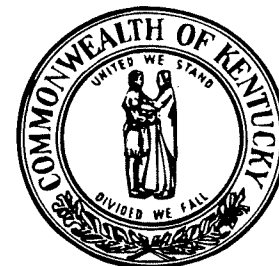


ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION FRANKFORT, KENTUCKY

VOLUME 23, NUMBER 6
SUNDAY, DECEMBER 1, 1996

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MEETING NOTICE

The Administrative Regulation Review Subcommittee is scheduled to meet on December 2, 1996. See tentative agenda beginning on page 2401 of this Administrative Register.

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

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ADMINISTRATIVE REGISTER - 2401

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - December 2, 1996, 10 a.m.
Room 149, Capitol Annex**

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

AGRICULTURAL EXPERIMENT STATION

Commercial Feeds (Deferred from November)

- 12 KAR 2:006. Definitions.
- 12 KAR 2:011. Label format.
- 12 KAR 2:016. Brand and product names.
- 12 KAR 2:017. Product purpose statement.
- 12 KAR 2:018. Guaranteed analysis.
- 12 KAR 2:021. Guarantees.
- 12 KAR 2:026. Ingredients.
- 12 KAR 2:036. Nonprotein nitrogen.
- 12 KAR 2:041. Additives.
- 12 KAR 2:046. Poisonous or deleterious substances.
- 12 KAR 2:051. Manufacturing conditions.
- 12 KAR 2:061. Registration.
- 12 KAR 2:066. Suitability.

Pet Food (Deferred from November)

- 12 KAR 3:012. Uniform labeling format.
- 12 KAR 3:017. Brand and product names.
- 12 KAR 3:022. Guarantees.
- 12 KAR 3:027. Ingredients.
- 12 KAR 3:037. Additives.
- 12 KAR 3:042. Statement of caloric content.

STATE BOARD OF ELECTIONS

Forms and Procedures

- 31 KAR 4:040E. Absentee ballots cast in county clerk's office. (Deferred from August)

Voting

- 31 KAR 5:010E. Absentee voting. (Deferred from August)

DEPARTMENT OF LAW

Medical Examination of Sexual Abuse Victims

- 40 KAR 3:020E. Protocol for operation of local multidisciplinary teams on child sexual abuse.

PERSONNEL

Personnel Board

- 101 KAR 1:365. Appeal and hearing procedures.

GENERAL GOVERNMENT CABINET

Real Estate Commission

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

Board of Hairdressers and Cosmetologists

- 201 KAR 12:082 (&E). School's course of instruction.
- 201 KAR 12:200 (&E). Requirements for continuing education for renewal of license.

TOURISM CABINET

Department of Fish and Wildlife Resources

Fish

- 301 KAR 1:016. Use of public lands and waters at department-owned lakes.

Game

- 301 KAR 2:140. Seasons for wild turkey.
- 301 KAR 2:221E. Waterfowl seasons and limits.
- 301 KAR 2:222E. Waterfowl hunting requirements.
- 301 KAR 2:224E. Waterfowl hunting zones.
- 301 KAR 2:225E. Dove, wood duck, teal and other migratory game bird hunting. (Deferred from November)

DEPARTMENT OF AGRICULTURE

Linked Deposits

- 302 KAR 3:010E. Linked Deposit Investment Program for agribusiness. (Deferred from September)

ADMINISTRATIVE REGISTER - 2402

ECONOMIC DEVELOPMENT CABINET

Linked Deposit Investment Program

307 KAR 5:010E. Linked Deposit Investment Program. (Deferred from September) (Agency Requests Deferral)

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

Department for Environmental Protection

Division of Water

Water Quality (Public Hearings in October)

401 KAR 5:001. Definitions of terms used in 401 KAR Chapter 5.

401 KAR 5:005. Permits to construct, modify, or operate a facility.

401 KAR 5:006. Wastewater planning requirements for regional areas.

Public Water Supply

401 KAR 8:030E. Water treatment plants; water distribution systems; certification of operators. (Agency Requests Deferral)

Division of Air Quality

General Administrative Procedures

401 KAR 50:035 (& E). Permits. (Public Hearing in October)

New Source Requirements; Nonattainment Areas

401 KAR 51:017. Prevention of significant deterioration of air quality.

PUBLIC PROTECTION AND REGULATION CABINET

Office of the Petroleum Storage Tank Environmental Assurance Fund

415 KAR 1:050 (&E). Definitions.

415 KAR 1:060 (&E). Financial responsibility account.

415 KAR 1:070 (&E). Petroleum storage tank account.

415 KAR 1:080 (&E). Claims procedures.

415 KAR 1:090 (&E). Ranking system.

415 KAR 1:100 (&E). Third party claims.

415 KAR 1:110 (&E). Contractor costs.

415 KAR 1:114 (&E). Contractor certification.

415 KAR 1:120 (&E). Hearings.

415 KAR 1:125 (&E). Discovery procedure.

JUSTICE CABINET

Department of Corrections

Office of the Secretary

501 KAR 6:020. Corrections policies and procedures.

501 KAR 6:040. Kentucky State Penitentiary.

501 KAR 6:060. Northpoint Training Center.

501 KAR 6:130. Western Kentucky Correctional Complex. (Deferred from November)

501 KAR 6:170. Green River Correctional Complex.

Department of State Police

Candidate Selection

502 KAR 45:005E. Definitions. (Deferred from October)

502 KAR 45:035E. Application. (Deferred from October)

502 KAR 45:045E. Written examination. (Deferred from October)

502 KAR 45:055E. Oral interview.

502 KAR 45:075E. Register. (Deferred from October)

502 KAR 45:150E. Content Based Task Test (CBTT). (Deferred from October)

Department of Training

Concealed Deadly Weapon Licensing

503 KAR 6:010E. Carry concealed deadly weapon licensing. (Deferred from October)

503 KAR 6:020 & E. Application for license to carry concealed deadly weapon.

503 KAR 6:030 & E. Applicant photograph requirements for license to carry concealed deadly weapon.

503 KAR 6:040E. Application form issuance, completion, and submission procedures. (Deferred from October)

503 KAR 6:050 & E. Denial of application form and consideration process.

503 KAR 6:060 & E. Incomplete application for license to carry concealed deadly weapon.

503 KAR 6:070E. The applicant background analysis process. (Deferred from October)

503 KAR 6:080 & E. Replacement and renewal of license to carry concealed deadly weapon.

503 KAR 6:090 & E. License denial and reconsideration process.

503 KAR 6:100E. The license suspension/ reinstatement process. (Deferred from October)

503 KAR 6:110 & E. License revocation notice and reinstatement process.

TRANSPORTATION CABINET

Department of Vehicle Regulation

Division of Motor Carriers

601 KAR 1:005. Safety administrative regulations.

ADMINISTRATIVE REGISTER - 2403

Commercial Driver's License

601 KAR 11:020. Commercial driving history record.

Driver Improvement

601 KAR 13:025. Point system.

601 KAR 13:070. Applicant for an operator's license who is under the age of eighteen (18); notification.

Department of Highways

Traffic

603 KAR 5:115. Coal-haul highway system; reporting requirements.

603 KAR 5:320E. Safety in highway work zones. (Deferred from October) (Agency Requests Deferral)

603 KAR 5:330 & E. Annual overweight permits for nondivisible loads. (Amended After Hearing)

EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Office of Chief State School Officer

701 KAR 5:065. Repeal of 701 KAR 5:060.

Office of District Support Services

School Administration and Finance (Deferred from October)

702 KAR 3:285 & E. School district Medicaid providers. (Not Amended After Hearing) (Deferred from November)

Facilities Management

702 KAR 4:150. Procedures for approving energy conservation projects.

Pupil Transportation

702 KAR 5:150. Transportation of preschool children.

School Terms, Attendance, and Operation

702 KAR 7:055E. Repeal of 702 KAR 7:010, 7:020, and 7:050. (Deferred from November)

702 KAR 7:125 & E. Pupil attendance.

Bureau of Learning Results Services

Assistance and Intervention Services

703 KAR 3:060 & E. Procedures for determining rewards and sanctions.

Learning Results Services

703 KAR 4:010 & E. The formula for determining successful schools.

703 KAR 4:090 & E. Statewide Assessment and Accountability Program; school building and local district appeal of performance judgments.

703 KAR 4:110. Code of ethics for state required testing.

OFFICE OF LEARNING PROGRAMS DEVELOPMENT

Office of Instruction

704 KAR 3:345. Evaluation guidelines.

Education Professional Standards Board

Board

704 KAR 20:260. Junior Reserve Officers Training Corps certification.

704 KAR 20:460. Examination prerequisites for principal certification.

704 KAR 20:475 (&E). Probationary certificate for teachers of technology education.

704 KAR 20:695. Standards for accreditation of teacher education.

704 KAR 20:700. Standards for admission to teacher education.

704 KAR 20:705. Admission, placement, and supervision in student teaching.

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

WORKFORCE DEVELOPMENT CABINET

Department of Vocational Rehabilitation

Administration

781 KAR 1:030 (& E). Order of selection and economic need test for vocational rehabilitation services.

Department for Employment Services

Unemployment Insurance

787 KAR 1:320E. Priority of deductions from benefits.

LABOR CABINET

Occupational Safety and Health

803 KAR 2:600. Occupational safety and health standards for agriculture. (Deferred from November)

Department of Workers' Claims

Workers' Claims

803 KAR 25:015. Procedure in Workers' Compensation enforcement hearings. (Not Amended After Hearing) (Deferred from November)

803 KAR 25:036E. Computation of life expectancies for purposes including apportionment and attorney's fees. (Agency Requests Deferral)

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PUBLIC PROTECTION AND REGULATION CABINET Department of Alcoholic Beverage Control

Licensing

804 KAR 4:330. Direct sales from out-of-state companies.

Malt Beverage Equipment, Supplies and Service

804 KAR 11:010. Equipment and supplies. (Not Amended After Hearing) (Deferred from November)

Department of Insurance

Kinds of Insurance; Limits of Risk; Reinsurance

806 KAR 5:060 & E. Registration of service contracts for consumer products.

Agents, Consultants, Solicitors and Adjusters

806 KAR 9:240E. Financial institutions licensed as noncredit related insurance agents.

Health Insurance Contracts

806 KAR 17:140E. Health insurance rate filing requirements. (Deferred from November)

Public Service Commission

Utilities

807 KAR 5:003. Utility filing of updated information.

Department of Financial Institutions

Securities

808 KAR 10:260. Examination requirement for individuals advising the public on securities.

808 KAR 10:291. Repeal of 808 KAR 10:290.

808 KAR 10:300. Registration exemptions - pension plans.

Kentucky Racing Commission

Thoroughbred Racing

810 KAR 1:026. Racing associations. (Deferred from September) (Deferred from November)

Harness Racing

811 KAR 1:020. Registration and identification of horses.

811 KAR 1:035. Claiming races.

811 KAR 1:120. Licensing of race meetings.

Department of Housing, Buildings and Construction

Plumbing

815 KAR 20:120. Water supply and distribution.

815 KAR 20:195. Medical gas piping installations.

CABINET FOR HEALTH SERVICES

Long-term Care

900 KAR 2:060. Hearings concerning transfer and discharge rights.

Certificate of Need

900 KAR 6:010 & E. Certificate of need process.

900 KAR 6:020 (& E). Certificate of need application fee schedule.

900 KAR 6:030 (& E). Certificate of need expenditure minimums.

900 KAR 6:040 (& E). Licensure hearings.

Department for Public Health

State Health Plan

902 KAR 17:030 & E. State Health Plan.

902 KAR 17:040 & E. Data reporting by health care providers.

Health Services and Facilities

902 KAR 20:016. Hospitals; operations and services.

902 KAR 20:180. Psychiatric hospitals; operation and services.

902 KAR 20:275E. Mobil health services. (Deferred from October)

902 KAR 20:320 & E. Psychiatric residential treatment facility operation and services.

Hazardous Substances

902 KAR 47:080E. Training and certification requirements for individuals who perform lead-hazard detection or lead-hazard abatement.

902 KAR 47:090E. Accreditation of training programs and providers of educational programs for individuals who perform lead-hazard detection and abatement.

902 KAR 47:100E. Permit fees, permit requirements and procedures, and standards for performing lead-hazard detection and abatement.

CABINET FOR FAMILIES AND CHILDREN

Department for Social Insurance

Public Assistance

904 KAR 2:410E. Child support collection and distribution.

904 KAR 2:470 & E. Disability Determinations Program.

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Department for Social Services

Child Welfare

905 KAR 1:180E. DSS policy and procedures manual. (Deferred from November)

Day Care

905 KAR 2:100E. Certification of family child care homes. (Deferred from September)

CABINET FOR HEALTH SERVICES

Office of Inspector General

906 KAR 1:040. Blood establishment inspection.

Department for Medicaid Services

Medicaid Services

907 KAR 1:013 & E. Payments for hospital inpatient services. (Not Amended After Hearing)

907 KAR 1:022 & E. Nursing facility and intermediate care facility for the mentally retarded services.

907 KAR 1:025 & E. Payments for nursing facility and intermediate care facility for the mentally retarded services.

907 KAR 1:034 & E. Early and periodic screening, diagnosis, and treatment services. (Not Amended After Hearing)

907 KAR 1:035 & E. Payments for early and periodic screening, diagnosis, and treatment services. (Not Amended After Hearing)

907 KAR 1:140 & E. Alternative intermediate services for individuals with mental retardation or developmental disabilities. (Not Amended After Hearing) (Emergency expired 11/17/96)

907 KAR 1:715 & E. School-based health services. (Amended After Hearing)

Payment and Services

907 KAR 3:020E. Coverage and payments for targeted case management and rehabilitative services provided through an agreement with the state Title V agency. (Deferred from September)

Department for Mental Health and Mental Retardation Services

Substance Abuse

908 KAR 1:350. Licensing procedures and standards for the operation of alcohol and other drug abuse prevention programs. (Public Hearing in October)

Mental Health (Deferred from November)

908 KAR 2:100E. Kentucky Early Intervention Program definitions.

908 KAR 2:110E. Kentucky Early Intervention Program point of entry.

908 KAR 2:120E. Kentucky Early Intervention Program evaluation and eligibility.

908 KAR 2:130E. Kentucky Early Intervention Program assessment and service planning.

908 KAR 2:140E. Kentucky Early Intervention Program primary service coordination.

908 KAR 2:150E. Kentucky Early Intervention Program personnel qualifications.

908 KAR 2:160E. Kentucky Early Intervention Program covered services.

908 KAR 2:170E. Notice of action and administrative appeal.

908 KAR 2:180E. Kentucky Early Intervention Program mediation.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

Department for Environmental Protection

Division of Waste Management

(Deferred from November Meeting)

General Administrative Procedures

401 KAR 30:005. Definitions related to 401 KAR Chapter 30.

401 KAR 30:010. Adoption without change.

401 KAR 30:031. Environmental performance standards.

401 KAR 30:040. Transfer of regulatory responsibility.

401 KAR 30:080. Standards for variances.

Identification and Listing of Hazardous Waste

401 KAR 31:005. Definitions related to 401 KAR Chapter 31. (Amended After Hearing)

401 KAR 31:010. General provisions for hazardous wastes.

401 KAR 31:030. Characteristics of hazardous waste.

401 KAR 31:040. Lists of hazardous wastes. (Amended After Hearing)

401 KAR 31:050. General provisions for special waste.

401 KAR 31:060. Rulemaking petitions for hazardous waste. (Amended After Hearing)

401 KAR 31:070. Delisted hazardous waste streams.

401 KAR 31:110. Appendix on toxicity characteristic leaching procedure.

401 KAR 31:120. Appendix on chemical analysis test methods.

401 KAR 31:160. Appendix on basis for listing hazardous waste.

401 KAR 31:170. Appendix on hazardous waste constituents.

Standards Applicable to Generators of Hazardous Waste

401 KAR 32:005. Definitions related to 401 KAR Chapter 32. (Amended After Hearing)

401 KAR 32:010. General provisions for generators.

401 KAR 32:020. Manifest system.

401 KAR 32:030. Pretransport requirements.

401 KAR 32:040. Recordkeeping and reporting.

401 KAR 32:050. Special conditions.

401 KAR 32:100. Appendix on hazardous waste manifest and instructions.

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Standards Applicable to Transporters of Hazardous Waste

- 401 KAR 33:005. Definitions related to 401 KAR Chapter 33. (Amended After Hearing)
- 401 KAR 33:010. General provisions for transporters.

Standards for Owners and Operators of Hazardous Waste Storage; Treatment and Disposal Facilities

- 401 KAR 34:005. Definitions related to 401 KAR Chapter 34. (Amended After Hearing)
- 401 KAR 34:010. General provisions for facilities.
- 401 KAR 34:020. General facility standards.
- 401 KAR 34:050. Manifest system, recordkeeping and reporting.
- 401 KAR 34:060. Groundwater protection. (Amended After Hearing)
- 401 KAR 34:070. Closure and postclosure.
- 401 KAR 34:080. General financial requirements.
- 401 KAR 34:090. Closure financial requirements.
- 401 KAR 34:100. Postclosure financial requirements.
- 401 KAR 34:120. Liability requirements. (Amended After Hearing)
- 401 KAR 34:180. Use and management on containers.
- 401 KAR 34:190. Tanks.
- 401 KAR 34:200. Surface impoundments.
- 401 KAR 34:210. Waste piles.
- 401 KAR 34:230. Landfills.
- 401 KAR 34:240. Incinerators.
- 401 KAR 34:245. Containment buildings.
- 401 KAR 34:250. Miscellaneous units.
- 401 KAR 34:275. Air emission standards for process vents.
- 401 KAR 34:280. Air emission standards for equipment leaks.
- 401 KAR 34:281. Air emission standards for tanks, surface impoundments, and containers. (Amended After Hearing)
- 401 KAR 34:287. Corrective action for waste management units.
- 401 KAR 34:290. Appendix on recordkeeping instructions.
- 401 KAR 34:360. Appendix on the list of hazardous constituents for groundwater monitoring.

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

- 401 KAR 35:005. Definitions related to 401 KAR Chapter 35. (Amended After Hearing)
- 401 KAR 35:010. General provisions for facilities (IS).
- 401 KAR 35:020. General facilities standards (IS).
- 401 KAR 35:050. Manifest system, recordkeeping and reporting (IS). (Amended After Hearing)
- 401 KAR 35:060. Groundwater monitoring (IS).
- 401 KAR 35:070. Closure and postclosure (IS).
- 401 KAR 35:080. General financial requirements (IS).
- 401 KAR 35:090. Closure financial requirements (IS).
- 401 KAR 35:100. Postclosure financial requirements (IS).
- 401 KAR 35:120. Liability requirements (IS). (Amended After Hearing)
- 401 KAR 35:180. Use and management of containers (IS).
- 401 KAR 35:190. Tanks (IS).
- 401 KAR 35:200. Surface impoundments (IS).
- 401 KAR 35:210. Waste piles (IS).
- 401 KAR 35:230. Landfill (IS).
- 401 KAR 35:245. Containment buildings (IS). (Amended After Hearing)
- 401 KAR 35:250. Thermal treatment (IS).
- 401 KAR 35:275. Air emission standards for process vents (IS).
- 401 KAR 35:280. Air emission standards for equipment leaks (IS).
- 401 KAR 35:281. Air emission standards for tanks, surface impoundments, and containers (IS).
- 401 KAR 35:290. Appendix on recordkeeping instructions (IS).

Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities

- 401 KAR 36:005. Definitions related to 401 KAR Chapter 36. (Amended After Hearing)
- 401 KAR 36:020. Hazardous waste burned in boilers and industrial furnaces.
- 401 KAR 36:025. Tables and procedures associated with the standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities.
- 401 KAR 36:030. Recyclable materials used in a manner constituting disposal.
- 401 KAR 36:070. Spent lead-acid batteries being reclaimed.

Waste Management - Land Disposal Restrictions

- 401 KAR 37:005. Definitions related to 401 KAR Chapter 37. (Amended After Hearing)
- 401 KAR 37:010. General provisions for land disposal restrictions. (Amended After Hearing)
- 401 KAR 37:030. Prohibitions on land disposal.
- 401 KAR 37:040. Treatment standards. (Repeal 401 KAR 37:100)
- 401 KAR 37:050. Prohibitions on storage.

Hazardous Waste Permitting Process

- 401 KAR 38:005. Definitions related to 401 KAR Chapter 38. (Amended After Hearing)
- 401 KAR 38:010. General provisions for permitting.
- 401 KAR 38:020. Interim status provisions.

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- 401 KAR 38:030. Conditions applicable to all permits.
- 401 KAR 38:040. Changes to permits; expiration of permits. (Amended After Hearing)
- 401 KAR 38:050. Public information procedures.
- 401 KAR 38:060. Special types of permits.
- 401 KAR 38:070. Applications procedures.
- 401 KAR 38:080. Contents of Part A application.
- 401 KAR 38:090. General contents of Part B application.
- 401 KAR 38:100. Specific Part B requirements for groundwater protection.
- 401 KAR 38:150. Specific Part B requirements for containers.
- 401 KAR 38:160. Specific Part B information requirements for tanks.
- 401 KAR 38:170. Specific Part B requirements for surface impoundments.
- 401 KAR 38:190. Specific Part B requirements for incinerators.
- 401 KAR 38:250. Specific Part B requirements for equipment.
- 401 KAR 38:500. Provisions for approval by the local government or the Kentucky Regional Integrated Treatment and Disposal Facility

Siting Board.

Hazardous Waste Fees

- 401 KAR 39:005. Definitions related to 401 KAR Chapter 39. (Amended After Hearing)
- 401 KAR 39:080. Recycling and universal waste fees.
- 401 KAR 39:110. Registration fees.
- 401 KAR 39:120. Application fees.

Enforcement and Compliance Monitoring for Hazardous Waste

- 401 KAR 40:001. Definitions related to 401 KAR Chapter 40.

Underground Storage Tanks

- 401 KAR 42:005. Definitions related to 401 KAR Chapter 42.

Standards for Special Collection System Wastes

- 401 KAR 43:005. Definitions related to 401 KAR Chapter 43. (Amended After Hearing)
- 401 KAR 43:010. General standards.
- 401 KAR 43:020. Standards for small quality handlers of universal waste.
- 401 KAR 43:030. Standards for large quality handlers of universal waste. (Amended After Hearing)
- 401 KAR 43:040. Standards for universal waste transporters. (Amended After Hearing)
- 401 KAR 43:050. Standards for destination facilities.
- 401 KAR 43:060. Import requirements.
- 401 KAR 43:070. Petitions to include other waste under 401 KAR Chapter 43.

Standards for the Management of Used Oil

- 401 KAR 44:005. Definitions related to 401 KAR Chapter 44. (Amended After Hearing)
- 401 KAR 44:010. Applicability. (Repeals 401 KAR 36:050)
- 401 KAR 44:020. Standards for used oil generators.
- 401 KAR 44:030. Standards for used oil collection centers and aggregation points.
- 401 KAR 44:040. Standards for used oil transporter and transfer facilities. (Amended After Hearing)
- 401 KAR 44:050. Standards for used oil processors and refiners.
- 401 KAR 44:060. Standards for used oil burners who use off-specification used oil for energy recovery.
- 401 KAR 44:070. Standards for used oil marketers.
- 401 KAR 44:080. Standards for use as a dust suppressant and disposal of used oil.

Solid Waste Facilities

- 401 KAR 47:005. Definitions related to 401 KAR Chapter 47.

Standards for Solid Waste Facilities

- 401 KAR 48:005. Definitions related to 401 KAR Chapter 48.

Solid Waste Planning

- 401 KAR 49:005. Definitions related to 401 KAR Chapter 49.

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ADMINISTRATIVE REGULATION REVIEW PROCEDURE (Also see KRS Chapter 13A)

Notice of Intent

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

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

Filing and Publication

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

Public Hearing

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

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

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

No transcript of the hearing need to be taken unless a written request for a transcript is made, and the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript.

Review Procedure

If a proposed administrative regulation is amended as a result of the public hearing, the amended version shall be published in the next Administrative Register; and the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting following publication. If a proposed administrative regulation is not amended as a result of the hearing or if the hearing is cancelled, the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the administrative regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or thirty (30) days after being referred by LRC, whichever occurs first.

NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

November 6, 1996

Kentucky Higher Education Assistance Authority

(1) The subject matter of the administrative regulation is **11 KAR 4:030**, Student appeal process.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an amendment to all sections of the administrative regulation governing the subject matter listed above, particularly:

New Section 1 is added to define terms used in the administrative regulation;

Former Section 1(1), as renumbered to new Section 2 is amended to delineate circumstances to which the administrative regulation shall not apply, including processes for collection of debts governed by other federal or state laws and administrative regulations, matters subject to determination by judicial procedures, and denial of student financial assistance due to insufficient funds;

Former Section 1(2) renumbered as new Section 3 is amended to clarify when the authority shall respond in writing to a request for explanation of the basis for an adverse action by the authority;

Former Section 2 renumbered as new Section 4 is amended to clarify the process for fact finding in which individual may dispute an adverse action and initially have the action by considered by a representative of the authority and subsequently reviewed by the executive director or his designee;

Former Section 3 renumbered as new Section 5 is amended to verify the process for requesting a hearing and to supplement KRS Chapter 13B with specific prehearing procedures.

Former Section 4 renumbered as new Section 6 is amended to clarify the role of the board in issuing the final order in accordance with KRS Chapter 13B.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, December 30, 1996, at 10 a.m., at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 30, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Higher Education Assistance Authority at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 164.748(4), 13B.070(3), 13B.170.

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will amend 11 KAR 4:030, as follows: New Section 1 is added to define terms used in the administrative regulation;

Section 1(1) of the above cited administrative regulation currently provides that this administrative regulation shall not apply to a determination of default on an insured student loan, the setoff of an individual's tax refund, and the issuance of administrative wage garnishment. The Kentucky Higher Education Assistance Authority intends to amend that section of the administrative regulation to provide that it will be renumbered as new Section 2, and that the administrative regulation shall apply to a determination of default on an insured student loan, but shall not apply to the setoff of an individual's tax refund, or the issuance to an administrative wage garnishment, or to matters subject to judicial proceedings or to denial of aid due to lack of funds.

Section 1(2) of the above cited administrative regulation currently provides that the authority shall respond within ten (10) working days to a written inquiry about an adverse action. The Kentucky Higher Education Assistance Authority intends to amend this section of the regulation to provide that the section shall be renumbered as new Section 3 and to clarify when the authority shall respond in writing to a request for explanation of the basis for an adverse action by the authority.

Section 2 of the above cited administrative regulation currently provides that an individual may seek a redetermination of an adverse action by a delegated officer of the authority and subsequently seek review of the decision of that delegated officer by the executive director. The Kentucky Higher Education Assistance Authority intend to amend that section of the administrative regulation to provide that the section shall be renumbered as new Section 4 and to clarify the process for fact finding in which an individual may dispute an adverse action and initially have the action considered by delegated officer of the authority and subsequently reviewed by the executive director or his designee.

Section 3 of the above cited administrative regulation currently provides that an individual may request a hearing before a hearing officer, and that the decision of that hearing officer shall be final unless appealed through the board. The Kentucky Higher Education Assistance Authority intends to amend that section of the administrative regulation to provide that the section shall be renumbered as new Section 5 and to clarify the process of requesting a hearing with specific free hearing procedures that supplement KRS Chapter 13B.

Section 4 of the above cited administrative regulation currently provides that the decision of the hearing officer maybe appealed to the board. The Kentucky Higher Education Assistance Authority intends to amend that section of the administrative regulation to provide that the section shall be renumbered as new Section 6 and to clarify the role of the board in issuing the final order following review of the hearing officer's recommended order in accordance with KRS Chapter 13B.

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Section 5 of the above cited administrative regulation currently provides that the party adversely affected by the decision of the board may appeal that decision to court. The Kentucky Higher Education Assistance Authority intends to amend that section of the administrative regulation to provide that it shall be repealed because the right of appeal to a court is classified in KRS Chapter 13B.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The Kentucky Higher Education Assistance Authority administers programs to provide financial assistance to students to attend postsecondary institutions. This administrative regulation sets forth the procedures by which students seeking financial assistance or individuals indebted to the authority for repayment of student financial assistance may request a review of decisions made by the authority which adversely affect their rights, obligations and benefits or their eligibility to participate in authority administered programs. This amendment is necessary to clarify hearing procedures and the applicability of this administrative regulation to certain disputes that may arise.

(d) The benefits expected from the administrative regulation are: expeditious and efficient handling of appeals by clarification and streamlining of the processes for informal dispute resolution, fact-finding, and prehearing procedures conforming to KRS Chapter 13B.

(e) The administrative regulation will be implemented as follows: An individual affected by an adverse action or decision of the authority may request an explanation of the basis for that adverse action. The authority shall respond in writing to a written request for explanation. The individual may also request a reconsideration of the adverse action by a delegated officer of the authority. The delegated officer shall undertake the fact-finding review of the circumstances and shall notify the disputant in writing of his conclusions. The disputant may then request review by the executive director or his designee of the delegated officer's decision. This review by the executive director or his designee shall be based upon the record established by the delegated officer during the initial review. The executive director or his current designee shall notify the disputant in writing of his decision. The disputant may subsequently request a hearing before a hearing officer. Upon such a request, the authority shall arrange for a hearing, which shall be preceded by the opportunity for both parties to confer, to resolve the issues, to engage in discovery, and to report to the hearing officer the results of these activities and suitable dates for a hearing. The hearing officer's recommended decision shall be reviewed by the board at a regular or special meeting.

FINANCE AND ADMINISTRATION CABINET

November 11, 1996

Finance and Administration Cabinet

(1) The Finance and Administration Cabinet intends to amend **200 KAR 5:021** to update the Finance and Administration Cabinet's Manual of Policies and Procedures which is incorporated by reference in 200 KAR 5:021.

(2) The Finance and Administration Cabinet intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 10 a.m., EST, December 23, 1996, at Room 386 of the Capitol Annex, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 23, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Office of Legal and Legislative Services, Room 374, Capitol Annex, Frankfort, Kentucky 40601.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Office of Legal and Legislative Services at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to promulgation of the purchasing manual is KRS 45A.045(2).

(b) The administrative regulation that the Finance and Administration Cabinet intends to promulgate will amend 200 KAR 5:021. It will update the cabinet's Finance and Administration Cabinet's Manual of Policies and Procedures.

(c) The necessity and function of the proposed regulation is to allow for an increase in scope of use and monetary limit for the state procurement card, and to eliminate unnecessary steps in purchasing or leasing copy machines by state agencies.

(d) The benefits expected from this regulation are: Allowing the Finance and Administration Cabinet's Manual of Policies and Procedures to implement policies that will improve the efficiency and management of state government procurement for small purchases.

(e) The administrative regulation will be implemented as follows: By making necessary changes in the cabinet's Finance and Administration Cabinet's Manual of Policies and Procedures.

BOARD OF PHARMACY

October 16, 1996

Board of Pharmacy

(1) **201 KAR 2:045**, Technicians.

(2) The Kentucky Board of Pharmacy intends to promulgate an administrative regulation creating 201 KAR 2:045 relating to the qualifications that pharmacy technicians are required to attain prior to engaging in pharmacy practice activities outside the immediate supervision

of a pharmacist and identifying those activities.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 23, 1996 at 8 a.m. local prevailing time, at 1024 Capital Center Drive, Suite 210-Board Room, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 23, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Board of Pharmacy, 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the qualifications that pharmacy technicians are required to attain prior to engaging in pharmacy practice activities outside the immediate supervision of a pharmacist and those activities to be performed is found at KRS 315.191(1)(l).

(b) The administrative regulation that the Board of Pharmacy intends to promulgate will address the manner by which a pharmacy technician will demonstrate qualifications that would permit the pharmacy technician to engage in identified pharmacy practice activities that will be performed outside the immediate supervision of a pharmacist.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 315.191(1)(l) and 315.020(4)(b) require the Board of Pharmacy to promulgate administrative regulations establishing the qualifications of pharmacy technicians and the specific activities to be performed. This proposed administrative regulation is necessary to establish those qualifications and specific activities.

(d) The benefits expected from the administrative regulation are increased efficiency in the practice of the profession of pharmacy by permitting the delegation of specific activities to qualified technicians, thereby allowing the pharmacist to devote more time to the provision of pharmaceutical care to the citizens of the Commonwealth.

(e) The administrative regulation will be implemented as follows: Each pharmacy technician who meets the qualifications will be permitted to perform any of the specifically identified activities that may be delegated to the technician by the pharmacist without the necessity of immediate supervision by that pharmacist.

(8) Any person with a disability for which the Board of Pharmacy needs to make an accommodation in order for the person to participate in the public comment hearing should notify Michael A. Moné at the above-mentioned address no later than December 18, 1996.

October 16, 1996

Board of Pharmacy

(1) **201 KAR 2:220**, Collaborative care agreements.

(2) The Kentucky Board of Pharmacy intends to promulgate an administrative regulation creating 201 KAR 2:220 relating to the method by which a pharmacist and a practitioner enter into a collaborative care agreement and the records that must be maintained to document the actions taken by a pharmacist pursuant to the collaborative care agreement.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 23, 1996 at 9 a.m. local prevailing time, at 1024 Capital Center Drive, Suite 210-Board Room, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 23, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Board of Pharmacy, 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to method by which a pharmacist and a practitioner enter into a collaborative care agreement and the records that must be maintained to document the actions taken by a pharmacist pursuant to the collaborative care agreement is found at KRS 315.191(1)(a).

(b) The administrative regulation that the Board of Pharmacy intends to promulgate will address the manner by which the pharmacist enters into a collaborative care agreement with a practitioner; the method of notification of the specific patient of the collaborative care agreement; the method of termination of the agreement and notice to the specific patient of the termination; and the records that must be maintained to document the actions taken by a pharmacist pursuant to the collaborative care agreement.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 315.191(1)(a) authorizes the Board of Pharmacy to promulgate administrative regulations establishing the method by which a pharmacist and a practitioner enter into a collaborative care agreement and the records that must be maintained to document the actions taken by a pharmacist pursuant to the

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collaborative care agreement. This proposed administrative regulation is necessary to establish the method, manner and documentation.

(d) The benefits expected from the administrative regulation are certainty by the public of the relationship between their practitioner and their pharmacist working cooperatively for the maximization of the benefits of drug therapy. Disease state monitoring and increased communication between practitioner-pharmacist-patient will result in greater efficacy of health care costs paid by the citizens of Commonwealth.

(e) The administrative regulation will be implemented as follows: Each pharmacist who enters into a collaborative care agreement with a practitioner will have a written agreement which will be available to the patient that will set forth the extent of the delegation by the practitioner to the pharmacist. The agreement will provide for notice to the patient of the existence of the agreement and of its termination. Each pharmacist who enters into a collaborative care agreement will maintain patient records that will document the specific actions taken pursuant to the collaborative care agreement. The patient records will contain minimum patient specific information needed to undertake the delegated functions permitted by the collaborative care agreement between the practitioner and the pharmacist.

(8) Any person with a disability for which the Board of Pharmacy needs to make an accommodation in order for the person to participate in the public comment hearing should notify Michael A. Moné at the above-mentioned address no later than December 18, 1996.

KENTUCKY LICENSING BOARD FOR SPECIALISTS IN HEARING INSTRUMENTS

November 11, 1996

Kentucky Licensing Board for Specialists in Hearing Instruments

(1) **201 KAR 7:015. Fees.**

(2) The Kentucky Licensing Board for Specialists in Hearing Instruments intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 23, 1996, at 9 a.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to December 23, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Licensing Board for Specialists in Hearing Instruments at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to fees is KRS 334.150(9), 334.050, 334.080, 334.090, and 334.110.

(b) The administrative regulation that the board intends to promulgate will amend 201 KAR 7:015, Fees. It will set forth in detail the fee requirements for applicants for licensure.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation is necessitated by KRS 334.050, 334.080, 334.090, and 334.110 and sets forth in detail all fees charged by the board.

(d) The benefits expected from administrative regulation are: The applicants will know what all fees are that are charged by the board.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented as soon as it becomes effective.

November 11, 1996

Kentucky Licensing Board for Specialists in Hearing Instruments

(1) **201 KAR 7:040. Examinations.**

(2) The Kentucky Licensing Board for Specialists in Hearing Instruments intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 23, 1996, at 9 a.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to December 23, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

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

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

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an

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administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Kentucky Licensing Board for Specialists in Hearing Instruments at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to examinations is KRS 334.150(9).

(b) The administrative regulation that the board intends to promulgate will amend 201 KAR 7:040, Examinations. It will set forth in detail the examination requirements for applicants for licensure.

(c) The necessity and function of the proposed administrative regulation is as follows: The purpose of this administrative regulation is to clarify and delineate the procedures for administering examinations.

(d) The benefits expected from administrative regulation are: The applicants will know what the examination procedures are and apprentices will be able to extend their apprenticeship period if they fail to pass the examination.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented as soon as it becomes effective.

KENTUCKY BOARD OF MEDICAL LICENSURE

November 14, 1996

Kentucky Board of Medical Licensure

(1) Regulation Number and Title: **201 KAR 9:021** - Medical and osteopathic schools approved by the board; denial or withdrawal of approval; application of KRS 311.271; postgraduate training requirements; approved programs; recognition of degrees.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, December 23, 1996, at 3 p.m., at the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 23, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: C. William Schmidt, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 311.565, 311.601.

(b) The administrative regulation that the Kentucky Board of Medical Licensure intends to promulgate will amend 201 KAR 9:021 - Medical and osteopathic schools approved by the board; denial or withdrawal of approval; application of KRS 311.271; postgraduate training requirements; approved programs; recognition of degrees. This change will effect applicants for regular licensure who are graduates of medical and osteopathic schools located outside the United States and Canada.

(c) The necessity and function of the proposed administrative regulation is as follows: To reduce the postgraduate training requirement for international applicants for licensure in the Commonwealth of Kentucky from three (3) years to two (2) years of postgraduate training.

(d) The benefits expected from administrative regulation are: Applicants for licensure who are graduates of schools located outside the United States and Canada will only be required to obtain two (2) years of postgraduate training instead of the current requirement of three (3) years. Physicians generally enter into a two (2) year fellowship training program. This change would alleviate the need for these physicians to request a waiver of the third year.

(e) The administrative regulation will be implemented as follows: After this administrative regulation becomes effective, international graduates upon completion of a two (2) year postgraduate training program that is approved by the board would be eligible for licensure.

November 14, 1996

Kentucky Board of Medical Licensure

(1) Regulation Number and Title: **201 KAR 9:041** - Fee schedule.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, December 23, 1996, at 9 a.m., at the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 23, 1996, the public hearing will be canceled.

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(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: C. William Schmidt, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 311.565, 311.601.

(b) The administrative regulation that the Kentucky Board of Medical Licensure intends to promulgate will amend 201 KAR 9:041 - Fee schedule. It will effect all physicians who are licensed to practice medicine in the Commonwealth of Kentucky, and is necessary for the board's housekeeping purposes.

(c) The necessity and function of the proposed administrative regulation is as follows: To correct the presently listed fee of \$375 to \$365. The incorrect fee amount was included due to administrative error.

(d) The benefits expected from administrative regulation are: None, decrease in fee.

(e) The administrative regulation will be implemented as follows: After this administrative regulation becomes effective, the board will enforce the lower fee.

November 14, 1996

Kentucky Board of Medical Licensure

(1) Regulation Number and Title: **201 KAR 9:141** - Denial, revocation and suspension of certificate.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, December 23, 1996, at 2 p.m., at the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 23, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: C. William Schr Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 311.654.

(b) The administrative regulation that the Kentucky Board of Medical Licensure intends to promulgate will amend 201 KAR 9:141 - Denial, revocation and suspension of certificate. This regulation change will effect all paramedics who are certified in the Commonwealth of Kentucky, and is necessary for the board's disciplinary process.

(c) The necessity and function of the proposed administrative regulation is as follows: Will bring this regulation into conformity with KRS 311.595.

(d) The benefits expected from administrative regulation are: Will permit the board to exercise the same disciplinary options in cases involving paramedics as it does in cases involving physicians and/or physician assistants. This will benefit the involved paramedics by permitting the board to impose sanctions less severe than revocation or suspension, as presently limited.

(e) The administrative regulation will be implemented as follows: After this administrative regulation becomes effective, the board will have a full range of disciplinary sanctions to choose from, where a paramedic is found to be in violation of Kentucky statutes.

November 14, 1996

Kentucky Board of Medical Licensure

(1) Regulation Number and Title: **201 KAR 9:310** - Continuing medical education.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, December 23, 1996, at 10 a.m., at the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people

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at least 10 days prior to December 23, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: C. William Schmidt, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 311.565, 311.601.

(b) The administrative regulation that the Kentucky Board of Medical Licensure intends to promulgate will amend 201 KAR 9:310 - Continuing medical education. It will effect physicians who are licensed to practice medicine in the Commonwealth of Kentucky, and is necessary for the board's housekeeping purposes.

(c) The necessity and function of the proposed administrative regulation are as follows: Section 1(1) of 201 KAR 9:310 will include medical education accredited by the American Osteopathic Association that was inadvertently omitted. Section 1(5) will omit language that references Section 4 of this administrative regulation because this regulation only contains Section 1.

(d) The benefits expected from administrative regulation are: Doctors of osteopathic medicine will be allowed to use credits they have obtained by the American Osteopathic Association to satisfy the continuing medical education requirement. This was the original intent of this regulation.

(e) The administrative regulation will be implemented as follows: After this administrative regulation becomes effective, the board shall recognize credits obtained from the American Osteopathic Association to satisfy the CME requirement.

KENTUCKY BOARD OF VETERINARY EXAMINERS

November 11, 1996

Kentucky Board of Veterinary Examiners

(1) **201 KAR 16:015, Fees.**

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 23, 1996, at 10 a.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to December 23, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to fees is KRS 321.235, 321.240, 321.193, 321.195, 321.201, 321.211, and 321.221.

(b) The administrative regulation that the board intends to promulgate will amend 201 KAR 16:015, Fees. It will set forth in detail all fees regarding licensure.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation is necessitated by KRS 321.193, 321.195, 321.201, 321.211, and 321.221 and sets forth in detail all fees charged by the board.

(d) The benefits expected from administrative regulation are: The applicants and licensees will know what the fees are regarding licensure.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented as soon as it becomes effective.

November 11, 1996

Kentucky Board of Veterinary Examiners

(1) **201 KAR 16:040.** Approved programs for veterinary technicians and veterinary technologists.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December

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23, 1996, at 10 a.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to December 23, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to approved programs for veterinary technicians and veterinary technologists is KRS 321.235 and 321.240.

(b) The administrative regulation that the board intends to promulgate will amend 201 KAR 16:040, Approved programs for veterinary technicians and veterinary technologists. It will set forth the requirements for the educational programs approved by the board.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 321.441 provides for the qualification, registration, and use of veterinary technicians and veterinary technologists. KRS 321.441 sets forth the requirements for registration as a veterinary technician and a veterinary technologist. One of the requirements is the receipt of a degree from a program approved by the board. This regulation sets forth a listing of the programs approved by the board.

(d) The benefits expected from administrative regulation are: The applicants will know what the educational requirements for licensure are.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented as soon as it becomes effective.

BOARD OF NURSING

October 24, 1996

General Government Cabinet

Board of Nursing

(1) **201 KAR 20:215**, Contact hours, recordkeeping and reporting requirements for renewal of licensure.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 23, 1996, at 9 a.m. (EST) in the Boardroom, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received at least 10 days prior to December 23, 1996, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

(b) The administrative regulation that the Board of Nursing intends to promulgate will amend 201 KAR 20:215. It will add a pharmacology continuing education provision for advanced registered nurse practitioners.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: To comply with 1996 legislation.

(d) The benefits expected from administrative regulation are: Compliance with statutes and pharmacologic continuing education for ARNPs.

(e) The administrative regulation will be implemented as follows: In accordance with existing continuing education procedures.

October 24, 1996

General Government Cabinet

Board of Nursing

(1) **201 KAR 20:220**, Provider approval.

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

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(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 23, 1996, at 9 a.m. (EST) in the Boardroom, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received at least 10 days prior to December 23, 1996, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

(b) The administrative regulation that the Board of Nursing intends to promulgate will amend 201 KAR 20:220. It will allow a provider to designate the number of hours of a continuing education offering dedicated to pharmacology.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: To facilitate the offering of pharmacology CE for ARNPs.

(d) The benefits expected from administrative regulation are: Facilitation of the required pharmacology CE for ARNPs.

(e) The administrative regulation will be implemented as follows: In accordance with existing CE procedures.

October 24, 1996

General Government Cabinet

Board of Nursing

(1) **201 KAR 20:230**, Renewal of licenses.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 23, 1996, at 9 a.m. (EST) in the Boardroom, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received at least 10 days prior to December 23, 1996, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

(b) The administrative regulation that the Board of Nursing intends to promulgate will amend 201 KAR 20:230. It will require licensees to submit certified copies of disciplinary actions taken in other states and to report any pending actions.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: Licensees are required to report disciplinary actions in other states.

(d) The benefits expected from administrative regulation are: Public protection.

(e) The administrative regulation will be implemented as follows: In accordance with existing procedures.

October 24, 1996

General Government Cabinet

Board of Nursing

(1) **201 KAR 20:370**, Applications for licensure and registration.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 23, 1996, at 9 a.m. (EST) in the Boardroom, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received at least 10 days prior to December 23, 1996, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

(b) The administrative regulation that the Board of Nursing intends to promulgate will amend 201 KAR 20:370. It will require licensees to submit certified copies of disciplinary actions taken in other states and to report any pending actions. It will also prohibit licensure for applicants with certain criminal convictions.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: Licensees are required to report disciplinary actions in other states. Also, the board has determined that applicants with certain criminal convictions should not be licensed.

(d) The benefits expected from administrative regulation are: Public protection.

(e) The administrative regulation will be implemented as follows: In accordance with existing procedures.

KENTUCKY BOARD OF CERTIFICATION OF ALCOHOL AND DRUG COUNSELORS

November 11, 1996

Kentucky Board of Certification of Alcohol and Drug Counselors

(1) The subject matter of the proposed administrative regulation, **201 KAR 35:020**, is fees.

(2) The Kentucky Board of Certification of Alcohol and Drug Counselors intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 23, 1996, at 11 a.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to December 23, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Licensing Board for Specialists in Hearing Instruments at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to fees is KRS 309.0813(4) and (12) and 309.085(1)(a).

(b) The administrative regulation that the board intends to promulgate will not amend an existing regulation. It will set forth in detail the fee requirements for all fees.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation is necessitated by KRS 309.0813(4) and (12) and 309.085(1)(a) and sets forth in detail all fees charged by the board.

(d) The benefits expected from administrative regulation are: The applicants and certificate holders will know what all fees are that are charged by the board.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented as soon as it becomes effective.

DEPARTMENT OF AGRICULTURE

November 6, 1996

Kentucky Department of Agriculture

(1) Regulation number and title: **302 KAR 20:110**. Treatment of imported mares.

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

(3) A public hearing to receive oral and written comments has been scheduled for December 30, 1996 at 10 a.m. at the Department of Agriculture's Conference Room, 7th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

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(b) If a request for a public hearing is not received from the required number of people at least ten days prior to December 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mark Farrow, General Counsel, Kentucky Department of Agriculture, 7th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The authority for the promulgation of an administrative regulation relating to treatment of imported stallions is KRS 257.030.

(b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate is an amended administrative regulation. It sets forth the treatment of stallions imported in Kentucky from any country outside the continental United States, its territories and possessions.

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

(d) The benefits expected from the proposed administrative regulation are: To prevent the introduction of contagious equine metritis (CEM) bacterium into Kentucky.

(e) The administrative regulation will be implemented as follows: This regulation will be implemented by emergency on or about November 6, 1996 and will be replaced by an ordinary administrative regulation.

November 6, 1996

Kentucky Department of Agriculture

(1) Regulation number and title: **302 KAR 20:120**. Treatment of imported stallions.

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

(3) A public hearing to receive oral and written comments has been scheduled for December 23, 1996 at 10 a.m. at the Department of Agriculture's Conference Room, 7th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing is not received from the required number of people at least ten days prior to December 23, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mark Farrow, General Counsel, Kentucky Department of Agriculture, 7th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The authority for the promulgation of an administrative regulation relating to treatment of imported stallions is KRS 257.030.

(b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate is an amended administrative regulation. It sets forth the treatment of stallions imported in Kentucky from any country outside the continental United States, its territories and possessions.

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

(d) The benefits expected from the proposed administrative regulation are: To prevent the introduction of contagious equine metritis (CEM) bacterium into Kentucky.

(e) The administrative regulation will be implemented as follows: This regulation will be implemented by emergency on or about November 6, 1996 and will be replaced by an ordinary administrative regulation.

ECONOMIC DEVELOPMENT CABINET

October 30, 1996

Economic Development Cabinet

(1) **307 KAR 1:030**, relating to Kentucky Rural Economic Development Act Tax Credit Program.

(2) The Kentucky Economic Development Finance Authority intends to promulgate an administrative regulation setting out the application process and project selection criteria for the Kentucky Rural Economic Development Act Tax Credit Program.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 23, 1996, at 10 a.m., in Room G-2 of Capitol Plaza Tower, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people

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at least ten days prior to December 23, 1996, the public hearing will be cancelled.

(5)(a) Persons requesting a public hearing should mail their written request to the following address: Lori Flanery, General Counsel, Economic Development Cabinet, 24th Floor, Capitol Plaza Tower, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 154.22-040(2).

(b) The administrative regulation that the Economic Development Cabinet intends to promulgate will amend 307 KAR 1:030, Kentucky Rural Economic Development Act Tax Credit Program.

(c) The necessity and function of the proposed administrative regulation is as follows: The administrative regulation is necessary to set out the application processes and project selection criteria for the Kentucky Rural Economic Development Act Tax Credit Program established pursuant to KRS 154.22-010 through 154.22-080.

(d) The benefits expected from this administrative regulation are adherence to statutory authority and increased efficiency in the application and procedural process for the Kentucky Rural Economic Development Act Tax Credit Program.

(e) The administrative regulation will be implemented as follows: Requirement will begin on the effective date of the administrative regulation.

October 30, 1996

Economic Development Cabinet

(1) **307 KAR 2:010**, relating to Kentucky Jobs Development Act Program.

(2) The Kentucky Economic Development Finance Authority intends to promulgate an administrative regulation setting out the application process, hearing procedure and project selection criteria for the Kentucky Jobs Development Act Program.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 23, 1996, at 10 a.m., in Room G-2 of Capitol Plaza Tower, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten days prior to December 23, 1996, the public hearing will be cancelled.

(5)(a) Persons requesting a public hearing should mail their written request to the following address: Lori Flanery, General Counsel, Economic Development Cabinet, 24th Floor, Capitol Plaza Tower, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 154.24-040(7).

(b) The administrative regulation that the Economic Development Cabinet intends to promulgate will amend 307 KAR 2:010, Kentucky Jobs Development Act Program.

(c) The necessity and function of the proposed administrative regulation is as follows: The administrative regulation is necessary to set out the application process, hearing procedure and project selection criteria for the Kentucky Jobs Development Act Program established pursuant to KRS 154.24-010 through 154.24-150.

(d) The benefits expected from this administrative regulation are adherence to statutory authority and increased efficiency in the application and procedural process for the Kentucky Jobs Development Act Program.

(e) The administrative regulation will be implemented as follows: Requirement will begin on the effective date of the administrative regulation.

October 30, 1996

Economic Development Cabinet

(1) **307 KAR 3:010**, relating to Kentucky Industrial Revitalization Act Tax Credit Program.

(2) The Kentucky Economic Development Finance Authority intends to promulgate an administrative regulation setting out the application process, hearing procedure and project selection criteria for the Kentucky Industrial Revitalization Act Tax Credit Program.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 23, 1996, at 10 a.m., in Room G-2 of Capitol Plaza Tower, Frankfort, Kentucky.

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

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

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(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten days prior to December 23, 1996, the public hearing will be cancelled.

(5)(a) Persons requesting a public hearing should mail their written request to the following address: Lori Flanery, General Counsel, Economic Development Cabinet, 24th Floor, Capitol Plaza Tower, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 154.26-030(5).

(b) The administrative regulation that the Economic Development Cabinet intends to promulgate will amend 307 KAR 3:010, Kentucky Industrial Revitalization Act Tax Credit Program.

(c) The necessity and function of the proposed administrative regulation is as follows: The administrative regulation is necessary to set out the application processes, hearing procedure and project selection criteria for the Kentucky Industrial Revitalization Act Tax Credit Program established pursuant to KRS 154.26-010 through 154.26-100.

(d) The benefits expected from this administrative regulation are adherence to statutory authority and increased efficiency in the application and procedural process for the Kentucky Industrial Revitalization Act Tax Credit Program.

(e) The administrative regulation will be implemented as follows: Requirement will begin on the effective date of the administrative regulation.

October 30, 1996

Economic Development Cabinet

(1) **307 KAR 4:010**, relating to Kentucky Industrial Development Act Tax Credit Program.

(2) The Kentucky Economic Development Finance Authority intends to promulgate an administrative regulation setting out the application process and project selection criteria for the Kentucky Industrial Development Act Tax Credit Program.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 23, 1996, at 10 a.m., in Room G-2 of Capitol Plaza Tower, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten days prior to December 23, 1996, the public hearing will be cancelled.

(5)(a) Persons requesting a public hearing should mail their written request to the following address: Lori Flanery, General Counsel, Economic Development Cabinet, 24th Floor, Capitol Plaza Tower, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 154.28-030(5).

(b) The administrative regulation that the Economic Development Cabinet intends to promulgate will amend 307 KAR 4:010, Kentucky Industrial Development Act Tax Credit Program.

(c) The necessity and function of the proposed administrative regulation is as follows: The administrative regulation is necessary to set out the application processes and project selection criteria for the Kentucky Industrial Development Act Tax Credit Program established pursuant to KRS 154.28-010 through 154.28-100.

(d) The benefits expected from this administrative regulation are adherence to statutory authority and increased efficiency in the application and procedural process for the Kentucky Industrial Development Act Tax Credit Program.

(e) The administrative regulation will be implemented as follows: Requirement will begin on the effective date of the administrative regulation.

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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management

November 15, 1996

Natural Resources and Environmental Protection Cabinet

Department for Environmental Protection

Division of Waste Management

(1) **401 KAR 46:005**, Definitions related to 401 KAR Chapter 46; **401 KAR 46:010**, General provisions for waste tires; **401 KAR 46:020**, Registered permit-by-rule for waste tire facilities; **401 KAR 46:030**, Operating requirements for waste tire facilities; **401 KAR 46:040**, Financial assurance; **401 KAR 46:050**, Tire fee; **401 KAR 46:060**, Waste Tire Trust Fund Loan Program; **401 KAR 46:070**, Waste Tire Trust Fund Grant Program; **401 KAR 46:100**, Enforcement; **401 KAR 47:150**, Special types of permits.

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

(3) A public hearing to receive oral and written comments on the administrative regulations has been scheduled for December 26, 1996, at 2 p.m. EST, at Capital Plaza Tower Auditorium, Mero Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend a public hearing, are not received from the required number of people by December 16, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division of Waste Management, ATTN: James Hale, Supervisor, Program Planning Section, 14 Reilly Road, Frankfort, Kentucky 40601 and phone number (502) 564-2225 extension 221.

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

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

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

(b) Persons who wish to file this request may obtain a request form from Bruce Cassidy, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky, 40601, (502) 564-6716 extension 282.

(7) Information related to the proposed administrative regulations:

(a) The statutory authority for the promulgation of administrative regulations related to tires is KRS 224.10-100 and 224.50-820 through 50-844.

(b) The administrative regulations that the Natural Resources and Environmental Protection Cabinet intends to promulgate will amend 401 KAR 47:150, Special types of permits; 401 KAR 46:060, Waste Tire Trust Fund Loan Program; 401 KAR 46:070, Waste Tire Trust Fund Grant Program, and will establish seven (7) new administrative regulations. These administrative regulations will establish registration requirements, reporting requirements, management and operating standards, and financial assurance requirements for accumulators and processors of waste tires; clarify fee requirements for retailers of new tires; and establish loan and grant requirements for the Waste Tire Trust Fund.

(c) The necessity and function of the administrative regulations is as follows: To provide minimum standards for the Waste Tire Removal and Control Program as provided in KRS 224.50-824 and implement the provisions of KRS 224.50-820 through 50-844.

(d) The benefits expected from the administrative regulations are: Assured compliance with statutory requirements; consistency for registration and reporting requirements; responsible tire management and tracking; prevention of the creation of new waste tire piles; clarify enforcement, penalties, and corrective action requirements; clarify cost recovery for clean-ups of unregistered waste tire piles; clarify the retailer fee exemption; and expanded the use of the waste tire trust fund.

(e) The administrative regulations will be implemented by the Division of Waste Management, Department for Environmental Protection, as follows: Upon the effective date of these regulations, all new waste tire accumulators or processors will have to register, post financial assurance, and manage waste tires in accordance with these administrative regulations; all existing registered accumulators or processors shall post financial assurance and complete a new registration form or begin closure activities; and retailers already exempt from the one (1) dollar fee exemption will have to reapply for the exemption. All administrative regulations and forms will be made available to the public.

JUSTICE CABINET Department of Corrections

November 12, 1996

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:020**, Department of Corrections: inmate canteen, use of force, and governmental services program.

(2) The Justice Cabinet, Department of Corrections intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 23, 1996 at 9 a.m., in the Fifth Floor Conference Room, in the State Office Building, Frankfort, Kentucky 40601.

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

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

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(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 23, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Department of Corrections, Office of General Counsel, Attention: Tamela Biggs, Room 200, State Office Building, Frankfort, Kentucky 40601, (502) 564-2024, facsimile (502) 564-6494.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 196.035 and 197.020.

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:020, as follows:

1. Inmate canteen (2.1) has been amended to give or grant the commissioner the right to determine the amount each inmate may spend per week at the canteen; to permit inmates to exceed the present amount in limited instances; and to provide for the regulation of prices for canteen items.

2. Use of force (9.1) shall be amended to (a) reflect the correct references, (b) clarify the inclusion of the use of mechanical restraints, (c) clarify the progressive levels of force, and (d) comply with drafting rules in KRS Chapter 13A.

3. Governmental services program (19.1) has been totally revised to clarify the types of inmates which would be eligible for participation in the program; to permit the per diem cost per inmate to be determined on an annual basis; and to eliminate overnight details.

(c) The necessity and function of the proposed administrative regulation is: To provide consistent policies among all Department of Corrections entities and compliance with state and federal statutes.

(d) The benefits expected from the administrative regulation are: To provide consistent policies among all Department of Corrections entities and to most efficiently use departmental resources.

(e) The administrative regulation will be implemented as follows: By promulgating and enforcing the components of the various policies to provide consistent policy for the department.

TRANSPORTATION CABINET

November 15, 1996

Transportation Cabinet

(1) **601 KAR 12:041**, Driving history record.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation repealing the administrative regulation which sets the fee for driving history records.

(3) A public hearing to receive oral and written comments on these proposed administrative regulations has been scheduled for 10 a.m., local prevailing time, on December 23, 1996 at 501 High Street, 4th Floor Hearing Room, State Office Building, Frankfort, Kentucky 40622.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 23, 1996, the public hearing will be canceled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of administrative regulation 601 KAR 12:041 is KRS 186.041.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will repeal an existing administrative regulation, 601 KAR 12:040, Driving history record. The repeal is proposed because the fee charged for a driving history record is now set forth in statute.

(c) The necessity and function of the proposed administrative regulation is as follows: House Bill 400 passed by the 1996 General Assembly requires in KRS 186.018 that the fee for any driving history record be \$3 and the 10 cent per record reduction be used to provide driving education for youth. Since the fee is now set forth in statute, there is no reason to include it in an administrative regulation. In fact, that is contrary to state law.

(d) The benefit expected from this administrative regulations is elimination of the repetition of a statute in an administrative regulation.

(e) The administrative regulation will be implemented by just continuing "business as usual".

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by December 13, 1996. This request does not have to be in writing. This notice can be provided in an alternate format upon request.

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WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education

November 15, 1996

Workforce Development Cabinet

State Board for Adult and Technical Education

- (1) Regulation Number and Title: **780 KAR 3:070**, (Classified), attendance, compensatory time, and leave.
- (2) The Cabinet for Workforce Development, State Board for Adult and Technical Education intends to amend an administrative regulation governing the subject matter listed above; specifically, family and medical leave.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 23, 1996, 1 p.m. in the second floor conference room, 500 Mero Street, Capital Plaza Tower, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing by at least 5 persons, or an administrative body or an association having at least 5 members;
 2. A minimum of 5 persons, or the administrative body or association agree, in writing to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 23, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Delmus Murrell, Secretary, State Board for Adult and Technical Education, 500 Mero Street, 20th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing"; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that a person who desires to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file the request may obtain a request from the State Board for Adult and Technical Education at the address that is listed.
- (7) Information relating to the proposed amendment to the administrative regulation:
 - (a) The statutory authority for this administrative regulation is KRS 151B.035.
 - (b) The administrative regulation the State Board for Adult and Technical Education intends to promulgate will amend 780 KAR 3:070, Section 7 by bringing this administrative regulation into conformity with federal statutes and regulations governing family and medical leave.
 - (c) The need and function of the proposed amendments are to provide for required notice to employees, to include FMLA qualifying events, to list qualified health care providers, to define terms, and to address other rights, duties, and requirements of the Family and Medical Leave Act of 1993, 20 USC 2601, et. seq. and 29 CFR Part 825.
 - (d) The benefits expected from the administrative regulation are that employees will receive the necessary and proper notices and other rights, duties, and responsibilities of receiving family and medical leave as required by federal law.
 - (e) The administrative regulation will be implemented by the Commissioners of the Department for Adult Education and Literacy, and the Department for Technical Education, and the Division of Personnel Services of the Cabinet for Workforce Development.

November 15, 1996

Workforce Development Cabinet

State Board for Adult and Technical Education

- (1) Regulation Number and Title: **780 KAR 6:060**, (Unclassified), attendance, compensatory time, and leave.
- (2) The Cabinet for Workforce Development, State Board for Adult and Technical Education intends to amend an administrative regulation governing the subject matter listed above; specifically family and medical leave.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 23, 1996, 1 p.m. in the second floor conference room, 500 Mero Street, Capital Plaza Tower, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, writing by at least 5 person, or an administrative body or an association having at least 5 members;
 2. A minimum of 5 persons, or the administrative body or association agree, in writing to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 23, 1996, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Delmus Murrell, Secretary, State Board for Adult and Technical Education, 500 Mero Street, 20th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing"; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that a person who desires to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file the request may obtain a request from the State Board for Adult and Technical Education at the address that is listed.
- (7) Information relating to the proposed amendment to the administrative regulation:
 - (a) The statutory authority for this administrative regulation is KRS 151B.035.
 - (b) The administrative regulation the State Board for Adult and Technical Education intends to promulgate will amend 780 KAR 6:060, Section 7 by bringing this administrative regulation into conformity with federal statutes and regulations governing family and medical leave.
 - (c) The need and function of the proposed amendments are to provide for required notice to employees; to include FMLA qualifying events, to list qualified health care providers, to define terms, and to address other rights, duties and requirements of the Family and Medical Leave Act of 1993, 20 USC 2601, et. seq. and 29 CFR Part 825.
 - (d) The benefits expected from the administrative regulation are that employees will receive the necessary and proper notices and

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other rights, duties and responsibilities of receiving family and medical leave as required by federal law.

(e) The administrative regulation will be implemented by the Commissioners of the Department for Adult Education and Literacy, and the Department for Technical Education, and the Division of Personnel Services of the Cabinet for Workforce Development.

Department of Vocational Rehabilitation

November 8, 1996

Workforce Development Cabinet

Department of Vocational Rehabilitation

(1) Regulation Number and Title: **781 KAR 1:010**, Department of Vocational Rehabilitation appeal procedures.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 23, 1996 at 10 a.m., in the DVR Training Room, 209 Saint Clair Street, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 23, 1996 the public hearing will be canceled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

(b) The administrative regulation that the department intends to promulgate will amend 781 KAR 1:010 as follows: Section 2(1) is being deleted because similar provisions exist in the enabling federal legislation and in KRS Chapter 13B. Section 3 is being deleted because similar provisions exist in the federal enabling legislation. Redundant language dealing with timeliness of reviews will be removed from Section 4(3). Section 5(1) will be revised to allow for consistency in administrative review procedures. Restrictive language dealing with timelines for reviews will be removed from Section 5(2). Redundant language is Section 5(4)(b)1 and 2 will be deleted. The remainder of Sections 5, 6, 7 and 8 will be deleted and the department will then conduct hearings pursuant to KRS Chapter 13B.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS Chapter 13B prescribes uniform procedures for hearings. The language in this administrative regulation is duplicative and is being removed.

(d) The benefits expected from administrative regulation are: Duplication of effort can be avoided and hearing officers will use only the procedures prescribed in KRS Chapter 13B.

(e) The administrative regulation will be implemented as follows: Hearing officers will be advised to use only the provisions of KRS Chapter 13B in the conduct of any future hearings. Staff will advise affected individuals of their rights to administrative review and appeal pursuant to the provisions of this administrative regulation and KRS Chapter 13B.

Department for the Blind

November 15, 1996

Workforce Development Cabinet

Department for the Blind

(1) **782 KAR 1:020**. Definition of terms.

(2) The Kentucky Department for the Blind intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 23, 1996 at 10 a.m. at the Charles McDowell Center, 8412 Westport Road, Louisville, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 23, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jeanne Pherson, Department for the Blind, Charles McDowell Center, 8412 Westport Road, Louisville, Kentucky 40242.

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

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

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

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

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(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the participation of the individual in the cost of services for the Department for the Blind is KRS 163.470.

(b) The administrative regulation that the Kentucky Department for the Blind intends to promulgate will add the definition "function capacity" to 782 KAR 1:020 so as to comply with language used in the department's State Plan.

(c) The necessity, function, and conformity of the proposed administrative regulation is to assure consistency with its State Plan for Vocational Rehabilitation authorized under Title I of the Rehabilitation Act of 1973, as amended. This administration provides definitions and terms relating to 782 KAR 1:030 and 782 KAR 1:040 which are being amended.

(d) The benefit expected from this amended administrative regulation is to make agency procedures consistent with federal law.

(e) The administrative regulation will be implemented as procedure, which will direct agency staff in the provision of vocational rehabilitation services.

November 15, 1996

Workforce Development Cabinet

Department for the Blind

(1) **782 KAR 1:030.** Scope and nature services.

(2) The Kentucky Department for the Blind intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 23, 1996 at 10 a.m. at the Charles McDowell Center, 8412 Westport Road, Louisville, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 23, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jeanne Pherson, Department for the Blind, Charles McDowell Center, 8412 Westport Road, Louisville, Kentucky 40242.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the participation of the individual in the cost of services for the Department for the Blind is KRS 163.470.

(b) The administrative regulation that the Kentucky Department for the Blind intends to promulgate will amend 782 KAR 1:030 as follows: Section 7, Maintenance, to strike out subsection (4) which states that "Room and board shall not be provided for an eligible individual who attends an institution of higher education in the home community of the eligible individual . . ." Section 16, Participation of Individual in the Cost of Services, to strike out the existing test which provides for voluntary participation of individuals in the cost of their own services, and replace with a regulation to apply an economic needs test for every individual who receives rehabilitation services. Individuals whose household income is above the threshold of one and one-half times the medium income for all Kentuckians according to the most recent U.S. Census will be required to help pay, on a graduated scale according to ascending income, for a percentage of the cost of their own rehabilitation services. The proposal includes adjustments in the test on the basis of family hardship. Add Section 19 to provide for an order of selection which will provide for priority categories to be served when the department does not have sufficient resources to provide services to all individuals who may apply. The order of selection will give priority to those individuals with severe disabilities, in conformance with the Rehabilitation Act, as amended

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The department does not have the resources to provide services to all individuals who apply for rehabilitation services. It is the position of the department that those with the available household income to do so should contribute some of their own resources to the cost of their own rehabilitation. Federal Rehabilitation Law prohibits the denial of maintenance services on the basis of residence of an individual.

(d) The benefit expected from this amended administrative regulation is to conform agency procedures with federal law and to ensure available resources to serve more visually impaired individuals of the Commonwealth.

(e) The administrative regulation will be implemented by agency staff responsible for direct vocational rehabilitation service delivery. Services subject to the economic needs test are specified in the agency's State Plan, as required by the federal Rehabilitation Act, as amended. Administrative remedies exist for individuals affected by agency decisions applying to this regulation.

November 15, 1996

Workforce Development Cabinet

Department for the Blind

(1) **782 KAR 1:040.** Appeal procedures.

(2) The Kentucky Department for the Blind intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 23, 1996 at 10 a.m. at the Charles McDowell Center, 8412 Westport Road, Louisville, Kentucky.

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

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

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(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 23, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jeanne Pherson, Department for the Blind, Charles McDowell Center, 8412 Westport Road, Louisville, Kentucky 40242.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the appeal procedures for the Department for the Blind is KRS 163.470 and 13B.020.

(b) The administrative regulation that the Kentucky Department for the Blind intends to promulgate will amend 782 KAR 1:040, Appeal procedures, to be consistent with KRS Chapter 13B, Administrative Hearing Procedures Act, enacted during the 1996 legislative session. This Act applies to all administrative hearings conducted by an agency, with the exception of those specifically exempted. The provisions of KRS Chapter 13B are to supersede any other provisions of the Kentucky Revised Statutes and administrative regulations. As several sections of 782 KAR 1:040 are duplicative and in conflict with KRS Chapter 13B, it is necessary that they be repealed.

(c) The necessity, function, and conformity of the proposed administrative regulation is required to establish procedures so that any applicant for or client of vocational rehabilitation services who is dissatisfied with determinations made by staff of the department concerning the furnishing or denial of services may request a timely review of those determinations.

(d) The benefit expected from this amended administrative regulation is to eliminate duplication and inform the public of available review procedures in concordance with KRS Chapter 13B.

(e) The administrative regulation will be implemented as follows: The department will adhere to the prescribed procedures for an administrative review and utilize KRS Chapter 13B hearing procedures.

LABOR CABINET Department of Workers' Claims

November 13, 1996

Labor Cabinet

Department of Workers' Claims

(1) Regulation and Title No.: **803 KAR 25:140**, Workers' compensation mediation.

(2) The Commissioner of the Department of Workers' Claims intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 27, 1996, at 10 a.m., at the Department of Workers' Claims, 1270 Louisville Road, Perimeter Park West, Building C, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to December 27, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, Attn: Marcy D. Ches, Staff Attorney.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to a workers' compensation mediation is SB 161 recently enacted by the 1996 session of the Kentucky General Assembly.

(b) The administrative regulation that the commissioner intends to promulgate will not amend an existing regulation. It will provide the procedures whereby mediation services are offered by the Department of Workers' Claims in workers' compensation cases.

(c) The necessity and function of the proposed administrative regulation is as follows: SB 161 enacted by the 1996 Kentucky General Assembly requires the Commissioner of the Department of Workers' Claims to establish a program to provide an opportunity for mediation of disputes as to the entitlement to benefits under KRS Chapter 342. It further provides that the commissioner shall promulgate administrative regulations necessary to establish and implement the mediation program, prescribe the qualifications and duties of mediators; a process for the designation of mediations; procedures for the conduct of mediation procedures; and the issues shall be subject to mediation.

(d) The benefits expected from administrative regulation are: To create a mediation process to resolve workers' compensation disputes on an informal basis at minimal costs to the parties. The purposes of mediation are to contain workers' compensation costs by reducing expenditures for litigation, expedite the resolution of claims, expedite the placement of workers into vocational rehabilitation when appropriate, reduce the caseload of the ALJs, and lower the level of tension in the employee/employer relationship generated by the adversarial claims

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adjudication process.

(e) The administrative regulation will be implemented as follows: This regulation shall be implemented by the Department of Workers' Claims upon adoption of the administrative regulation.

PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance

November 15, 1996

Department of Insurance

- (1) **806 KAR 18:080**, Association uniform data collection.
- (2) The Department of Insurance intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 23, 1996, at 10 a.m., at the Department of Insurance, 215 West Main Street, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and
 2. A minimum of five (5) persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten (10) days prior to December 23, 1996, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Department of Insurance, Attn: Carla H. Montgomery, P.O. Box 517, Frankfort, Kentucky 40602, (502) 564-6032, fax number (502) 564-1456.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 304.2-110 and 304.18-050.
 - (b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will require each association to file data relating to its health insurance program.
 - (c) The necessity and function of the proposed administrative regulation is as follows: Each association will file information relating to membership and its health insurance program. This information will assist the department in evaluating the health insurance market.
 - (d) The benefits expected from the administrative regulation are: The department will be able to thoroughly evaluate the health insurance market.
 - (e) The administrative regulation will be implemented as follows: Each association will file on December 31, 1996, monthly membership totals and health insurance program enrollment for January 1996 through September 1996. Each association will then file quarterly reports regarding membership and the health insurance program. The department will compile the data and be able to evaluate this part of the health insurance market.

KENTUCKY RACING COMMISSION

August 21, 1996

Kentucky Racing Commission

- (1) Regulation Number and Title: **811 KAR 1:215**, Kentucky Standardbred Development Fund.
- (2) The Kentucky Racing Commission intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, December 23, 1996, 10 a.m. at the commission offices at 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to Monday, December 23, 1996, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mr. Calvert Bratton, Chief Administrative Officer, Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing;" or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request from the Kentucky Racing Commission at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 230.260(1) and (3) and 230.215(1) and (2).

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(b) The administrative regulation that the Kentucky Racing Commission intends to promulgate will amend 811 KAR 1:215. It will revamp the Kentucky Standardbred Development Fund.

(c) The necessity and function of the proposed administrative regulation is as follows: To bring the Kentucky Standardbred Development Fund up to the standards of other states, more stallions participating in the program, higher purse monies, and more yearlings nominated into the program.

(d) The benefits expected from administrative regulation are: It is determined that updating the program will attract more horses and a higher caliber of horses into the program.

(e) The administrative regulation will be implemented as follows: Changes will be applied as soon as administratively permitted.

CABINET FOR HEALTH SERVICES Department for Public Health Division of Environmental Health and Community Safety

November 1, 1996

Cabinet for Health Services

Department for Public Health

Division of Environmental Health and Community Safety

(1) **902 KAR 55:015**, Schedule I substances.

(2) The Cabinet for Health Services, Department for Public Health intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 9 a.m., December 30, 1996, in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main St., Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form by writing the Administrative Regulation Coordinator, Commissioner's Office, Department for Public Health, 275 E. Main Street, Frankfort, Kentucky 40621, or by calling (502) 564-3970 between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to schedule I substances is KRS 194.050, 211.020, 218A.020(1), 218.020(2), 218A.250, and EO 96-862.

(b) The administrative regulation that the Department for Public Health intends to promulgate will amend 902 KAR 55:015, Schedule I substances. It will add flunitrazepam to the list of substances in schedule I, make corrections to comply with KRS Chapter 13A and correct spelling errors.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 218A.020 authorizes the Cabinet for Health Services to add substances to or delete or reschedule substances enumerated in KRS Chapter 218A. After considering the criteria set forth in KRS 218A.020 and 218A.040 and applicable federal regulations, the Cabinet for Health Services designates the substances set forth in this administrative regulation as schedule I controlled substances.

(d) The benefits expected from administrative regulation are: Protection of the public by allowing law enforcement agencies to appropriately address trafficking or illegal distribution of flunitrazepam.

(e) The administrative regulation will be implemented as follows: Law enforcement agencies and laboratories will be notified via the Justice Cabinet that the substance has been rescheduled.

November 1, 1996

Cabinet for Health Services

Department for Public Health

Division of Environmental Health and Community Safety

(1) **902 KAR 55:030**, Schedule IV substances.

(2) The Cabinet for Health Services, Department for Public Health intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 9 a.m., December 30, 1996, in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main St., Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main St., 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

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

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

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

(b) Persons who wish to file this request may obtain a request form by writing the Administrative Regulation Coordinator, Commissioner's Office, Department for Public Health, 275 E. Main Street, Frankfort, Kentucky 40621, or by calling (502) 564-3970 between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to schedule IV substances is KRS 194.050, 211.020, 218A.020(1), 218.020(2), 218A.100, and EO 96-862.

(b) The administrative regulation that the Department for Public Health intends to promulgate will amend 902 KAR 55:030, Schedule IV substances. It will delete flunitrazepam from the list of substances in schedule IV.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 218A.100 authorizes the Cabinet for Health Services to place a substance in Schedule IV if it finds that: (1) the substance has a low potential for abuse relative to substances in schedule III; (2) the substance has currently accepted medical use in treatment in the United States; and (3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in schedule III. In addition, KRS 218A.020(3) provides that if any substance is designated, rescheduled, or deleted as a controlled substance under a federal law and notice of the designation, rescheduling or deletion is given to the cabinet, the cabinet may similarly control the substance by administrative regulation. The Cabinet for Health Services, after considering the criteria, designates the substances set forth in this administrative regulation as schedule IV controlled substances.

(d) The benefits expected from administrative regulation are: Protection of the public by allowing law enforcement agencies appropriately address trafficking or illegal distribution of flunitrazepam.

(e) The administrative regulation will be implemented as follows: Law enforcement agencies and laboratories will be notified via the Justice Cabinet that the substance has been rescheduled.

November 1, 1996

Cabinet for Health Services

Department for Public Health

Division of Environmental Health and Community Safety

(1) **902 KAR 55:040**, Excluded over-the-counter products.

(2) The Cabinet for Health Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 30, 1996, at 9 a.m., in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

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

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

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

(b) Persons who wish to file this request may obtain a request form by writing the Administrative Regulation Coordinator, Commissioner's Office, Department for Public Health, 275 E. Main Street, Frankfort, Kentucky 40621, or by calling (502) 564-3970 between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to excluded over-the-counter products is KRS

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194.050, 211.090, 218A.020(3), 218A.090(4)(i) and 218A.250, EO 96-862.

(b) The administrative regulation that the Department for Public Health intends to promulgate will amend 902 KAR 55:040, Excluded over-the-counter products. It will revise the date of the citation for the list of over-the-counter products that are exempt from the provisions of KRS Chapter 218A, the Controlled Substances Act. The list itself is unchanged. Also minor errors will be corrected.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 218A.020(4) and 218A.090(4)(i) authorize the Cabinet for Health Services to exclude products that may be lawfully sold over the counter (without prescription) from the provisions of KRS Chapter 218A relating to controlled substances. The purpose of this administrative regulation is to exclude certain over-the-counter products from the provisions of KRS Chapter 218A.

(d) The benefits expected from administrative regulation are: Conformity with federal regulation and correct grammatical or wording errors.

(e) The administrative regulation will be implemented as follows: No implementation is necessary since the requirements conform to existing federal regulations.

November 1, 1996

Cabinet for Health Services

Department for Public Health

Division of Environmental Health and Community Safety

(1) **902 KAR 55:045**, Exempt prescription products.

(2) The Cabinet for Health Services, Department for Public Health intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 9 a.m., December 30, 1996, in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

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

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

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

(b) Persons who wish to file this request may obtain a request form by writing the Administrative Regulation Coordinator, Commissioner's Office, Department for Public Health, 275 E. Main Street, Frankfort, Kentucky 40621, or by calling (502) 564-3970 between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to exempt prescription products is KRS 194.050, 211.020, 218A.020(3), 218A.250, EO 96-862.

(b) The administrative regulation that the Department for Public Health intends to promulgate will amend 902 KAR 55:045, Exempt prescription products. It will revise the date of the citation for the list of prescription products that are exempt from the provisions of KRS Chapter 218A, the Controlled Substances Act. The list itself is unchanged. Also a minor change in wording will be included.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 218A.020(3) provides that if any controlled substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice is given to the Cabinet for Health Services, the Cabinet for Health Services may similarly control the substance under KRS Chapter 218A by administrative regulation. The purpose of this administrative regulation is to exempt certain stimulant or depressant products from the provisions of KRS Chapter 218A that have been exempted pursuant to federal regulation.

(d) The benefits expected from administrative regulation are: Conformity with federal regulation and elimination of unnecessary recordkeeping.

(e) The administrative regulation will be implemented as follows: No implementation is necessary since the requirements conform to existing federal regulations.

November 1, 1996

Cabinet for Health Services

Department for Public Health

Division of Environmental Health and Community Safety

(1) **902 KAR 55:090**, Exempt anabolic steroid products.

(2) The Cabinet for Health Services, Department for Public Health intends to promulgate an administrative regulation governing the

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subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 9 a.m., December 30, 1996, in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

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

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

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

(b) Persons who wish to file this request may obtain a request form by writing the Administrative Regulation Coordinator, Commissioner's Office, Department for Public Health, 275 E. Main Street, Frankfort, Kentucky 40621, or by calling (502) 564-3970 between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to exempt anabolic steroid products is KRS 194.050, 211.020, 218A.020(3), 218A.250, EO 96-862.

(b) The administrative regulation that the Department for Public Health intends to promulgate will amend 902 KAR 55:090, Exempt anabolic steroid products. It will revise the date of the citation for the list of anabolic steroid products that are exempt from the provisions of KRS Chapter 218A, the Controlled Substances Act. The list itself is unchanged. Also minor changes in wording will be included.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 218A.020(3) provides that if any controlled substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice is given to the Cabinet for Health Services, the Cabinet for Health Services may similarly control the substance under KRS Chapter 218A by administrative regulation. The purpose of this administrative regulation is to exempt certain anabolic steroid products from the provisions of KRS Chapter 218A that have been exempted pursuant to federal regulation.

(d) The benefits expected from administrative regulation are: conformity with federal regulation and elimination of unnecessary recordkeeping.

(e) The administrative regulation will be implemented as follows: No implementation is necessary since the requirements conform to existing federal regulations.

CABINET FOR FAMILIES AND CHILDREN Department for Social Services

November 15, 1996

Cabinet for Families and Children

Department for Social Services

(1) **905 KAR 2:140**, Child day care programs.

(2) The Department for Social Services intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 30, 1996 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 30, 1996, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Acting General Counsel, Cabinet for Families and Children, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Social Services, Cabinet for Human Resources, 6th Floor West, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may

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call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 905 KAR 2:140, Child day care programs is KRS 194.050, 199.892, 199.894, PL 104-193, 45 CFR 98.41 and EO 96-862.

(b) The administrative regulation that the Department for Social Services intends to promulgate will amend 905 KAR 2:140. This administrative regulation shall establish procedures for unregulated providers to become enrolled and meet the minimum health and safety standards requirements pursuant to 45 CFR 98.41.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: KRS 194.050 authorizes the Cabinet for Families and Children to adopt regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs and provide uniform administration of child care funds. This administrative regulation shall establish procedures by which unregulated providers shall become enrolled and eligible for payment pursuant to the Child Care Development Block Grant, transitional child care programs, at-risk child care programs and child care services pursuant to 904 KAR 2:017 pursuant to PL 104-193.

(d) The benefits expected from this administrative regulation are: The benefit expected from this administrative regulation is that unregulated providers will become enrolled and be eligible for subsidies under the Child Care and Development Block Grant, transitional child care programs, at-risk child care programs and child care services as governed by 904 KAR 2:017 pursuant to PL 104-193. Additionally the unregulated providers through the enrollment process will comply with 45 CFR 98.41 which requires at a minimum that providers protect the health and safety of children through the prevention and control of infectious diseases including immunizations, building and physical premises safety and minimum health and safety training.

CABINET FOR HEALTH SERVICES Department for Medicaid Services

November 15, 1996

Cabinet for Health Services

Department for Medicaid Services

(1) **907 KAR 1:008**, Ambulatory surgical centers.

(2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 30, 1996, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, Fax # (502) 564-7573.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to outpatient surgical clinic also known as ambulatory surgical centers are 42 CFR 440.90, 447.325, EO-96-862.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:008, to add the word "ambulatory" to the name to conform with the licensure title; to implement the revised Ambulatory Surgical Center Manual; to implement new payment methodology; and to comply with KRS Chapter 13A.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the coverage provisions and method for establishing payment for ambulatory surgical centers.

(d) The benefits expected from administrative regulation are: Development of an uniform reimbursement methodology for ambulatory surgical procedures also known as outpatient surgical clinics.

November 15, 1996

Cabinet for Health Services

Department for Medicaid Services

(1) **907 KAR 1:011**, Technical eligibility requirements for Medicaid.

(2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the

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subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 30, 1996 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, Fax # (502) 564-7573.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to technical eligibility requirements for Medicaid are KRS 194.050, 42 USC 402, 416, 423, 1382c, 13951, and 1396a, b, c, d; PL 99-603, 99-643 and 104-193; 42 CFR 435; and 45 CFR 233.100, EO 96-862.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:011, Technical eligibility requirements for Medicaid, to comply with changes in technical eligibility requirements related to aliens and those categorically needy individuals who would have been eligible for Aid to Families with Dependent Children (AFDC) using AFDC methodologies prior to July 16, 1996, set forth in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104-193). Implementation of the Regional Managed Care Partnership Waiver (907 KAR 1:705) results in the amendment of this administrative regulation in order to conform to changes related to the three-month retroactive Medicaid eligibility determination.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation set forth changes in technical eligibility requirements in the Medicaid Program related to aliens and those categorically needy individuals who would have been eligible for Aid to Families with Dependent Children (AFDC) using AFDC methodologies prior to July 16, 1996, set forth in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104-193), and changes related to the implementation of the Regional Managed Care Partnership Waiver (907 KAR 1:705).

(d) The benefits expected from administrative regulation are: Compliance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104-193) with regard to aliens and those categorically needy individuals who have been eligible for Aid to Families with Dependent Children (AFDC) using AFDC methodologies prior to July 15, 1996, set forth in PL 104-193. Accordance with the Regional Managed Care Partnership Waiver (907 KAR 1:705) with regard to elimination of the three-month retroactive Medicaid eligibility determination.

November 15, 1996

Cabinet for Health Services

Department for Medicaid Services

(1) **907 KAR 1:019**, Pharmacy services; **907 KAR 1:417**, Repeal of 907 KAR 1:416; **907 KAR 1:673**, Claims processing.

(2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate these administrative regulations governing the subject matters listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for December 30, 1996 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, Fax Number (502) 564-7573.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Program Development and Budget, CHR Building, Third Floor East, 275 East Main Street, Frankfort, Kentucky

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40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of administrative regulations, relating to pharmacy and claims are KRS 194.50, 42 CFR 440.120, 447.331, 447.332, 447.333, 42 USC 1396a-d, EO-96-862.

(b) The administrative regulations that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:019 and 907 KAR 1:673 to implement "point of sale" and 907 KAR 1:417 is a new repealer regulation to repeal 907 KAR 1:416, which is no longer needed.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: 907 KAR 1:019 sets forth administrative regulation pertaining to pharmacy services paid through the Medicaid Program. 907 KAR 1:673, Claims processing, sets forth administrative regulation which pertains to claims processing by Medicaid providers. 907 KAR 1:417 repeals 907 KAR 1:416.

(d) The benefits expected from these administrative regulations are: To mandate "point of sale" claims transmissions. By mandating the "point of sale" claims transmission, a recipient's complete on-line drug profile will alert the pharmacist of any potentially serious clinical problems that may be associated with the prescription, such as adverse interaction with a drug from another prescription obtained from another pharmacy prescribed by another physician. This would prevent the number of drug related problems resulting in potential hospitalizations or death.

November 15, 1996

Cabinet for Health Services

Department for Medicaid Services

(1) **907 KAR 1:021**, Amounts payable for drugs.

(2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 30, 1996 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, Fax # (502) 564-7573.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Administration and Budget, CHR Building, Third Floor East, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to reimbursement through the Medicaid Program for drugs are: KRS 194.050, 42 CFR 440.120, 447.331, 447.332, 447.333, 42 USC 1396a-d, EO 96-862.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:021, Amounts payable for drugs, to clarify policy. The department is also considering participation in the Public Health Service drug discount program for specific drugs and is considering revising the prior authorization procedures for certain categories of drugs.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the methods for determining amounts payable for drugs by the Medicaid Program.

(d) The benefits expected from administrative regulation are: To clarify policy and to consider participation in the Public Health Service discount program for specific drugs which may create discount drug rates for specific drugs and to prevent inappropriate use of certain categories of drugs.

November 15, 1996

Cabinet for Health Services

Department for Medicaid Services

(1) **907 KAR 1:381**, Repeal of 907 KAR 1:380.

(2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 30, 1996, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, Fax # (502) 564-7573.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to repeal of another administrative regulation are KRS 194.050 and 13A.310.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will repeal 907 KAR 1:380 which is no longer needed.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation acts specifically to repeal 907 KAR 1:380.

(d) The benefits expected from administrative regulation are: To eliminate possible conflict and remove obsolete material.

November 15, 1996

Cabinet for Health Services

Department for Medicaid Services

(1) **907 KAR 1:405**, Repeal of 907 KAR 1:404.

(2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 30, 1996 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, Fax# (502) 564-7573.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to repealing another administrative regulation are KRS 194.050 and 13A.310.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will repeal 907 KAR 1:404, Incorporation by reference of the Independent Laboratory Services Manual, which is no longer needed.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation repeals 907 KAR 1:404, Incorporation by reference of the Independent Laboratory Services Manual.

(d) The benefits expected from administrative regulation are: The elimination of possible conflict between policy manuals.

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November 15, 1996
Cabinet for Health Services
Department for Medicaid Services

(1) **907 KAR 1:433**, Repeal of 907 KAR 1:374 and 907 KAR 1:378.

(2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 30, 1996 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, Phone: (502) 564-7900, Fax Number: (502) 564-7573.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to repeal another administrative regulation are KRS 194.050 and 13A.310.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will repeal of 907 KAR 1:374 and 907 KAR 1:378 which are no longer needed.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation acts specifically to repeal 907 KAR 1:374; Incorporation by reference of the Skilled Nursing Facility Services Manual, and 907 KAR 1:378 Incorporation by reference of the Intermediate Care Facility Services Manual, which are no longer relevant.

(d) The benefits expected from administrative regulation are: To eliminate possible conflict and remove obsolete material.

November 15, 1996
Cabinet for Health Services
Department for Medicaid Services

(1) **907 KAR 1:605**, Medicaid procedures for determining initial and continuing eligibility.

(2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 30, 1996 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, Fax # (502) 564-7573.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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(a) The statutory authority for the promulgation of an administrative regulation relating to Medicaid procedures for determining initial and continuing eligibility are KRS 194.050, 205.520, 42 USC 1396a, b, d, 42 CFR 435.530, 435.531, 435.540, 435.541, 435.914, 435.916.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:605, Medicaid procedures for determining initial and continuing eligibility to comply with policies set forth in 907 KAR 1:705, eliminating the three-month retroactive Medicaid eligibility determination for those MA applicants residing in a partnership region who receive Medicaid services under the terms of the partnership waiver. The regulation will also conform to the waiver provision as shown in 907 KAR 1:705 which guarantees six months of MA eligibility for those recipients who have not received MA for six months, and who continue to reside in a partnership region during those six months, provided these recipients are not illegal aliens, incarcerated or do not request discontinuance of their Medicaid case. The provision for discontinuance of the three months of retroactive eligibility is limited to only those individuals or families enrolled in the partnership and will remain unchanged for other Medicaid applicants. Since there will always be some eligible recipients not enrolled in the partnerships, there will always be some individuals for whom the retroactive determination of eligibility will be applicable. There should be no problem with regard to comparability of services since the waiver itself provides relief from the statutory comparability requirement with regard to this program element.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth provision relating to determining initial and continuing eligibility for assistance under the Medicaid Program.

(d) The benefits expected from administrative regulation are: Conformity with policies set forth in 907 KAR 1:705, which eliminate the three-month retroactive Medicaid eligibility determination and guarantees six months of Medicaid eligibility for those recipients residing in a partnership region.

Department for Mental Health/Mental Retardation Services

November 15, 1996

Cabinet for Health Services

Department for Mental Health/Mental Retardation Services

(1) **908 KAR 2:060.** Mental health and mental retardation manuals for plan and budget instructions, billing instructions, and reimbursement guidelines.

(2) The Department for Mental Health/Mental Retardation Services intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 30, 1996 at 9 a.m. in the Department for Public Health Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to December 30, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

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

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

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

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to mental health and mental retardation manuals for plan and budget instructions billing instructions, and reimbursement guidelines is KRS 210.440 to 210.450.

(b) The administrative regulation that the Department for Mental Health/Mental Retardation Services intends to promulgate will amend 908 KAR 2:060. It will revise the regulation to change the provisions related to the content of annual cost reports.

(c) The necessity and function of the proposed administrative regulation is as follows: To allocate available funds to regional mental health and mental retardation boards in accordance with approved annual plans and budgets, and to promulgate policies and administrative regulations governing operations, budgets and expenditures for community programs and to require management and financial reports necessary to carry out the purposes of KRS 210.370 to 210.460.

(d) The benefits expected from this administrative regulation are: To simplify the form and content of required cost reports, to facilitate timely submission of reports and to reduce the costs of related audits.

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY
302 KAR 20:110E

This emergency administrative regulation prevents the spread of contagious equine metritis (CEM) bacterium into Kentucky. This disease is a threat to the state's equine industry. This administrative regulation is being promulgated to meet a deadline established by federal regulation. This emergency administration regulation shall be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
BILLY RAY SMITH, Commissioner

DEPARTMENT OF AGRICULTURE
Division of Animal Health

302 KAR 20:110E. Treatment of imported mares.

RELATES TO: KRS 257.070

STATUTORY AUTHORITY: KRS 257.030

EFFECTIVE: November 6, 1996

NECESSITY, FUNCTION, AND CONFORMITY: To establish a technique for treatment of mares imported into Kentucky from a [any] country listed in 78 Part 9 Code of Federal Regulations 92.2 as a country affected [infected] with contagious equine metritis.

Section 1. As used in this administrative regulation, unless the context clearly requires otherwise:

- (1) "Mare" means a female horse over 731 days of age.
- (2) "Breeding" means natural or artificial insemination of a mare.
- (3) "CF test" means a complement-fixation test on equine serum for the detection of [specific] antibodies for [of] contagious equine metritis (CEM) bacterium.
- (4) "Set of cultures" means a culture is obtained from the clitoral sinus (if intact), clitoral fossa, ~~cervix or endometrium of the uterus~~.

Section 2. Any mare imported into Kentucky from a [any] country known to be affected [infected] with CEM, [shall] before breeding ~~shall [being used for breeding]~~ be treated by or under the direct supervision of a Kentucky licensed [an] accredited veterinarian ~~[licensed to practice in Kentucky]~~ according to the following procedure:

- (1) ~~[Pregnant and nonpregnant mares:]~~ The veterinarian shall obtain a ~~[one (1)]~~ set of cultures from the mare on days one (1), four (4) and seven (7). ~~[and then follow the prescribed treatment:]~~
- (2) On completing the set of cultures on day seven (7), the accredited veterinarian shall manually remove all organic debris from the clitoral sinuses. The sinuses shall then be flushed with an approved cerumalytic agent until all remaining debris has been removed. The accredited veterinarian shall for five (5) consecutive days wash and clean (scrub) with a solution of not less than two (2) percent chlorhexidine in a detergent base ~~the [For five (5) consecutive days the veterinarian shall aseptically clean and wash]~~ external genitalia, vaginal vestibule, ~~[and]~~ clitoral fossa and clitoral sinuses. ~~The clitoral fossa, clitoral sinuses [with a solution of not less than two (2) percent chlorhexidine in a detergent base, and then coat the]~~ external genitalia and vaginal vestibule shall be filled and covered with an antibiotic ointment that is effective against the CEM organism and is approved by USDA and the Kentucky State Veterinarian. ~~[of not less than two tenths (0.2) percent nitrofurazone or other medication approved by the USDA and the Kentucky State Veterinarian]~~

insuring that the clitoral fossa is filled.

(3) After the treatment, the mare shall undergo a seven (7) day rest period.

(4) Nonpregnant mares. The veterinarian shall collect three (3) additional sets of cultures at intervals of not less than seven (7) days. He shall also collect one (1) specimen from the endometrium of the uterus during estrus. All samples shall be submitted to a laboratory approved by the USDA's National Veterinary Services Laboratory and the Kentucky State Veterinarian for culture.

(5) Pregnant mares. These mares must remain quarantined on a state approved premise until all tests results are complete on both the mare and foal. The veterinarian shall collect three (3) additional sets of cultures at intervals of not less than seven (7) days. Seven (7) days after foaling, the veterinarian shall collect one (1) specimen from the endometrium of the uterus of the mare and one (1) specimen from the foal. If the foal is female, the specimen is to be collected from the vaginal vestibule; and, if a male, the specimen shall be collected from the prepuce. Each of these specimens shall be submitted to a laboratory for culture approved by the USDA's National Veterinary Services Laboratory and the Kentucky State Veterinarian for culture.

(6) If positive, the mare must remain under quarantine until three (3) additional specimens from the clitoral fossa are collected by an accredited veterinarian at intervals of not less than seven (7) days. The first set not to be collected less than one (1) year from the last positive and an additional specimen from the endometrium of the uterus during estrus is required.]

(3) ~~[(7)]~~ Imported mares bred in Kentucky will be prophylactically scrubbed and bred last of any group of mares bred during that session. The covering stallion will be scrubbed and treated after breeding and will remain out-of-service for a minimum of twelve (12) hours. The imported mare and the next three (3) mares bred to the same stallion shall ~~[will]~~ have a CF test, ~~[which shall be taken]~~ fifteen (15) to forty (40) days postbreeding. ~~[after the mare is bred.]~~

Section 3. The mare may be released from quarantine when the requirements of Sections 1 and 2 of this administrative regulation have been completed and when all required specimens and tests taken from the mare are test negative and culture negative for the CEM bacterium.

Section 4. A CEM culture positive mare shall remain under quarantine. The mare then shall follow the treatment as described in Section 2(2) and (3) of this administrative regulation. No less than twenty-one (21) days after the last day of treatment, the mare shall have sets of cultures obtained as described in Section 2(1) of this administrative regulation. When all required specimens taken from the mare are test negative and culture negative for the CEM bacterium the mare may be eligible for a quarantine release.

Section 5. A user fee shall be assessed for equine imports. ~~[(1)]~~ The import brokers shall pay a fee for each shipment of mares which arrive at their Kentucky quarantine destination on weekends, state recognized holidays and between the hours of 5:01 p.m. and 6:59 a.m.

(a) For weekends and between the hours of 5:01 p.m. and 6:59 a.m. the assessed fee shall be forty (40) dollars per hour with a minimum of two (2) hours time charged.

(b) For state recognized holidays the assessed fee shall be eighty (80) dollars per hour with a minimum of two (2) hours charged.

(2) The broker shall pay by check the Kentucky Department of

Agriculture the assessed fee within ninety-six (96) hours on receipt of the charges.

BILLY RAY SMITH, Commissioner

APPROVED BY AGENCY: November 6, 1996

FILED WITH LRC: November 6, 1996 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Dr. D. L. Notter, State Veterinarian

(1) Type and number of entities affected: The Department of Agriculture routinely oversees the importation and required testing and treatment of approximately 200 mares and 35 stallions imported annually from other countries.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The amended regulation requires a fee be paid by the broker of the department for receiving and inspecting imported animals which arrive on weekends, at nights or on state recognized holidays. While this may appear to be an added expense it is actually a savings because brokers must now elect to either pay USDA employees a higher rate than that proposed in the amended regulation or to leave the animals in the USDA quarantine station over the weekend at a cost in excess of \$100 per day.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No additional requirements.

2. Second and subsequent years: No additional requirements.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Because the required time needed to complete the test and treatment requirements is shortened, the department would recognize a savings because the shortened quarantine period would require less monitoring, inspecting and supervision by department employees.

2. Continuing costs or savings: Same as for the first year.

3. Additional factors increasing or decreasing costs: By having the brokers reimburse the department for required overtime expenses the department would recognize a savings.

(b) Reporting and paperwork requirements: No additional paperwork required.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The department currently budgets for implementing this program. There is not expected to be any additional cost as a result of this amended regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: No public comments received.

(b) Kentucky: All comments received have been supportive of these amended changes being implemented as soon as possible.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative method would to have restrictions which are more stringent than federal regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public

health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: N/A

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All mares and stallions imported from countries considered by the USDA are required to successfully complete a prescribed testing and treatment protocol for the detection of contagious equine metritis before being released from an importation quarantine.

STATEMENT OF EMERGENCY

302 KAR 20:120E

This emergency administrative regulation prevents the spread of contagious equine metritis (CEM) bacterium into Kentucky. This disease is a threat to the state's equine industry. This administrative regulation is being promulgated to meet a deadline established by federal regulation. This emergency administration regulation shall be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor

BILLY RAY SMITH, Commissioner

DEPARTMENT OF AGRICULTURE

Division of Animal Health

302 KAR 20:120E. Treatment of imported stallions.

RELATES TO: KRS 257.030

STATUTORY AUTHORITY: KRS 257.030

EFFECTIVE: November 6, 1996

NECESSITY, FUNCTION, AND CONFORMITY: To establish a technique for treatment of stallions imported into Kentucky from any country outside the continental United States, its territories and possessions.

Section 1. Definitions. As used in this administrative regulation, unless the context clearly requires otherwise:

(1) "Stallion" means a male horse other than gelding over 731 days of age.

(2) "Breeding" means natural or artificial insemination of a mare.

(3) "CF test" means a complement-fixation test on equine serum for the detection of ~~[specific]~~ antibodies ~~for~~ ~~[of]~~ contagious equine metritis (CEM) bacterium.

(4) "Set of cultures" for female equines means a culture is obtained from the clitoral sinus (if intact), and clitoral fossa~~[-cervix or endometrium of the uterus].~~

(5) "Set of cultures" for an intact male equine~~[s]~~ means a culture is obtained from the prepuce, the urethral sinus, and the fossa glandis, including the diverticulum of the fossa glandis. ~~[urethral fossa, urethra and prepuce.]~~

Section 2. Any stallion imported into Kentucky ~~[which at any time]~~ after reaching 731 days of age that has been outside the continental United States, its territories, possessions, or Canada shall, before being used for breeding, be treated by or under the direct supervision of a Kentucky licensed [an] accredited veterinarian [licensed to practice in Kentucky.] according to the following ~~[procedure]~~:

(1) The veterinarian [With the stallion in full erection] and while wearing disposable gloves and using disposable equipment shall:

(a) ~~[The veterinarian shall]~~ Collect one (1) set of cultures from the

stallion to be cultured for CEM.

(b) ~~The stallion shall be bred to two (2) test mares that have been qualified as CEM free. The test mares shall qualify as CEM free by testing negative to a CEM CF test and when the set of cultures taken from the mares on days one (1), four (4) and seven (7) are culture negative for the CEM bacterium. [Mechanically clean the external genitalia with clean, warm water.]~~

(c) ~~After being bred by the stallion a set of culture specimens shall be collected from the test mares on the third, sixth, and ninth days after breeding. [Apply a chlorhexidine-containing surgical scrub liberally and using sufficient water to obtain sudsing, cleanse thoroughly paying particular attention to the urethral fossa/sinus and penetration of the folds of the sheath.]~~

(d) ~~The test mares shall have a complement fixation test (CF) conducted fifteen (15) days after breeding. [Wash with clean warm water and dry.]~~

(e) ~~With the stallion in full erection, the veterinarian shall for five (5) consecutive days wash and clean (scrub) with a solution of not less than two (2) percent chlorhexidine in a detergent base, the prepuce, urethral sinus, fossa glandis, including the diverticulum of the fossa glandis. The external genitalia, the prepuce, urethral sinus, fossa glandis, including the diverticulum of the fossa glandis shall then be filled and covered with an antibiotic ointment that is effective against the CEM organism which is approved by the USDA and the Kentucky State Veterinarian. [Apply an ointment containing not less than two-tenths (0.2) percent nitrofurazone or other medication approved by the USDA and Kentucky State Veterinarian liberally, insuring filling of the urethral fossa/sinus and penetration of the folds of the sheath.]~~

~~(2) Repeat the treatment daily for five (5) consecutive days.~~

~~(3) After completing the treatment procedure, the stallion must undergo a seven (7) day rest period.~~

~~(4) The stallion must breed two (2) mares that have been qualified as free of CEM by negative culture of two (2) sets of specimens collected at intervals of not less than seven (7) days apart and a CF test. One (1) set of cultures must be taken at the time of estrus.~~

~~(5) The two (2) qualified test mares bred by a stallion which has been treated as outlined in subsection (1) of this section shall be cultured from the cervix, clitoral fossa and clitoral sinuses on the second, fourth and seventh day after breeding. During the next estrus, specimens for culture shall be collected from the endometrium of the uterus, clitoral sinus and clitoral fossa. Two (2) blood samples for the CF test shall be obtained at intervals of not less than seven (7) days and between the 15th and 40th day after breeding.]~~

~~(2) All tests and cultures required by this section shall be conducted at a laboratory approved by the USDA's National Veterinary Services Laboratory and the Kentucky State Veterinarian. When [if] all required specimens taken from the test mares and stallion [cultures and tests] are test negative and culture negative for the CEM bacterium the stallion and the test mares may be eligible for a quarantine release. [-the treated stallion may be placed in service for breeding.]~~

Section 3. A user fee shall be assessed for equine imports. The import brokers shall pay a fee for each shipment of equine (stallions and mares) which arrive at their Kentucky quarantine destination on weekends, state recognized holidays and between the hours of 5:01 p.m. and 6:59 a.m. For weekends and between the hours of 5:01 p.m. and 6:59 a.m. the assessed fee shall be forty (40) dollars per hour with a minimum of two (2) hours time charged. For state recognized holidays the assessed fee shall be eighty (80) dollars per hour with a minimum of two (2) hours time charged. The broker shall pay by check to the Kentucky Department of Agriculture the assessed fee within ninety-six (96) hours on receipt of the charges.

BILLY RAY SMITH, Commissioner

APPROVED BY AGENCY: November 6, 1996

FILED WITH LRC: November 6, 1996 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Dr. D. L. Notter, State Veterinarian

(1) Type and number of entities affected: The Department of Agriculture routinely oversees the importation and required testing and treatment of approximately 200 mares and 35 stallions imported annually from other countries.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The amended regulation requires a fee be paid by the broker of the department for receiving and inspecting imported animals which arrive on weekends, at nights or on state recognized holidays. While this may appear to be an added expense it is actually a savings because brokers must now elect to either pay USDA employees a higher rate than that proposed in the amended regulation or to leave the animals in the USDA quarantine station over the weekend at a cost in excess of \$100 per day.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No additional requirements.

2. Second and subsequent years: No additional requirements.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Because the required time needed to complete the test and treatment requirements is shortened, the department would recognize a savings because the shortened quarantine period would require less monitoring, inspecting and supervision by department employees.

2. Continuing costs or savings: Same as for the first year.

3. Additional factors increasing or decreasing costs: By having the brokers reimburse the department for required overtime expenses the department would recognize a savings.

(b) Reporting and paperwork requirements: No additional paperwork required.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The department currently budgets for implementing this program. There is not expected to be any additional cost as a result of this amended regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: No public comments received.

(b) Kentucky: All comments received have been supportive of these amended changes being implemented as soon as possible.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative method would to have restrictions which are more stringent than federal regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: N/A

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

- (a) Necessity of proposed regulation if in conflict: N/A
- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
- (10) Any additional information or comments: None
- (11) TIERING: Is tiering applied? No. All mares and stallions imported from countries considered by the USDA are required to successfully complete a prescribed testing and treatment protocol for the detection of contagious equine metritis before being released from an importation quarantine.

STATEMENT OF EMERGENCY
803 KAR 25:034E

Pursuant to an amendment to KRS 342.260 enacted by the 1996 Regular Session of the Kentucky General Assembly, the Commissioner of the Department of Workers' Claims is required to adopt life expectancy tables for use in computing apportionment and attorneys' fees in workers' compensation cases. Life expectancy tables have been adopted as 803 KAR 25:036E, filed October 15, 1996 with the Legislative Research Commission. A prior administrative regulation, 803 KAR 25:035, which directly conflicts with 803 KAR 25:036E remains in existence and should be repealed. Due to the conflict of two (2) different life expectancy tables being in effect, an eminent threat to the public welfare exists. The consequences of using an outdated life expectancy table in calculating workers' compensation awards is that employers and their insurance carriers do not pay a proper part of the awards, while the Special Fund pays a disproportionately large part of awards. Outdated life expectancy tables have contributed to the current funding crisis of the Special Fund. This emergency administrative regulation is also necessary due to changes made to KRS Chapter 13A, effective July 15, 1996, which prescribes the process for repealing an administrative regulation. KRS Chapter 13A now requires a separate regulation to repeal an existing regulation. Because 803 KAR 25:036E is an emergency administrative regulation and was filed on October 15, 1996, the administrative regulation repealing 803 KAR 25:035 must also be an emergency regulation. An ordinary administrative regulation will not be filed with the Regulations Compiler because 803 KAR 25:036E, which replaces 803 KAR 25:035 and will be replaced by an ordinary regulation, was filed with the Legislative Research Commission on October 15, 1996. The sole purpose of this emergency administrative regulation is to repeal 803 KAR 25:035. Under KRS 13A.310(3)(b), 803 KAR 25:035 shall be repealed on the effective date of this emergency administrative regulation, therefore an ordinary regulation repealing 803 KAR 25:035 a second time is unnecessary.

PAUL E. PATTON, Governor
WALTER W. TURNER, Commissioner

LABOR CABINET
Department of Workers' Claims

803 KAR 25:034E. Repeal of 803 KAR 25:035.

RELATES TO: KRS Chapter 342
STATUTORY AUTHORITY: KRS 342.260(2)
EFFECTIVE: November 14, 1996

NECESSITY, FUNCTION, AND CONFORMITY: 803 KAR 25:035 is no longer required because 803 KAR 25:036E was filed with the Legislative Research Commission on October 15, 1996 and will be replaced by an ordinary regulation. 803 KAR 25:036E directly conflicts with the subject matter of 803 KAR 25:035.

Section 1. 803 KAR 25:035, Computation of apportionment and attorney's fees, is hereby repealed.

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: November 11, 1996

FILED WITH LRC: November 14, 1996 at 3 p.m.

PUBLIC HEARING: A public hearing will be held at the Department of Workers' Claims, 1270 Louisville Road, Perimeter Park West, Building C, Frankfort, Kentucky 40601, on Friday December 27, 1996, at 10 a.m. Individuals interested in attending this hearing shall notify this agency in writing by December 18, 1996, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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 five days prior to the hearing. 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 regulation to: Marcy D. Ches, Staff Attorney, Department of Workers' Claims, 1270 Louisville Road, Perimeter Park West Building C, Frankfort, Kentucky 40601, (502) 564-5550, (502) 564-5934 (FAX).

REGULATORY IMPACT ANALYSIS

Contact Person: Marcy D. Ches

(1) Type and number of entities affected: Workers' compensation claimants, employers, the Special Fund, and their attorneys. Approximately 10,000 formal applications for adjustment of claims are filed with the Department of Workers' Claims each year.

(2) Direct or indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments have been received.

(b) Cost of doing business in geographical area in which the administrative regulation will be implemented to the extent available from public comments received: No public comments have been received.

(c) Compliance reporting and paperwork requirements for the:

1. First year following implementation. No additional paperwork requirements are imposed upon the entities affected by this administrative regulation.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Some additional cost for printing copies of the amended administrative regulation; not to exceed \$1,000.

2. Continuing costs or savings: Negligible

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: No additional requirements to the agency.

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

(5) Source of revenue to be used for implementation and enforcement of this administrative regulation: The Kentucky Workers' Compensation Funding Commission pursuant to KRS 342.122.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will be implemented state wide, and also will affect Kentucky workers' compensation claimants who reside outside of Kentucky. No public comments have been received about any anticipated impact, but the amendments to this regulation will help to assure uniformity in calculations involving life expectancies for workers' compensation purposes. The use of outdated life expectancy tables has contributed to the funding crisis

of the Special Fund, which in turn threatens the economical foundation of the workers compensation program administered by the Kentucky Department of Workers' Claims.

(b) Kentucky: Same as (a), above.

(7) Assessment of alternative methods: Reasons why alternatives were rejected: KRS 342.260(2), as amended by the Regular Session of the 1996 Kentucky General Assembly, requires the commissioner to develop or adopt life expectancy tables for use in making computations for the apportionment of benefits, attorneys fees, and for use in all other situations arising under the Workers' Compensation Act in which the calculation of a life expectancy is necessary or desirable.

(8) Assessment of expected benefits:

(a) Identify effect on public health and environmental welfare: No effect.

(b) State whether a detrimental effect would result if not implemented: No effect.

(c) Explain detrimental effect: Not applicable.

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

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? Tiering does not apply. The life expectancy table adopted pursuant to 803 KAR 25:036E will be applied uniformly in all calculations for workers' compensation purposes where a life expectancy determination is required. The sole purpose of this emergency administrative regulation is to repeal 803 KAR 25:035.

STATEMENT OF EMERGENCY 806 KAR 18:080E

This emergency administrative regulation sets forth requirements for each association offering group health insurance to its members. The associations shall file certain data regarding membership and enrollment in the health insurance program. The Department of Insurance needs to obtain this information as soon as possible to clearly evaluate the market place for health insurance. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be filed at a later date.

PAUL E. PATTON, Governor
LAURA M. DOUGLAS, Secretary
GEORGE NICHOLS III, Commissioner

PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance

806 KAR 18:080E. Association uniform data collection.

RELATES TO: KRS 304.18-020, 304.18-050

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.18-050

EFFECTIVE: November 15, 1996

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) provides that the Commissioner of Insurance may promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.18-050 allows eligible associations to offer group health insurance if approved by the Department of Insurance pursuant to Subtitle 18 and applicable administrative regulations promulgated under that Subtitle. This administrative regulation obtains information from associations regarding membership and health plans.

Section 1. Definitions. (1) "Members" means employer groups or

individuals who join the association;

(2) "Health plan subscribers" means an employee of an employer group or an individual who participates in the health insurance plan; and

(3) "Covered lives" means all of the subscribers, the subscriber's spouse and all dependents covered under the health insurance policy; and

(4) "Contract type" means single or family plan.

Section 2. Each association offering group health insurance to its members shall provide the following by December 31, 1996 on report form number AUDC 1 and quarterly thereafter on the Association Uniform Data Collection Form:

- (1) Name of association;
- (2) Location of its principal office;
- (3) Name of its contact person;
- (4) Mailing address;
- (5) Telephone and facsimile numbers;
- (6) Beginning date of association;
- (7) Beginning date of health insurance plan;
- (8) Purpose of the association;
- (9) Description of persons solicited for membership; and
- (10) Name of health insurers.

Section 3. (1) An association offering and planning to offer group health insurance to its members shall file an Association Uniform Data Collection Form, number AUDC 1 for the reporting period of January 1, 1996 through September 30, 1996 with the commissioner. This report shall include a monthly break down of the following:

- (a) Number of members;
 - (b) Number of members eligible for health insurance plan;
 - (c) Number of members enrolled in the health insurance plan;
 - (d) Number of health plan subscribers in the health plan; and
 - (e) Number of covered lives in the health plan.
- (2) The report shall be filed with the department by December 31, 1996.

Section 4. (1) Each association offering group health insurance to its members shall file a quarterly report on the Association Uniform Data Collection Form beginning with the quarter of October 1, 1996 through December 31, 1996 and quarterly thereafter.

(2) The report shall be filed no later than forty-five (45) days after the end of each quarter.

(3) The report shall include the following information at the end of each quarter:

- (a) Number of members;
- (b) Number of members eligible for the health insurance plan;
- (c) Number of members enrolled in the health insurance plan;
- (d) Number of covered lives in the health insurance plan;
- (e) Demographic data regarding number of covered lives enrolled

in the health plan by:

1. Age; and
2. Gender;

(f) Demographic data regarding covered lives cancelling health insurance coverage by:

1. Age; and
2. Gender;

(g) Number of health plan subscribers by contract type;

(h) Insurer and association underwriting eligibility requirements;

(i) Method of allocation of the rate within the association; and

(j) Standard industry codes used by members enrolled in the health plan, and number of the members covered by each code, if applicable.

Section 5. Beginning January 1, 1997 and for each quarter thereafter, associations shall report at the end of each quarter the number of members newly enrolled in the health insurance plan that

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had previous health insurance coverage.

Section 6. The Association Uniform Data Collection Form (November 1996) and Association Uniform Data Collection Form only for the reporting period of January 1, 1996 through September 30, 1996 (November 1996) are incorporated by reference and can be obtained from the Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. until 4:30 p.m.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: November 14, 1996

FILED WITH LRC: November 15, 1996 at 11 a.m.

CONTACT PERSON: Carla H. Montgomery, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Telephone Number: (502) 564-6032, Ext. 239, Fax Number: (502) 564-1456.

REGULATORY IMPACT ANALYSIS

Contact Person: Carla H. Montgomery

(1) Type and number of entities affected: The department does not know all of the associations that were offering group health insurance as of January 30, 1996. There are 54 associations that have applied to offer group health insurance. The department is attempting to obtain names of associations who had insurance programs as of January 30, 1996.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has not received public comments at this time.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has not received public comments at this time.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Each association that offers group health insurance to its members must file the certain data regarding membership and enrollment in health plan as well as other information. The first report is due December 31, 1996. The associations will then report quarterly.

2. Second and subsequent years: Associations will continue to file quarterly updates.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The department does not anticipate any additional cost or savings.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: The amount of data received.

(b) Reporting and paperwork requirements: The department will have to review all of the data collection forms to determine if we have received all of the requested information. The department will compile the data from each filing.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget for the Department of Insurance will be used to implement this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments have been received at this time.

(b) Kentucky: Same comment as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Associations are a vital part of the health insurance market. If this administrative regulation were not enacted, the department would not be able to evaluate that part of the health insurance market.

(8) Assessment of expected benefits: The department will be able to better understand and evaluate the health insurance market in Kentucky.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect:

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied equally to all associations offering group health insurance.

STATEMENT OF EMERGENCY 905 KAR 2:140E

This emergency administrative regulation and Notice of Intent were promulgated pursuant to KRS 194.050 and 199.8994 which authorizes the cabinet to adopt administrative regulations necessary to operate programs and provide uniform administration of child day care funds. This administrative regulation establishes the procedures by which unregulated providers shall make application and establish eligibility for payment. This administrative regulation must be promulgated on an emergency basis to enable the cabinet to implement provisions of PL 104-193, Personal Responsibility and Work Opportunity Reconciliation Act of 1996, that requires that unregulated providers of child care services under the Child Care and Development Block Grant, Transitional Child Care Program, At-Risk Child Care Program, and child care as governed by 904 KAR 2:017 shall be enrolled with the Department for Social Services to meet minimum health and safety standards pursuant to 45 CFR 98.41 effective October 1, 1996. Unless the unregulated providers become enrolled, the cabinet will be unable to pay for child care services under the Child Care and Development Block Grant and this could result in the loss of 2600 providers of child care services to cabinet clients and, therefore, constitute an imminent threat to the public health, safety or welfare to these individuals. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation shall be filed with the Regulations Compiler on or about January 15, 1997.

PAUL E. PATTON, Governor

VIOLA P. MILLER, Secretary

CABINET FOR FAMILIES AND CHILDREN Department for Social Services

905 KAR 2:140E. Child day care programs.

RELATES TO: KRS 199.892 - 896, 45 CFR 98, 256, 257, PL 99-457 Part H, PL 94-142.2

STATUTORY AUTHORITY: KRS 194.050, 199.892, 199.8994, PL

104-193, 45 CFR 98.41, EO 96-862

EFFECTIVE: November 15, 1996

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194.050 and 199.8994 provides that the Secretary for the Cabinet for Human Resources shall adopt administrative regulations necessary to operate programs and fulfill the responsibilities vested in the Cabinet for Human Resources and provide uniform administration of child day care funds. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Social Services under the Cabinet for Families and Children. This administrative regulation is necessary to enable the Cabinet for Families and Children [Human Resources] to qualify to receive federal funds under the Social Services Block Grant, Child Care and Development Block Grant and the Transitional and At-Risk Child Care Programs and for child care services pursuant to 904 KAR 2:017. The function of this administrative regulation is to establish procedures for the implementation of child day care programs.

Section 1. Definitions. (1) "At-risk child care, (ARCC)" means child care assistance provided to non-K-TAP [AFDC] families who need care in order to work and who may otherwise be at risk of becoming dependent upon K-TAP [AFDC].

(2) "Attending a job training or educational program" means regular and scheduled participation in a program offering appropriate skills training or education, if post secondary, consistent with employment goals.

(3) "Center-based child care" means a Type I day care facility.

(4) "Certificate" means a payment mechanism provided by DSS and used by a family to secure day care from the provider of choice.

(5) "Certified family child care home" means a home as governed by KRS 199.8982(1)(c) and 905 KAR 2:100.

(6) "Child care and development block grant, (CCDBG)" means child care assistance provided to families through the state to improve the affordability, quality and availability of child care services for a low income family to work or attend training or educational programs.

(7) "Child protective cases" means cases registered for services in which the case file contains case documentation that substantiates or reflects some indication of child abuse, neglect, dependency or exploitation. This category may include services to prevent abuse, neglect, dependency or exploitation, including multiproblem families.

(8) "Corporal physical discipline" means the deliberate infliction of physical pain and does not include spontaneous physical contact which is intended to protect a child from immediate danger.

(9) "Day care" means the provision of essential child care for a portion of a day on a regular basis and is designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development and supervision.

(10) "Dedicated child care workers, (DCW)" means the Department for Social Services staff who work strictly with the day care program. The dedicated child care worker provides services to families through the following federally funded programs: Social Services Block Grant, (SSBG), Child Care and Development Block Grant, (CCDBG), At-Risk Child Care, (ARCC), and Transitional Child Care, (TCC).

(11) "Dependent care disregard" means a method of providing child care for K-TAP [AFDC] and medical assistance recipients with earned income and food stamp recipients with earned income or in training or educational programs which are preparatory to employment by deducting child care expenses from the gross income, thus allowing the K-TAP [AFDC] recipient to retain more income to pay child care expenses. In cases where recipients are receiving assistance under more than one program, the highest disregard shall be used.

(12) "Eligibility requirements" means that for a family to qualify for child day care funds, except in those instances where day care is provided under SSBG for child protective cases, a family shall meet both need and income status criteria.

(13) "Employment" means public or private, full or part time, permanent or temporary work, including self-employment.

(14) "Enrolled or enrollment" means the process by which unregulated providers become eligible for CCDBG, ARCC, and TCC funds and child care services pursuant to 904 KAR 2:017 by completing the application for provider enrollment and obtaining approval by the Department for Social Services.

(15) "Family" means one or more adults and children related by blood or law, including stepparents, residing in the same residence.

(16) [(46)] "Family child care" means:

(a) Certified family child care homes as governed by 905 KAR 2:100; or

(b) Unregulated care provided for no more than three (3) unrelated children.

(17) [(46)] "Group home child care" means a Type II day care facility.

(18) "Kentucky Transitional Assistance Program (K-TAP)", Kentucky's "Temporary Assistance for Needy Families (TANF) Program" means a money payment program for children who are deprived of parental support or care due to:

(a) Death, continued or involuntary absence, physical or mental incapacity of a parent; or

(b) Unemployment of at least one (1) parent when both parents are in the home.

(19) [(47)] "Licensed child day care facility" means a facility as governed by KRS 199.894.

(20) [(48)] "Physical or mental incapacity" means a child under the age of 18 who has multiple or severe problems diagnosed by a physician or qualified professional, that prevent the child from caring for himself or herself for a part of the day.

(21) [(49)] "Priorities" mean that the client groups identified for receipt of day care are ranked in chronological order by priority.

(22) [(20)] "Provider" means owner, operator or employee, including a volunteer, who works in a Type I or Type II licensed day care facility, certified family child care home, or enrolled [unregulated home or registered] home.

(23) [(24)] "Purchase of care" means the purchase of child day care services from licensed facilities, certified or enrolled [registered] homes or other eligible provider for authorized children to the extent funds are available.

[(22)] "Registered provider" means a provider that is registered with the Department for Social Services as a provider of child care services through the Child Care and Development Block Grant, (CCDBG) or At-Risk Program, (ARCC).]

(24) [(23)] "Relative provider" means the provider shall be at least eighteen (18) years of age and provide child care services only to eligible children who are by marriage, blood relationship or court decree the grandchild, great-grandchild, niece, nephew, or sibling if the adult sibling is living in a separate residence. [for registration purposes:

(a) Grandparents, aunts and uncles who are required to register with the Department for Social Services before being eligible to receive payment for child care under CCDBG; and-

(b) Relatives of the child by blood or marriage, eighteen years of age or older, including grandfather, grandmother, brother, sister-uncle, aunt, nephew, niece or first cousin, including half blood and preceding generations, who are not required to register with the Department for Social Services to be eligible to receive payment for child care under ARCC.]

(25) [(24)] "Social services block grant, (SSBG)" means child care assistance provided by licensed or certified providers for families receiving protective and preventive services, including multiproblem families, and low income working parents.

(26) [(25)] "Special needs child" means a child who has multiple or severe problems, and the severity of the disability requires ongoing specialized care as defined under PL 99-457 Part H or PL 94-142.2.

(27) [(26)] "Transitional child care, (TCC)" means child care

assistance provided to families whose eligibility for K-TAP [AFDC] has ceased due to earnings from employment, or as a result of the loss of income disregards due to the expiration of the time limit according to the federal regulation on K-TAP [AFDC]. The purpose of TCC is to help prevent welfare dependency or potential welfare dependency.

(28) [(27)] "Type I day care facility" means a facility:

(a) Other than a dwelling unit which regularly receives four (4) or more children for day care; or

(b) A facility, including a dwelling unit, which regularly provides day care for thirteen (13) or more children.

(c) If preschool children of any day care staff receive care in the facility, they shall be included in the number for which the facility is licensed.

(29) [(28)] "Type II day care facility" means a home or dwelling unit which regularly provides care apart from parents for seven (7), but not more than twelve (12) children. The provider's own pre-school children shall be included in the number for which the home is licensed.

(30) [(29)] "Unregulated provider" means a child care provider who is not subject to be licensed, or certified [or registered] by the state or federal government. [~~Families receiving day care funds through the SSBG may not use unregulated care, however, unregulated care may be used by families receiving TCC or ARCC funds. Relative care as provided through the ARCC program, which is not required to be registered, shall be deemed unregulated.~~]

(31) [(30)] "Waiting list" means a list that may be maintained by district DSS staff once funds are obligated in a district. The list is based on the availability of district day care funds. TCC families shall not be placed on a waiting list due to the uncapped funding source.

(32) [(31)] "Without regard to income" means that SSBG child day care services for child protective cases shall be provided or purchased without regard to family income. In situations where the court is involved, parents may be ordered to pay for part or all of the cost of day care for their child. Voluntary payments by parents may be accepted.

Section 2. Technical Eligibility for CCDBG. A child shall be eligible for services as verified on the DSS-1A, Application for Services, herein incorporated by reference, if he:

(1) Is under the age of thirteen (13) or is under the age of eighteen (18) and:

(a) Is physically or mentally incapable of caring for himself as verified by the written determination of:

1. A physician;
2. A licensed or certified psychologist;
3. A qualified mental health professional; or

4. As accepted by a collateral agency (schools, comprehensive care center); or

(b) Is under court supervision;

(2) Resides with a family whose income does not exceed:

(a) Sixty (60) percent of the states median income for a family of the same size at time of application; or

(b) Seventy-five (75) percent of the states median income for a family of the same size at the time of reauthorization; and

(c) To the extent necessary the eligibility levels of state median income specified in paragraphs (a) and (b) of this subsection may be revised based on the availability of state and federal funds.

(3) Resides with parents who are working or attending a job training or educational program;

(4) Fee requirement.

(a) A family receiving CCDBG funds shall be required to contribute toward the payment based on the family's income as described in Section 7(3) of this administrative regulation.

(b) An individual who fails to cooperate in paying required fees may, subject to notices and hearing requirements, lose eligibility for the period of time back fees are owed, unless satisfactory arrangements are made to make full payment.

(5) Other eligibility conditions or priority requirements including childhood development and before and after school care services, may be established in addition to Sections 3(1) through (5) and 5(4) as long as they shall not:

(a) Discriminate against children on the basis of:

1. Race;
2. National origin;
3. Ethnic background;
4. Sex;
5. Religious affiliation; or
6. Disability.

(b) Limit parental rights as governed by Section 4 of this administrative regulation; or

(c) Violate provisions of Section 5(4) of this administrative regulation.

Section 3. Technical eligibility for SSBG. (1) The child shall have met the requirements specified in Section 2(1) of this administrative regulation.

(2) The case records shall:

(a) Substantiate or reflect some indication of child abuse, neglect, dependency or exploitation; or

(b) Provide documentation that a family has a need for child care services and with the use of child care the need for protective services may be prevented.

(3) Working parents may be eligible if:

- (a) Child care needs exist in order to allow the parent to work;
- (b) The family is income eligible as specified in Section 2(2)(a) and (b) of this administrative regulation; and
- (c) ARCC and CCDBG funds are obligated.

Section 4. Technical Eligibility and Limitations for TCC. A family shall be notified of its potential eligibility for TCC when its K-TAP [AFDC] benefits are terminated.

(1) The following requirements shall be met during any month for which TCC is paid:

(a) The child shall have met the requirements specified in Section 2(1) of this administrative regulation or 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.

(b) Child care shall be necessary in order to permit a member of a K-TAP [an AFDC] family to accept or retain employment;

(c) Payments shall not be made for care provided by:

1. Parents;
2. Legal guardians;
3. Members of the assistance group; and
4. Providers not meeting applicable standards of state and local law or not enrolled pursuant to Section 7 of this administrative regulation.

(d) The family shall have ceased to be eligible for K-TAP [AFDC] as a result of:

1. Increased hours of, or increased income from, employment; or
2. The loss of income disregards due to the time limitations at Section 4(3)(b) of 904 KAR 2:016;

(e) The family shall have received K-TAP [AFDC]:

1. In at least three (3) of the six (6) months preceding the first month of ineligibility; and
2. At least one (1) of the three (3) months was received in the state of Kentucky.

(f) The family:

1. Requests TCC benefits;
2. Provides the information necessary for determining eligibility and fees; and
3. Meets application requirements.

(2) Time limitations.

(a) Eligibility for TCC:

1. Begins with the first month that the family is ineligible for K-

TAP [AFDC]; and

2. Continues for a period of twelve (12) consecutive months.

(b) A family may begin to receive child care in any month during the twelve (12) month eligibility period.

(3) Sanctions. The family is not eligible for TCC for any remaining portion of the twelve (12) month period if the caretaker relative:

(a) Terminates employment, unless good cause exists as follows:

1. The individual:

a. Is personally providing care for a child under age six (6); and
b. Employment will require the individual to work more than twenty (20) hours per week.

2. Child care:

a. Is necessary for the individual to participate in the program or accept employment; and

b. Is not available; or

c. The available child care does not meet the special needs of the child, e.g., a child who has physical or mental disabilities.

3. The individual is unable to engage in employment or training for mental or physical disabilities, including participation in a drug or alcohol rehabilitation program.

4. Transportation is unavailable and there is no readily accessible alternative means of transportation available.

5. Travel time to work site exceeds two (2) hours daily.

6. Illness of another household member requiring the presence of the participant at home.

7. Temporary incarceration.

8. Discrimination by an employer based on age, race, sex color, disability, religious beliefs, national origin or political beliefs.

9. Work demand or conditions that render continued employment unreasonable. Examples are:

a. Consistently not being paid on schedule; or

b. The work presents a risk to the individual's health or safety.

10. Wage rates are decreased subsequent to acceptance of employment.

11. Acceptance of a better job which, because of circumstances beyond the control of the recipient, does not materialize.

12. Employment would result in a net loss of cash income.

13. The client experiences a household emergency, including but not limited to: death of a member of the immediate family, entry into a spouse abuse center, or a natural disaster.

(b) Fails to cooperate with the State IV-A agency in establishing payment and enforcing child support obligations, per 904 KAR 2:006, Section 16.

(4) Fee requirements.

(a) A family receiving TCC shall be required to contribute toward the payment based on the family's income as described in Section 7 [6](3) of this administrative regulation.

(b) An individual who fails to cooperate in paying required fees may, subject to notices and hearing requirements, lose eligibility for the period of time back fees are owed, unless satisfactory arrangements are made to make full payment.

Section 5. Technical Eligibility and Limitations for ARCC. (1) The following requirements shall be met during any month for which ARCC is paid:

(a) The child shall have met the requirements specified in Section 2(1) and (2)(a), (b) of this administrative regulation.

(b) The family:

1. Is at risk of becoming eligible for K-TAP [AFDC];

2. Is not receiving K-TAP [AFDC]; and

3. Needs child care in order to accept employment and remain employed.

(2) Child care limitations:

(a) Child care payments shall be provided:

1. Directly to the provider;

2. In an amount equal to the actual cost up to the payment maximum based on market rates described in Section 7(2) of this

administrative regulation; or

3. In an amount equal to the difference between subparagraph b of this paragraph and the amount allowed as a deduction for child care costs to recipients of statutory benefits; and

4. If child care arrangements would otherwise be lost:

a. For up to two (2) weeks prior to the start of employment; or

b. For up to one (1) month during a break in employment if subsequent employment is scheduled to begin within that period.

(b) Payments shall not be made to a provider if the provider is:

1. The parent;

2. The legal guardian;

3. Not meeting applicable standards of state and local law;

4. Not enrolled [registered] by the department as required in Section 7 [6] of this administrative regulation; or

5. Not allowing parental access.

(3) Fee requirements

(a) A family receiving ARCC shall be required to contribute toward the payment based on the family's income as described in Section 7(3) of this administrative regulation.

(b) An individual who fails to cooperate in paying required fees may, subject to notices and hearing requirements, lose eligibility for the period of time back fees are owed, unless satisfactory arrangements are made to make full payment.

Section 6. Parental Rights and Responsibilities. (1) Parents of an eligible child who receive or are offered child care services subject to the availability of state and federal funds shall be offered a choice:

(a) To enroll the child with an eligible child care provider that has a grant or contract, selected by the parent to the maximum extent practicable; or

(b) To receive a child care certificate, the DSS-76, Day Care Services Agreement and Child Care Certificate, herein incorporated by reference, which shall:

1. Be issued to the parent;

2. Be of value commensurate with the value of child care services provided in Section 6(1)(a) of this administrative regulation;

3. If chosen by the parent, may be used for child care services provided by a sectarian organization or agency;

4. Not be considered a contract or grant to the provider but assistance to the parent;

5. Allow parents to choose from a variety of child care categories in compliance with federal regulations governing child day care programs including:

a. Licensed child care facilities;

b. Certified family child care facilities (CFCH); and

c. Unregulated child care facilities enrolled with the Department for Social Services; or

d. Relative providers as defined in Section 1 of this administrative regulation; [~~Registered child care facilities~~]; and

6. Inform parents and providers that the agreement may be terminated upon notice that the Department for Social Services has determined that conditions or circumstances at the child day care premises place children at risk of abuse, neglect, or exploitation pursuant to KRS Chapter 620.

(2) Providers of child care services shall afford parents unlimited access to their children and to the provider during normal hours of operation and whenever the child is in the care of the provider.

(3) The cabinet shall:

(a) Maintain a record of substantiated parental complaints; and

(b) Make information regarding parental complaints available to the public upon request.

(4) The cabinet shall make available to the parents and general public, consumer education about parental options relating to child care services including:

(a) Licensing and regulatory requirements; and

(b) Complaint procedures.

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Section 7. State and Provider Requirements. (1) The cabinet shall assure that providers of child care services funded under CCDBG, SSBG, ARCC, TCC and pursuant to 904 KAR 2:017:

(a) Shall comply with licensing and regulatory requirements as governed by 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120 and 905 KAR 2:100;

(b) That are not required to be licensed or certified as governed by 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120 and 905 KAR 2:100 or are relative providers shall be enrolled [registered] with the cabinet to meet minimum health and safety standards. Providers requesting enrollment shall complete the DSS-1297, Application for Child Care Provider Enrollment: In Child's Home or the DSS-1295, Application for Child Care Provider Enrollment: In Provider's Home and DSS-1296, Child Care Provider Enrollment Self-assessment, herein incorporated by reference, and meet the following health and safety requirements. [prior to payment under the block grant using the DSS-77, Day Care Billing Statement, herein incorporated by reference except under TCC and relative provided care under ARCC; and

(c) Under CCDBG, nonrelative providers registered with the Cabinet shall become certified as governed by 905 KAR 2:100.

(d) Nonrelative providers providing care in the child's home shall be certified by meeting the requirements as follows:]

1. The provider shall be at least eighteen (18) years of age;

2. [The provider shall be physically capable of providing care to children, as stated by a qualified physician;

3-] The provider shall be free of tuberculosis, as stated by a qualified physician or health care specialist;

3. [4-] The provider shall not have been convicted of crimes against children, as shown by a criminal records check conducted within the past year by the Kentucky State Police; and

4. [5-] The provider shall sign an agreement not to use any form of corporal physical discipline on the children entrusted into their care.

(c) The department may deny or terminate an agreement with an unregulated provider if conditions or circumstances at the child care premises places children at risk of abuse, neglect, or exploitation pursuant to KRS Chapter 620.

(d) If the department denies or terminates an agreement with an unregulated provider, the department shall notify the provider in writing stating the reasons for the adverse action and the provider's right of appeal.

(e) If the provider feels an action of the Department for Social Services is unfair, without reason, or unwarranted, the provider may appeal the action, in writing, to the Commissioner of the Department for Social Services, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621, within twenty (20) days after receiving the notice of the action from the department.

(f) Upon receipt of the request for hearing, the commissioner, or designee, shall appoint a hearing officer to review the record, conduct the hearing, and make recommendations upon the matter appealed. Within fifteen (15) days of the assignment, the hearing officer shall notify the provider in writing of the date, time and place of the hearing. The notice shall comply with KRS 13B.050(2), (3).

(g) The hearing shall be conducted as governed by KRS 13B.080.

(h) The hearing officer shall advise the parties that a recommended order shall be distributed within ten (10) days after the close of the hearing, the parties shall have fifteen (15) days from the date of the recommended order to file exceptions, and a final decision shall be rendered within thirty (30) days from the close of the hearing.

(i) The recommended order shall be filed with the commissioner, or designee, and shall comply with KRS 13B.110.

(j) Within twenty (20) days after receipt of the recommended order, the commissioner, or designee, shall render a final order, either affirming or overturning the initial decision of negative action. The final order shall comply with KRS 13B.120.

(k) If denial or termination of enrollment is upheld, the commissioner's or designee's notification shall specify the date by which the

child care payments shall cease.

(2) The cabinet has established maximum child day care payments as follows:

These charts represent the local maximum payment rate on a per day/weekly basis. If care exceeds five (5) days, the rate shall be the weekly maximum payment plus the additional designated daily amount reflecting the applicable rate. Chart abbreviations are as follows: FT - full time; PT - part time; WM - weekly maximum.

KENTUCKY CHILD CARE MAXIMUM PAYMENT LEVELS

WESTERN REGION

Purchase ADD #1

County: McCracken

	Center			Group Home			Family/In Home		
	FT	PT	WM	FT	PT	WM	FT	PT	WM
Urban X									
Rural									
Infant	\$13	16	65	12	12	60	11	16	55
Toddler	\$12	16	60	11	11	55	11	16	55
Preschool	\$12	14	60	11	10	55	11	16	55
School Age	\$12	9	60	11	10	55	11	16	55
Special Needs									
Child	\$12	16	60	13	13	65	10	16	50

Purchase ADD #1

Counties: Ballard, Calloway, Carlisle, Fulton, Graves, Hickman, Marshall

	Center			Group Home			Family/In Home		
	FT	PT	WM	FT	PT	WM	FT	PT	WM
Urban									
Rural X									
Infant	\$13	16	65	13	13	65	11	16	55
Toddler	\$13	16	65	13	13	65	11	16	55
Preschool	\$13	14	65	13	13	65	13	16	65
School Age	\$12	9	60	13	13	65	12	16	60
Special Needs									
Child	\$12	16	60	13	13	65	15	16	75

Pennyrile ADD #2

County: Christian

	Center			Group Home			Family/In Home		
	FT	PT	WM	FT	PT	WM	FT	PT	WM
Urban X									
Rural									
Infant	\$13	16	65	12	12	60	11	16	55
Toddler	\$12	16	60	11	11	55	11	16	55
Preschool	\$12	14	60	10	10	50	11	16	55
School Age	\$11	8	55	10	10	50	11	16	55
Special Needs									
Child	\$12	16	60	13	13	65	10	16	50

Pennyrile ADD #2

Counties: Caldwell, Crittenden, Hopkins, Livingston, Lyon, Muhlenberg, Todd, Trigg

	Center			Group Home			Family/In Home		
	FT	PT	WM	FT	PT	WM	FT	PT	WM
Urban									
Rural X									
Infant	\$13	16	65	13	13	65	11	16	55
Toddler	\$13	16	65	11	13	65	11	16	55
Preschool	\$13	14	65	13	13	65	13	16	65
School Age	\$12	8	60	13	13	65	12	16	60
Special Needs									
Child	\$12	16	60	13	13	65	15	16	75

Green River ADD #3

Counties: Daviess, Henderson

	Center			Group Home			Family/In Home		
	FT	PT	WM	FT	PT	WM	FT	PT	WM
Urban X									

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Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	\$13	16	65	12	12	60	11	16	55
Toddler	\$13	16	65	12	11	60	11	16	55
Preschool	\$13	14	65	12	10	60	11	16	55
School Age	\$13	10	65	12	10	60	11	16	55
Special Needs									
Child	\$13	16	65	13	13	65	11	16	55

Green River ADD #3

Counties: Hancock, McLean, Ohio, Union, Webster

Urban	Center	Group Home	Family/In Home
Rural X	FT PT WM	FT PT WM	FT PT WM
Infant	\$13 16 65	13 13 65	11 16 55
Toddler	\$13 16 65	13 13 65	11 16 55
Preschool	\$13 14 65	13 13 65	13 16 65
School Age	\$13 10 65	13 13 65	12 16 60
Special Needs			
Child	\$13 16 65	13 13 65	15 16 75

Barren River ADD #4

Counties: Allen, Barren, Butler, Edmonson, Hart, Logan, Metcalfe, Monroe, Simpson, Warren

Urban	Center	Group Home	Family/In Home
Rural X	FT PT WM	FT PT WM	FT PT WM
Infant	\$13 16 65	13 13 65	11 16 55
Toddler	\$13 16 65	13 13 65	11 16 55
Preschool	\$13 14 65	13 13 65	13 16 65
School Age	\$12 8 60	13 13 55	12 16 60
Special Needs			
Child	\$13 16 65	13 13 65	15 16 75

Lincoln Trail ADD #5

Counties: Breckinridge, Grayson, Hardin, Larue, Marion, Meade, Nelson, Washington

Urban	Center	Group Home	Family/In Home
Rural X	FT PT WM	FT PT WM	FT PT WM
Infant	\$13 16 65	13 13 65	11 16 55
Toddler	\$13 16 65	13 13 65	11 16 55
Preschool	\$13 14 65	13 13 65	13 16 65
School Age	\$12 8 60	13 13 65	12 16 60
Special Needs			
Child	\$12 16 60	13 13 65	15 16 75

Kipda ADD #6

Counties: Bullitt, Jefferson, Oldham, Shelby

Urban X	Center	Group Home	Family/In Home
Rural	FT PT WM	FT PT WM	FT PT WM
Infant	\$15 12 75	14 11 70	13 12 65
Toddler	\$15 14 75	14 11 70	13 12 65
Preschool	\$14 15 70	13 10 65	12 12 60
School Age	\$12 16 60	11 8 55	10 12 50
Special Needs			
Child	\$15 15 75	14 14 70	15 13 75

Kipda ADD #6

Counties: Henry, Spencer, Trimble

Urban	Center	Group Home	Family/In Home
Rural X	FT PT WM	FT PT WM	FT PT WM
Infant	\$16 12 80	15 15 75	15 12 75
Toddler	\$16 14 80	15 15 75	15 12 75
Preschool	\$15 15 75	15 10 75	15 12 75
School Age	\$14 16 70	13 8 65	15 12 75

Special Needs

Child	\$15	15	75	14	14	70	15	13	75
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Northern Ky. ADD #7

Counties: Boone, Campbell, Kenton

Urban X	Center	Group Home	Family/In Home
Rural	FT PT WM	FT PT WM	FT PT WM
Infant	\$16 13 80	15 12 75	14 12 70
Toddler	\$14 14 70	13 11 65	12 12 50
Preschool	\$14 15 70	13 10 65	12 12 60
School Age	\$13 16 65	12 9 60	11 12 55
Special Needs			
Child	\$16 16 80	15 15 75	15 14 70

Northern Ky. ADD #7

Counties: Carroll, Gallatin, Grant, Owen, Pendleton

Urban	Center	Group Home	Family/In Home
Rural X	FT PT WM	FT PT WM	FT PT WM
Infant	\$16 13 80	15 15 75	15 12 75
Toddler	\$16 14 80	15 15 75	15 12 75
Preschool	\$15 15 75	15 10 75	15 12 75
School Age	\$14 16 70	13 9 65	15 12 75
Special Needs			
Child	\$16 16 80	15 15 75	15 14 75

Buffalo Trace ADD #8

Counties: Bracken, Fleming, Lewis, Mason, Robertson

Urban	Center	Group Home	Family/In Home
Rural X	FT PT WM	FT PT WM	FT PT WM
Infant	\$13 12 65	12 12 60	11 9 55
Toddler	\$13 12 65	12 10 60	11 6 55
Preschool	\$13 12 65	12 10 60	15 10 75
School Age	\$13 14 65	12 10 60	12 10 60
Special Needs			
Child	\$13 16 65	12 11 60	10 10 50

Gateway ADD #9

Counties: Bath, Menifee, Montgomery, Morgan, Rowan

Urban	Center	Group Home	Family/In Home
Rural X	FT PT WM	FT PT WM	FT PT WM
Infant	\$13 12 65	12 12 60	11 9 55
Toddler	\$13 12 65	12 10 60	11 6 55
Preschool	\$13 12 65	12 10 60	15 10 75
School Age	\$13 14 65	12 10 60	12 10 60
Special Needs			
Child	\$13 16 65	12 10 60	10 9 50

Fivco ADD #10

Counties: Boyd, Carter, Greenup

Urban X	Center	Group Home	Family/In Home
Rural	FT PT WM	FT PT WM	FT PT WM
Infant	\$14 12 70	13 12 65	12 9 60
Toddler	\$13 12 65	12 10 60	11 8 55
Preschool	\$13 12 65	12 10 60	11 10 55
School Age	\$13 14 65	12 10 60	11 10 55
Special Needs			
Child	\$14 16 70	13 13 65	12 12 60

Fivco ADD #10

Counties: Elliott, Lawrence

Urban	Center	Group Home	Family/In Home
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Rural X	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	\$14	12	70	13	12	65	12	9	60
Toddler	\$13	12	65	12	10	60	11	8	55
Preschool	\$13	12	65	12	10	60	15	10	75
School Age	\$13	14	65	12	10	60	12	10	60
Special Needs									
Child	\$14	16	70	13	13	65	12	12	60

Big Sandy ADD #11

Counties: Floyd, Johnson, Magoffin, Martin, Pike

Urban	Center	Group Home	Family/In Home
Rural X	FT PT WM	FT PT WM	FT PT WM
Infant	\$13 12 65	12 12 60	11 9 55
Toddler	\$13 12 65	12 10 60	11 7 55
Preschool	\$13 12 65	12 10 60	15 10 75
School Age	\$13 14 65	12 10 60	12 10 60
Special Needs			
Child	\$13 16 65	12 11 60	10 10 50

Kentucky River ADD #12

Counties: Breathitt, Knott, Lee, Leslie, Letcher, Owsley, Perry, Wolfe

Urban	Center	Group Home	Family/In Home
Rural X	FT PT WM	FT PT WM	FT PT WM
Infant	\$13 12 65	12 12 60	11 9 55
Toddler	\$13 12 65	12 10 60	11 8 55
Preschool	\$13 12 65	12 10 60	15 10 75
School Age	\$13 14 65	12 10 60	12 10 60
Special Needs			
Child	\$13 16 65	12 12 60	11 11 55

Cumberland Valley ADD #13

Counties: Bell, Clay, Harlan, Jackson, Knox, Laurel, Rockcastle, Whitley

Urban	Center	Group Home	Family/In Home
Rural X	FT PT WM	FT PT WM	FT PT WM
Infant	\$13 12 65	12 12 60	11 9 55
Toddler	\$13 12 65	12 10 60	11 6 55
Preschool	\$13 12 65	12 10 60	15 10 75
School Age	\$13 14 65	12 10 60	12 10 60
Special Needs			
Child	\$13 16 65	12 10 60	10 9 50

Lake Cumberland ADD #14

Counties: Adair, Casey, Clinton, Cumberland, Green, McCreary, Pulaski, Russell, Taylor, Wayne

Urban	Center	Group Home	Family/In Home
Rural X	FT PT WM	FT PT WM	FT PT WM
Infant	\$16 8 80	15 15 75	15 12 75
Toddler	\$16 14 80	15 15 75	15 12 75
Preschool	\$15 13 75	15 8 75	15 12 75
School Age	\$14 16 70	13 8 65	15 12 75
Special Needs			
Child	\$14 11 70	14 14 70	15 12 75

Bluegrass ADD #15

Counties: Bourbon, Clark, Fayette, Franklin, Jessamine, Madison, Scott, Woodford

Urban X	Center	Group Home	Family/In Home
Rural	FT PT WM	FT PT WM	FT PT WM
Infant	\$14 11 70	13 11 65	13 12 65
Toddler	\$13 14 65	12 11 60	11 12 55
Preschool	\$13 14 65	12 9 60	11 12 55

School Age	\$13	16	65	12	9	60	11	12	55
Special Needs									
Child	\$14	14	70	14	14	70	15	12	75

Bluegrass ADD #15

Counties: Anderson, Boyle, Estill, Garrard, Harrison, Lincoln, Mercer, Nicholas, Powell

Urban	Center	Group Home	Family/In Home
Rural X	FT PT WM	FT PT WM	FT PT WM
Infant	\$16 11 80	15 15 75	15 12 75
Toddler	\$16 14 80	15 15 75	12 12 60
Preschool	\$15 14 75	15 9 75	15 12 75
School Age	\$14 16 70	13 9 65	15 12 75
Special Needs			
Child	\$14 14 70	14 14 70	15 12 75

(3) The cabinet shall assess a fee which the family shall pay to the provider for the cost of child day care based on the following sliding scale:

CHILD CARE FEE SCHEDULE

Income Range	FAMILY SIZE - Fee per agreement per family (Monthly)	2	3	4	5	6	7	8*
0	399	1.00	1.00	1.00	1.00	1.00	1.00	1.00
400	499	1.00	1.00	1.00	1.00	1.00	1.00	1.00
500	599	1.00	1.00	1.00	1.00	1.00	1.00	1.00
600	699	1.00	1.00	1.00	1.00	1.00	1.00	1.00
700	799	1.00	1.00	1.00	1.00	1.00	1.00	1.00
800	899	2.00	1.00	1.00	1.00	1.00	1.00	1.00
900	999	3.25	1.15	1.00	1.00	1.00	1.00	1.00
1000	1099	4.50	2.25	1.00	1.00	1.00	1.00	1.00
1100	1199	6.00	3.50	1.60	1.00	1.00	1.00	1.00
1200	1299	7.50	5.00	3.10	1.00	1.00	1.00	1.00
1300	1399	8.00	6.00	4.60	1.60	1.00	1.00	1.00
1400	1499	8.60	7.00	6.10	2.65	2.00	1.00	1.00
1500	1599	9.25	7.75	7.00	4.05	3.05	1.25	1.00
1600	1699	9.75	8.25	7.85	5.50	4.50	2.30	1.00
1700	1799	10.25	9.75	8.35	7.10	6.25	3.50	1.50
1800	1899	10.75	10.30	9.30	8.35	7.50	5.20	2.50
1900	1999	11.25	10.60	9.30	9.30	8.80	7.00	3.80
2000	2099	11.75	11.25	9.75	9.75	9.75	8.50	5.30
2100	2199	12.25	11.75	10.25	10.25	10.25	10.00	7.10
2200	2299	12.75	12.25	10.70	10.70	10.70	10.70	8.90
2300	2399	13.25	12.75	11.25	11.28	11.25	11.25	10.80
2400	2499	13.75	13.25	11.75	11.75	11.75	11.75	11.75
2500	2599	14.25	13.75	12.25	12.25	12.25	12.25	12.25
2600	2699	14.75	14.25	12.75	12.75	12.75	12.75	12.75
2700	2799	15.25	14.75	13.25	13.25	13.25	13.25	13.25

*For family size above eight (8), the parent fee shall not increase.

(a) Except fees shall not be assessed in:

1. A child protective case under SSBG; or
2. An K-TAP [AFDC], medical assistance or food stamp case where clients are receiving dependent care disregard.

(b) The DCW shall determine the maximum daily reimbursement rate and parent fee, not to exceed rates as specified in Section 7(2) of this administrative regulation and monitor the payment to the child care provider using the DSS-77, Day Care Billing Statement, herein incorporated by reference. If the parent fails to pay the fee the DCW shall develop a plan with the parent to pay the fee.

(c) The DCW shall advise the client to report family and financial changes that may affect authorization of payments. Reauthorization shall be determined:

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1. Every six (6) months; and
2. Upon receipt of reported changes.
- (4) The Cabinet for Families and Children ~~(Human Resources)~~ may, except for TCC and protective service cases, establish priorities for child care services as follows:
 - (a) Children with special needs;
 - (b) Job Opportunity and Basic Skills Program or TCC participants who have children ineligible for child care payments under the programs;
 - (c) Families who lose eligibility in another child care program; and
 - (d) Other low income working parents or parents attending training or educational programs.
- (5) The Department for Social Services shall exchange TCC client specific information to the Department for Social Insurance within ten (10) days of discovery.
- (a) The DCW shall report the following case terminations to the local DSI, Division of Field Services Office:
 1. When a TCC client quits a job without good cause;
 2. Based on a TCC client's failure to pay a parent fee;
 3. Based on a TCC client's refusal to cooperate with the Division of Child Support Enforcement; and
 4. Client makes suitable arrangements to pay parent fee.
- (b) The DCW shall report the following changes in client information to the Division for Child Support Enforcement:
 1. TCC case approval for payments;
 2. A child left the home;
 3. Payments cease for a child;
 4. Client's address changes;
 5. An absent parent returns to the home;
 6. A TCC case is terminated; or
 7. A child is added to the case.
- (6) Recoupment. The following provisions apply to overpayment in SSBG, CCDBG, TCC and ARCC:
 - (a) Necessary action shall be taken promptly to correct and recoup an overpayment in a case:
 1. Of fraud;
 2. Involving a current recipient; and
 3. In which the overpayment would equal or exceed the cost of recovery.
 - (b) An overpayment shall be recovered from the child care provider.
 - (c) An overpayment shall be recovered through a reduction in the amount payable to the provider.
 - (d) An underpayment and an overpayment may be offset against each other in adjusting an incorrect payment.
 - (e) For TCC cases an overpayment, including assistance paid pending a hearing decision, shall be recovered from:
 1. The responsible party;
 2. The family unit which was overpaid;
 3. The provider who was responsible for the overpayment;
 4. Individuals who were members of the family when overpaid;or
 5. A family that includes a member of a previously overpaid family.
- (7) The DCW shall terminate day care services when due to need or income criteria, clients lose eligibility.
 - (a) If due to program policy changes the DCW shall:
 1. Reassess the families so clients may be given ten (10) days notice of their eligibility, if they do not meet the new criteria after their authorization period expires;
 2. Send written notices explaining new eligibility criteria with a notice of intended action.
 - (b) TCC clients may lose eligibility during the entitlement period without causing permanent termination of benefits if:
 1. The client fails to cooperate in paying the parent fee, but later makes suitable arrangements;
 2. The client moves out of state and returns to Kentucky within

the entitlement period; and

3. The child requiring paid care leaves the home and returns.
- (c) K-TAP ~~[AFDC]~~ Unemployed Parent cases continue to be eligible for TCC without a deprivation.
- (8) The child care worker shall notify the client of their rights to notice of adverse actions, hearings and appeals as governed by 905 KAR 1:320, Fair Hearing.

Section 8. Material Incorporated by Reference. (1) The DSS-76, Day Care Services Agreement and Child Care Certificate revised October ~~[March]~~ 1995, the DSS-77, Day Care Billing Statement revised March, 1995 and the DSS-1A procedural instructions revised July, 1996, the DSS-1297, Application for Child Care Provider Enrollment: In Child's Home, October, 1996, the DSS-1295, Application for Child Care Provider Enrollment: In Provider's Home, October, 1996, and the DSS-1296, Child Care Provider Enrollment Self-assessment, October, 1996, ~~[March, 1996]~~ shall be incorporated by reference.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

VIOLA MILLER, Acting Commissioner and Secretary
APPROVED BY AGENCY: November 14, 1996
FILED WITH LRC: November 15, 1996 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Cheek

(1) Type and number of entities affected: The type and number of entities affected are the 634 certified, 1878 licensed and 2600 unregulated child care providers caring for 32,600 children who are receiving subsidized payment for child care services. A public hearing is scheduled for the Notice of Intent on December 30, 1996 during which additional comment may be received from affected entities.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. With the passage of welfare reform, unregulated providers receiving subsidized child care payments under the Child Care Development Block Grant, Transitional Child Care Program, At-Risk Child Care program and child care services pursuant to 904 KAR 2:017 are required to meet minimum health and safety standards pursuant to 45 CFR 98.41. A public hearing is scheduled for the Notice of Intent on December 30, 1996 during which additional comment may be received from affected entities.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. With the requirement to comply with 45 CFR 98.41, unregulated providers will be required to enroll with the Department for Social Services. This enrollment process will increase the cost of doing business by requiring a criminal background check for all adults in the household, completing a current tuberculosis screening, and requiring the provider to complete and return the application and self-assessment checklist of the provider and the household. A public hearing is scheduled for the Notice of Intent on December 30, 1996 during which additional comment may be received from affected entities.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The compliance, reporting and paperwork requirement for the first year include the completion of the one time enrollment packet for approximately 2600 unregulated providers.

2. Second and subsequent years: Compliance, reporting and paperwork requirements for the second and subsequent years include completing the enrollment process for new unregulated providers chosen by parents who are eligible for the child care subsidy.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The first year direct and indirect costs to the agency include the cost of one time mailouts and follow-up for the 2600 unregulated providers needing to complete the enrollment process.

2. Continuing costs or savings: Continuing costs to the agency will include only the cost of completing the enrollment process for new providers chosen by parents.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs but the requirement to have minimum health and safety standards for individuals caring for children provides parents with some assurance about the quality of care their children will receive.

(b) Reporting and paperwork requirements: With the required enrollment process the agency will have additional reporting and paperwork requirements to process the application for enrollment and complete the necessary follow-up to allow child care subsidy payments to enrolled providers.

(4) Assessment of anticipated effect on state and local revenues: The only anticipated effect on state and local revenues is that with the completed enrollment process the unregulated providers will be eligible for payment pursuant to the Child Care Development Block Grant, Transitional Child Care Programs, At-Risk Child Care Programs, and child care services pursuant to 904 KAR 2:017.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation is the Child Care and Development Block Grant as amended with the new welfare reform legislation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: A public hearing is scheduled for the Notice of Intent on December 30, 1996 during which additional comment may be received from affected entities.

(b) Kentucky: A public hearing is scheduled for the Notice of Intent on December 30, 1996 during which additional comment may be received from affected entities.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The other alternative method to provide minimum health and safety standards and comply with 45 CFR 98.41 was to require all providers receiving CCDBG funds as amended by the new welfare reform legislation to become certified. Since many of the unregulated providers are caring for between 1 and 3 children, it was determined that requiring them to become certified as governed by KRS 199.8982 could be detrimental to a parents choice of potential child care providers. The certification requirement may have curtailed the number of eligible providers available for the provision of subsidized child care to families in need.

(8) Assessment of expected benefits: Expected benefits for the enrollment process are that unregulated providers will become enrolled and be eligible for subsidies under the CCDBG, Transitional Child Care Programs, At-Risk Child Care Programs and child care services pursuant to 904 KAR 2:017. Additionally the unregulated providers through the enrollment process will comply with 45 CFR 98.41 which requires at a minimum that providers protect the health and safety of children through the prevention and control of infectious diseases including immunizations, building and physical premises safety and minimum health and safety training. Additionally the requirement to have minimum health and safety standards for individuals caring for children provides parents with some assurance about the quality of care their children will receive.

(a) Identify effects on public health and environmental welfare of

the geographical area in which implemented and on Kentucky: One effect on the public health is that the unregulated providers through the enrollment process will comply with 45 CFR 98.41 which requires at a minimum that providers protect the health and safety of childrer through the prevention and control of infectious diseases includin immunizations, building and physical premises safety and minimum health and safety training.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There is no detrimental effect as unregulated providers would be ineligible for subsidies under the CCDBG as amended by the new welfare reform legislation.

(c) If detrimental effect would result, explain detrimental effect: There would be no detrimental effect.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: There are no additional information or comments of which we are aware.

(11) TIERING: Is tiering applied? No. The change in the welfare reform law requires that unregulated providers receiving subsidies statewide are required to comply with 45 CFR 98.41 and become enrolled pursuant to this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate PL 104-193, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and 45 CFR 98.41.

2. State compliance standards. In order to comply with the requirements of the above referenced mandate the state has established an enrollment process in order for unregulated providers to become eligible to receive payments under the Child Care Development Block Grant as amended by PL 104-193.

3. Minimum or uniform standards contained in the federal mandate. Pursuant to 45 CFR 98.41 providers are required to protect the health and safety of children through the prevention and control of infectious diseases including immunization, building and physical premises safety and minimum health and safety training.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, prior to the amendment to the Child Care and Development Block Grant with PL 104-193, all unregulated providers requesting payment were required to become certified. With the expansion of the Child Care and Development Block Grant to include Title IV-A child care providers the cabinet developed the enrollment process that will provide minimum health and safety requirements for providers of child care that are not required by statute to be licensed or certified.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

STATEMENT OF EMERGENCY 907 KAR 1:019E

This emergency administrative regulation is being amended to implement mandatory "point of sale" claims processing requirement effective for services provided on or after December 1, 1996; incorporate by reference the pharmacy manual dated December

1996; and to comply with KRS Chapter 13A drafting requirements. This action must be taken on an emergency basis to implement mandatory "point of sale" claims transmission by December 1, 1996. By mandating "point of sale" claims transmission, a recipient's complete on-line drug profile will alert the pharmacist of any potentially serious clinical problems that may be associated with the prescription, such as adverse interaction with a drug from another prescription obtained from another pharmacy prescribed by another physician. This would prevent the hospitalizations or death. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of Medicaid recipients. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor
JOHN H. MORSE, Secretary

CABINET FOR HEALTH SERVICES
Department for Medicaid Services

907 KAR 1:019E. Pharmacy services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 314.011, 42 CFR 440.120, 447.331, 447.332, 447.333, 42 USC 1396a-d, s. EO 96-862
EFFECTIVE: November 15, 1996

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services ~~[Human Resources]~~ has responsibility to administer the Medicaid Program ~~[of Medical Assistance]~~. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 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 sets forth the provisions relating to pharmacy services for which payment shall be made by the Medicaid ~~[Medical Assistance]~~ Program in behalf of both the categorically needy and medically needy.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designee.

(2) "Drug manufacturer" means an entity meeting the definition shown in 42 USC 1396s(k)(5).

(3) ~~[(2)]~~ "Outpatient drug program" means the program of drug services provided directly by pharmacists to Medicaid recipients, including both the drug product and dispensing of the drug.

Section 2. Prescribed Drugs Coverage and Limitations Provisions Relating to the Outpatient Drug Program. Drugs prescribed by a physician, osteopath, dentist, optometrist, advanced registered nurse practitioner or podiatrist in accordance with 907 KAR 1:021 ~~[4:020]~~ shall be provided in accordance with the coverage and limitations provisions specified in this ~~[section of the]~~ administrative regulation.

(1) Coverage for outpatient drugs shall be limited to drugs for which the drug manufacturer has entered into and complies with a rebate agreement under 42 USC 1396s(a) which are prescribed for a medically accepted indication, and those drugs with a prior authorized ~~[preauthorized]~~ exemption from the rebate agreement granted by the Health Care Financing Administration.

(2) Drugs included on the Kentucky Medicaid ~~[Medical Assistance]~~ Program Outpatient Drug List (as published by the department ~~[Cabinet for Human Resources]~~) may be provided without prior authorization ~~[preauthorization]~~. Prior authorization ~~[Preauthorization]~~ shall be required for all other drugs.

(3) The drugs or classes of drugs listed in 42 USC 1927s(d)(2)

shall be excluded from coverage unless specifically (individually by drug within the class) placed on the outpatient drug list or prior authorized ~~[preauthorized]~~ using the usual prior authorization ~~[preauthorization]~~ criteria of the department ~~[for Medicaid services]~~.

(4) Prescribing quantities may be limited by the program.

(5) Patients placed in "lock-in" status due to overutilization shall receive services only from their lock-in provider except in the case of emergency or referral.

(6) Practitioner authorization, i.e., actual signature of the prescriber, shall be required on all prescriptions not phoned in, on all Schedule II controlled substances prescriptions, and when the prescriber ~~[physician]~~ override (certification of brand name necessity) procedure is being used. For telephone prescriptions (but not including the preceding) the pharmacist shall enter on the prescription form the name of the prescriber and the initials of the pharmacist.

(7) ~~[No]~~ Prescription shall not be refilled more than five (5) times, or more than six (6) months after the original prescription is written.

(8) Drugs, provided to recipients in institutions in which drugs are considered a part of the reasonable allowable costs under the Kentucky Medicaid ~~[Medical Assistance]~~ Program, shall not be billed as an outpatient pharmacy benefit.

(9) Drugs provided to recipients in nursing facilities (except for patients in head injury units and units providing care for ventilator dependent patients) shall be billed as an outpatient pharmacy benefit.

(10) Legend drugs, of a type not included on the Kentucky Medicaid ~~[Medical Assistance]~~ Program Outpatient Drug List, and which will prevent hospitalization or a higher level of care of the patient, shall be considered covered for individual recipients if prior authorized ~~[when preauthorized]~~ by qualified medical professionals in ~~[within]~~ the department ~~[for Medicaid Services]~~.

(11) Drugs of a type not on the Kentucky Medicaid Program ~~[KMAP]~~ Outpatient Drug List may be placed on a prior authorization ~~[preauthorization]~~ list and authorized as a group for recipients in personal care homes and for those recipients in nursing facilities who meet patient status criteria for the facility.

(12) Drugs for which the Food and Drug Administration has issued a "less than effective (LTE)" rating and drugs which are determined to be "identical, related, or similar to LTC drugs" shall not be covered.

Section 3. Material Incorporated by Reference. (1) The "Pharmacy Manual", dated December 1996 shall be incorporated by reference in this administrative regulation.

(2) The manual shall be on file in the Office of the Commissioner, Department for Medicaid Services, Cabinet for Health Services, 275 East Main Street, Third Floor East, Frankfort, Kentucky 40621.

(3) The manual shall be available for review during the normal business week, Monday through Friday, 8 a.m. through 4:30 p.m. (eastern standard time), excluding state holidays.

(4) Each participating provider shall be provided one (1) copy of the manual and appropriate manual updates following their incorporation by reference. Additional copies may be obtained from the Department for Medicaid Services upon payment of an appropriate fee which approximates cost in accordance with KRS 61.872.

Section 4. [3-] The amendments to this administrative regulation shall be implemented ~~[effective]~~ with regard to services provided on or after December 1, 1996 ~~[May 1, 1994]~~.

JOHN H. MORSE, Commissioner and Secretary

APPROVED BY AGENCY: November 15, 1996

FILED WITH LRC: November 15, 1996 at 11 a.m.

REGULATORY IMPACT ANALYSIS COMPARISON

Agency Contact Person: Ked Fitzpatrick or Karen Doyle

(1) Type and number of entities affected: All Medicaid pharmacy

providers.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$4,279,968 (savings)

2. Continuing costs or savings: \$4,279,968 (savings)

3. Additional factors increasing or decreasing costs: An increase or decrease in claims would affect savings. By implementing a mandatory point of sale (POS) claims transmission, the claims will be screened against the recipient's complete drug profile, regardless of where the prescription was filled. These POS claims will identify drug interactions which could result in possible hospitalization and additional costs to the program. In addition, the POS claims identification of duplicate drug prescriptions will also result in savings to the program.

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: By mandating "point of sale" claims transmission, a recipient's complete on-line drug profile will alert the pharmacist of any potentially serious clinical problems that may be associated with the prescription, such as adverse interaction with a drug with another prescription obtained from another pharmacy prescribed by another physician. This would prevent the number of drug related problems resulting in potential hospitalizations or death.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of Medicaid beneficiaries.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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.

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.

STATEMENT OF EMERGENCY 907 KAR 1:417E

This emergency administrative regulation is being promulgated to repeal 907 KAR 1:416, Incorporation by reference of the Pharmacy Services Manual which would be in conflict with the new pharmacy manual incorporated in the companion regulation 907 KAR 1:019E. The new manual implements mandatory "point of sale" claims transmissions for services provided on or after December 1, 1996. This action must be taken on an emergency basis to prevent a conflict in pharmacy policy relating to "point of sale" as of December 1, 1996. By mandating the "point of sale" claims transmission, a recipient's complete online drug profile will alert the pharmacist of any potentially serious clinical problems that may be associated with the prescription, such as adverse interaction with a drug from another prescription obtained from another pharmacy prescribed by another physician. This would prevent the number of drug related problems resulting in potential hospitalizations or death. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of Medicaid recipients. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor
JOHN H. MORSE, Secretary

CABINET FOR HEALTH SERVICES Department for Medicaid Services

907 KAR 1:417E. Repeal of 907 KAR 1:416.

RELATES TO: KRS 13A.310, 205.520

STATUTORY AUTHORITY: KRS 13A.310, 194.050, EO 96-86

EFFECTIVE: November 15, 1996

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for

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Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. This administrative regulation acts specifically to repeal 907 KAR 1:416 which is no longer needed because a newer edition of Pharmacy Services Manual is incorporated in 907 KAR 1:019.

Section 1. 907 KAR 1:416, Incorporation by reference of the Pharmacy Services Manual, is hereby repealed.

JOHN H. MORSE, Commissioner and Secretary

APPROVED BY AGENCY: November 15, 1996

FILED WITH LRC: November 15, 1996 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Ked Fitzpatrick (564-5020) or Karen Doyle (564-4321)

(1) Type and number of entities affected: Medicaid pharmacy providers.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: to prevent a conflict with the new pharmacy manual containing the implementation of mandatory "point of sale" claims transmission for services provided on or after December 1, 1996. By mandating the "point of sale" claims transmission, a recipient's complete online drug profile will alert the pharmacist of any potentially serious clinic

problems that may be associated with the prescription, such as adverse interaction with a drug from another prescription obtained from another pharmacy prescribed by another physician. This would prevent the number of drug related problems resulting in potential hospitalizations or death.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Conflict in Medicaid policy.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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.

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.

STATEMENT OF EMERGENCY

907 KAR 1:673E

This emergency administrative regulation is being amended to implement mandatory "point of sale" claims process requirements effective for services on or after December 1, 1996. This action must be taken on an emergency basis to implement mandatory "point of sale" claims processing requirements as reflected in companion regulation 907 KAR 1:019E. By mandating the "point of sale" claims transmission, a recipient's complete on-line drug profile will alert the pharmacist of any potentially serious clinical problems that may be associated with the prescription, such as adverse interaction with a drug from another prescription obtained from another pharmacy prescribed by another physician. This would prevent the number of drug related problems resulting in potential hospitalizations or death. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of Medicaid recipients. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor
JOHN H. MORSE, Secretary

CABINET FOR HEALTH SERVICES
Department for Medicaid Services

907 KAR 1:673E. Claims processing.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 447.45, 42 USC 1396a, b, c, EO 96-862

EFFECTIVE: November 15, 1996

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. Executive Order 96-862, effective July 2, 1996, reorganized ~~reorganizes~~ the Cabinet for Human Resources and placed ~~places~~ the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. 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 sets forth the provisions relating to Medicaid provider claims processing requirements.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Health Services.

(2) "Claim" means any request for payment that relates to each individual billing submitted by a provider to the department which details services rendered to a recipient ~~beneficiary~~ on a specific date~~(s)~~. The claim may be either a line item of service or all services for one (1) recipient ~~beneficiary~~ on a bill.

(3) "Department" means the Department for Medicaid Services or its designee.

(4) "POS" means on-line real time point of sale claims electronically transmitted to the department.

(5) "ProDUR" means prospective drug use review.

(6) "Provider" means as defined in 907 KAR 1:002.

(7) "Provider type fifty-four (54)" means an enrolled pharmacy provider who dispenses drugs to outpatient, long-term care residents, and personal care home residents who are Medicaid recipients. A number shall be assigned by the department to these providers and the first two (2) digits shall be fifty-four (54).

(8) ~~(6)~~ "Recipient" means as defined by KRS 205.8451.

(9) ~~(6)~~ "Services" means as defined in 907 KAR 1:671.

(10) ~~(7)~~ "Unacceptable practice" means as defined in 907 KAR 1:671.

(11) ~~(8)~~ "Withholding" means as defined in 907 KAR 1:671.

Section 2. Claims Processing. (1) Claim submittal process for all Medicaid providers.

(a) ~~[A] Providers, except for type fifty-four (54), shall submit a claim by an electronic billing process or by paper form approved by the department. [using forms and procedures specified by the department, for covered services or supplies rendered to an eligible recipient within twelve (12) months of the date the service was rendered.]~~

(b) ~~[A] Claims shall [may] be submitted for payment within twelve (12) months of the date the service was rendered to an eligible Medicaid recipient for covered services or supplies. [or:~~

~~1. A paper form;~~

~~2. An electronic billing process; or~~

~~3. Any form approved by the department.]~~

(c) A provider shall submit additional clarifying documentation for claims processing when required by the department.

(d) By submitting a claim a provider shall be:

1. Liable for the accuracy of all claims submitted by the provider,

its representatives employees or any individual or entity working on the provider's behalf; and

2. Responsible for reviewing the statement of payment or remittance statement to assure that paid claims shown are true and correct, and for informing the department of any discrepancy.

(e) If a provider submits a claim electronically, the provider's acceptance of payment shall be considered to be the provider's certification that a paid claim is true and correct; and

(f) Any submittal of a false claim, statement, or document shall be considered an unacceptable practice and subject to all the remedies available to the department.

(2) Provider type fifty-four (54) claims shall meet POS submittal requirements for services provided on or after December 1, 1996.

(a) Provider type fifty-four (54) who file in excess of 100 claims in a twelve (12) month period shall transmit by POS and be subject to ProDUR.

(b) Provider type fifty-four (54) POS exemptions. Providers that receive a POS exemption shall be subject to ProDUR as specified in 201 KAR 2:210.

1. Providers who are unable to submit POS claims for a period of two (2) or more hours, for drugs in an emergency situation which are essential to avoid life-threatening situations.

2. If a claim requires paper documentation as requested by the department, this claim shall not be subject to POS.

3. Provider type fifty-four (54) that file a maximum of 100 claims or less in a twelve (12) month period to the department may request an exemption from the department for the POS requirement.

4. Provider type fifty-four (54) that dispense drugs to be used in the provision of home infusion therapy (involving the parental administration of premanufactured or sterile compounded products for intravenous, intramuscular, subcutaneous or intraspinal infusion to a patient in a nonacute alternative site setting) shall request an exemption from the department for the POS requirement.

5. Retroactive recipient eligibility or retroactive nursing facility resident status.

Section 3. Claim Payment. (1) ~~(a)~~ Payment shall be made by the department, if:

~~(a) [1-] The information required to pay the claim is complete;~~

~~(b) [2-] The claim is not under review for medical necessity;~~

~~(c) [3-] The provider has submitted all reports and information relevant to claims required by the department; and~~

~~(d) [4-] The department is not withholding the provider's payments in accordance with 907 KAR 1:671.~~

~~(2) (b)~~ The department may audit claims paid to determine if any unacceptable practices have occurred that may result in sanctions.

JOHN H. MORSE, Commissioner and Secretary

APPROVED BY AGENCY: November 14, 1996

FILED WITH LRC: November 15, 1996 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick or Karen Doyle

(1) Type and number of entities affected: Medicaid pharmacy providers.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KR Chapter 13A requirement.

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(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Shown in companion regulation 907 KAR 1:019E.

2. Continuing costs or savings: Shown in companion regulation 907 KAR 1:019E.

3. Additional factors increasing or decreasing costs: Shown in companion regulation 907 KAR 1:019E.

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: By mandating "point of sale" claims transmission, a recipient's complete on-line drug profile will alert the pharmacist of any potentially serious clinical problems that may be associated with the prescription, such as adverse interaction with a drug with another prescription obtained from another pharmacy prescribed by another physician. This would prevent the number of drug related problems resulting in potential hospitalizations or death.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of Medicaid recipients.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

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

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEW SUBCOMMITTEE

LEGISLATIVE ETHICS COMMISSION
(As Amended)

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, 6.821, 6.824, 6.827
STATUTORY AUTHORITY: KRS 6.666(5)

NECESSITY, FUNCTION, AND CONFORMITY: 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 incorporates by reference ~~establishes~~ the required forms.

Section 1. Definitions. (1) "Personal expenses" mean expenses which are neither reimbursable to the legislative agent by the employer, nor deductible as a business expense under the Internal Revenue Code.

(2) "Source of funds and financial resources" on the employer's updated registration statements (revised 7/15/96) shall mean reporting such funds and resources which are designated primarily for lobbying-related expenditures by the name and address of the contributor. However, lobbying-related funds deriving pro rata from general membership dues assessed by an association by some standard method shall not require the reporting of the names and addresses of members. All other funds and financial resources may be reported by types of categories, such as "membership dues", "contributions", "grants", "interest", "scholarships", and the like. In either case, records shall be maintained in such a way that a more detailed accounting can be made if requested.

Section 2. The completed registration forms and termination forms required by KRS 6.807 shall be mailed or delivered to the Kentucky Legislative Ethics Commission, 22 Mill Creek Park, ~~Room 318, Capitol Annex,~~ Frankfort, Kentucky 40601.

Section 3. (1) The "Initial Legislative Agent/Employer Registration Statement", "Legislative Agent's Updated Registration Statement", "Legislative Agent's Notice of Termination of Engagement", "Employer's Updated Registration Statement", and "Employer's Notice of Termination of Engagement", are incorporated by reference on July 15, 1996.

(2) These documents may be inspected, copied, or obtained at the Kentucky Legislative Ethics Commission, 22 Mill Creek Park, ~~Capitol Annex, Room 318,~~ Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

JUDGE CHARLES B. LESTER, Chairman
EARL S. MACKEY, Executive Director

APPROVED BY AGENCY: September 13, 1996

FILED WITH LRC: September 13, 1996 at 10 a.m.

FINANCE AND ADMINISTRATION CABINET
Department for Administration
(As Amended)

200 KAR 5:025. Memoranda of agreement and memoranda of understanding by state agencies.

RELATES TO: KRS Chapter 45A

STATUTORY AUTHORITY: KRS 45A.035, 45A.045(2), 45A.050(5)

NECESSITY, FUNCTION, AND CONFORMITY: The Finance and Administration Cabinet needs to supervise state agencies acting under its delegated authority from MOAs and MOUs. The benefits expected from this administrative regulation are two (2)-fold: to allow the Finance and Administration Cabinet to monitor their delegation of authority to an agency and to enable the Finance and Administration Cabinet to monitor an agency's use of MOAs and MOUs. This administrative regulation will be implemented by requiring a state agency to report annually on all MOAs and MOUs used by that agency and to follow guidelines for use of MOAs and MOUs.

Section 1. Memorandum of agreement (MOA) shall be defined as an agreement for services rendered to a state agency as defined in KRS 45A.690(1)(d)1-6 ~~{3}~~, and shall include program administration contracts, but shall not apply to purchases of commodities and supplies.

Section 2. By January 1, 1997, all state agencies with active MOAs shall provide the Finance and Administration Cabinet Department for Administration with a report on each MOA. The report shall be submitted annually thereafter to the department by September 1 of each year, beginning September, 1997, and shall set out the following information: the name of the party with whom the agency entered the MOA; the type of service to be rendered under the MOA; the cost of the MOA to the agency to date; the projected total cost of the MOA to the agency; and the date the last payment was made under the MOA. The report shall contain information as of January 1 and September 1 of 1997 and as of September 1 of each year thereafter ~~(the first working day of each month and shall be submitted to the department by the fifth working day of each month)~~. The report shall be in an electronic format approved by the department prior to its use by the agency.

Section 3. Memorandum of understanding (MOU) shall be defined as a contract or agreement used whenever there is a joint project or undertaking by any state agency and another entity or entities, either government or private. The terms of a MOU shall set out the rights, duties and responsibilities of each entity in relation to the project or undertaking and the other entities. The term "joint entity or undertaking" shall include capital construction projects. The MOU shall specify the monetary liability of each entity and shall provide for the return of a specific dollar amount of state funds in the event that the project or undertaking is not begun, or other specific prerequisites are not completed by dates certain.

Section 4. By January 1, 1997, all state agencies with active MOUs shall provide the Secretary of the Finance and Administration Cabinet with a report of each active MOU. The report shall be submitted annually thereafter to the secretary by September 1 of each year, beginning September, 1997, and shall set out the following information: the name of the party or parties with whom the agency entered the MOU; the type of service to be rendered under the MOU,

the duties and responsibilities of each party under the MOU; any "flag" dates listed in the MOU by which certain action is to be completed and whether these dates have been met; the cost of the MOU to the agency to date; the projected total cost of the MOU to the agency; and the date the last payment was made under the MOU. The report shall contain information as of January 1 and September 1 of 1997 and as of September 1 of each year thereafter ~~(the first working day of each month and shall be submitted to the secretary by the fifth working day of each month)~~. The report shall be in an electronic format approved by the department prior to its use by the agency.

Section 5. This administrative regulation shall not discharge an agency's responsibility to obtain all other necessary statutory and regulatory approvals applicable to the MOA or MOU.

Section 6. This administrative regulation shall not apply to memoranda of agreement or memoranda of understanding entered into by the Kentucky Transportation Cabinet pursuant to KRS Chapters 175, 176, [and] 177, and 180.

JOHN MCCARTY, Secretary

APPROVED BY AGENCY: September 25, 1996

FILED WITH LRC: September 27, 1996 at 10 a.m.

**TOURISM CABINET
(As Amended)**

300 KAR 2:010. Kentucky Tourism Development Act Sales Tax Credit Program.

RELATES TO: 1996 Ky. Acts ch. 335, sec. 1 to 7

STATUTORY AUTHORITY: 1996 Ky. Acts ch. 335, sec. 3

NECESSITY, FUNCTION, AND CONFORMITY: 1996 Ky. Acts ch. 335, sec. 3 requires the Tourism Cabinet to establish standards for the making of an application for inducements and the recommendation to the Kentucky Economic Development Finance Authority of an eligible company and its tourism attraction project pursuant to the Kentucky Tourism Development Act Sales Tax Credit Program. This administrative regulation establishes these standards.

Section 1. Definitions. (1) "Agreement" is defined in 1996 in 1996 Ky. Acts ch. 335, sec. 1.

(2) "Authority" is defined in 1996 Ky. Acts ch. 335, sec. 1.

(3) "Eligible company" is defined in 1996 Ky. Acts ch. 335, sec. 1.

(4) "Inducements" is defined in 1996 Ky. Acts ch. 335, sec. 1.

(5) "Preliminary approval" is defined in 1996 Ky. Acts ch. 335, sec. 1.

(6) "Tourism attraction project" is defined in 1996 Ky. Acts ch. 335, sec. 1.

Section 2. Eligibility Standards. When submitting a written request to the authority for consideration of preliminary approval of the eligible company and its tourism attraction project, the secretary of the Tourism Cabinet shall base the request upon the information in the application and any written or oral communications with the eligible company.

Section 3. Kentucky Tourism Development Act Sales Tax Credit Program Application. (1) An eligible company wishing to participate in the Kentucky Tourism Development Act Sales Tax Credit Program shall file three (3) copies of an application with the secretary of the Tourism Cabinet.

(2) The following information and materials shall be submitted as a part of the application:

- (a) Eligible company name, address, phone and telefax numbers, contact person and federal employer tax identification number;
 - (b) Location of tourism attraction project;
 - (c) Form of organization of eligible company;
 - (d) Previous participation of eligible company in Kentucky tax incentive programs;
 - (e) Ownership of eligible company;
 - (f) Bankruptcy history of eligible company;
 - (g) Governmental denial, suspension or revocation of licenses of eligible company;
 - (h) Attorney for eligible company, including address, phone and telefax numbers;
 - (i) Contact person of bank for eligible company, including address, phone and telefax numbers and contact person;
 - (j) Accountant for eligible company, including address, phone and telefax numbers;
 - (k) Tourism attraction project description;
 - (l) Eligible company ownership or leasing of tourism attraction project;
 - (m) Estimated tourism attraction project costs;
 - (n) Proposed sources of financing tourism attraction project;
 - (o) Contractor for tourism attraction project, including address, phone and telefax numbers and contact person;
 - (p) The total number of jobs projected upon completion of and within two (2) years after completion of the tourism attraction project;
 - (q) Five (5) year history of attendance at tourism attraction project for an expansion;
 - (r) Five (5) year attendance projections for tourism attraction project;
 - (s) Months of the year during which the tourism attraction project is open;
 - (t) Marketing plans and media type to be used for the tourism attraction project, including five (5) year proposed advertising budget;
 - (u) Value of Kentucky tangible property before and after completion of the tourism attraction project;
 - (v) Ten (10) year estimate of tourism attraction project payroll;
 - (w) Estimated federal and state income tax liability of eligible company for first three (3) fiscal years of the eligible company after commencement of operations of the tourism attraction project;
 - (x) If the tourism attraction project is an expansion, federal and state income tax liability of eligible company for the past three (3) fiscal years;
 - (y) Ten (10) year estimated revenue of eligible company subject to Kentucky sales tax from the tourism attraction project;
 - (z) Ten (10) year estimated additional revenue the tourism attraction project will generate to the community; and
 - (aa) A completed Cabinet for Economic Development Economic Incentive Disclosure Statement as required by 307 KAR 2:020, Section 2.
- ~~[(3) The application to be filed with the secretary of the Tourism Cabinet shall contain notice of the following fees to be paid to the authority by the eligible company in accordance with 307 KAR 2:020, Section 5:~~
- ~~(a) An administrative fee of one tenth (1/10th) of one (1) percent of the estimated maximum inducements for the entire period which are due and payable to the authority in accordance with 307 KAR 2:020, Section 5, upon execution of the agreement; and~~
 - ~~(b) The legal fees for the preparation of the agreement by the authority's counsel which are payable upon execution of the agreement in accordance with 307 KAR 2:020, Section 5.]~~
- Section 4. Written Recommendation. The secretary of the Tourism Cabinet shall provide its recommendation required by 1996 Ky. Act ch. 335, sec. 3 based upon:
- (1) The eligible company's satisfaction of the statutory requirements of 1996 Ky. Act ch. 335, sec. 1 to 7;
 - (2) The findings of the consultant's report required by 1996 Ky.

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Act ch. 335, sec. 3; and

(3) The application submitted to the secretary under Section 3(2) of this administrative regulation, and written and oral communications with the eligible company.

Section 5. Incorporation by Reference. (1) The "Application for the Kentucky Tourism Development Act Sales Tax Credit Program (9/96)" is incorporated by reference.

(2) A copy of the form of application may be inspected, copied or obtained at the office of the Tourism Cabinet, 24th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

ANN LATTA, Secretary

APPROVED BY AGENCY: September 11, 1996

FILED WITH LRC: September 13, 1996 at 9 a.m.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (As Amended)

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

RELATES TO: KRS 150.175, ~~[150.180,]~~ 150.195, 150.225, 150.235, 150.240, 150.280, 150.290, 150.485, 150.525, 150.603, 150.520, ~~[150.630,]~~ 150.660, 1996 Ky. Acts ch. 268 ~~[150.670, 150.990]~~

STATUTORY AUTHORITY: KRS ~~[13A.350, 150.015, 150.021, 150.170, 150.175, 150.180,]~~ 150.195(4)(f), 150.225~~[-150.240, 150.280, 150.485, 150.525, 150.603, 150.620, 150.660, 150.670]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.225 requires the department to prescribe reasonable license fees relating to hunting, fishing, and trapping. KRS 150.195(4)(f) requires the department to promulgate an administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. This administrative regulation establishes fees and terms for licenses and the expiration dates for the licenses. [This administrative regulation is necessary to set fees and terms for licenses as authorized by KRS 150.225 and 150.195(4)(f). This amendment is necessary to add migratory bird, Peabody, and Cyprus AMAX fees; to change the expiration date for musseling licensing and commercial pet and propagation permits; to add the fee for fall turkey permit; to delete the conservation education camp fee, and to delete provisions which repeat statutory language.] [The commissioner, with the concurrence of the Fish and Wildlife Resources Commission, finds it necessary to establish the fee schedule in this administrative regulation to generate the necessary funds to finance programs to protect, manage, and conserve the fish and wildlife resources of the state so a permanent and continued supply will be maintained for the benefit of present and future generations. This amendment is necessary to reduce the commercial wildlife and fisheries pet and propagation permit fees, eliminate the fish transportation permit fee, add waterfowl stamp and pond stocking fees and eliminate the fishery pet permit fee.]

Section 1. Licenses, tags, and permits listed in this section shall be valid from March 1 through the last day of February the following year.

(1) Sport fishing licenses:

- (a) Statewide fishing license (resident): \$12.50.
- (b) Statewide fishing license (nonresident): \$30.
- (c) Joint statewide fishing license (resident): \$22.50.
- (d) Trout permit (resident or nonresident): \$5.

(2) Commercial fishing licenses:

- (a) Commercial fishing license (resident) plus ten (10) resident commercial gear tags: \$100.

- (b) Commercial fishing license (nonresident) plus ten (10) nonresident commercial gear tags: \$500.

(3) Commercial fishing gear tags (not to be sold singly):

- (a) Commercial fishing gear tags (resident) block of 10 tags: \$10.
- (b) Commercial fishing gear tags (nonresident) block of 10 tags: \$75.

(4) Hunting licenses:

- (a) Statewide hunting license (resident): \$12.50.
- (b) Statewide hunting license (nonresident): \$95.
- (c) Statewide junior hunting license (resident or nonresident): \$6.25.

(d) Statewide waterfowl permit (resident or nonresident): \$7.50.

(e) Migratory game bird permit (resident or nonresident): \$4.

(5) Combination hunting and fishing license (resident): \$20.

(6) Trapping licenses:

- (a) Trapping license (resident): \$15.
- (b) Trapping license (resident landowner/tenant): \$7.50.
- (c) Trapping license (nonresident): \$115.

(7) Big game permits:

- (a) Big game permit, deer (resident or nonresident): \$21.
- (b) Junior big game permit, deer (resident or nonresident): \$12.50.

(c) Big game permit, turkey (resident or nonresident): \$17.50.

(d) Big game permit, fall turkey (resident or nonresident): \$10.

(8) Peabody or Cyprus AMA-Robinson Forest individual permit: \$10.

(9) Commercial mussel licenses:

(a) Musseling license (resident): \$300.

(b) Musseling license (nonresident): \$1,500.

(c) Mussel buyer's license (resident): \$500.

(d) Mussel buyer's license (nonresident): \$1,500.

Section 2. Licenses, tags and permits, listed in this section shall be valid for the calendar year in which they are issued.

(1) Live fish and bait dealer's licenses:

(a) Live fish and bait dealer's license (resident): \$30.

(b) Live fish and bait dealer's license (nonresident): \$60.

(2) ~~[Commercial mussel licenses:~~

~~(a) Musseling license (resident): \$300.~~

~~(b) Musseling license (nonresident): \$1500.~~

~~(c) Mussel buyer's license (resident): \$500.~~

~~(d) Mussel buyer's license (nonresident): \$1500.~~

~~(3) Commercial taxidermist license: \$100.~~

~~(3) [(4)] Commercial guide licenses:~~

~~(a) Commercial guide license (resident): \$100.~~

~~(b) Commercial guide license (nonresident): \$250.~~

~~[(5) Fur dealer's licenses:~~

~~(a) Fur processor's license (resident): \$150.~~

~~(b) Fur buyer's license (resident): \$50.~~

~~(c) Fur buyer's license (nonresident): \$230.]~~

~~(4) [(6)] Nonresident hunting preserve license: \$10.~~

~~(5) [(7)] Shooting preserve permit: \$100.~~

~~(6) [(8)] Commercial fox hound training enclosure permit: \$250.~~

~~(7) [(9)] Collecting permits:~~

~~(a) Educational wildlife collecting permit: \$10.~~

~~(b) Scientific wildlife collecting permit: \$200.~~

~~(8) [(10)] Food permits:~~

- ~~(a) Food permit for selling bobwhite quail from propagation farms only: \$150.~~

~~(b) Retail food permit for propagated quail: \$5.~~

~~(9) [(11)] Pay lake license:~~

~~(a) First two (2) acres or less: \$100.~~

~~(b) Per additional acre or part of acre: \$20.~~

~~[(12) Bird dog training device permit: \$10.~~

Section 3. Licenses, tags and permits listed in this section shall be valid for one (1) year from the date of issue.]

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(10) ~~[(4)]~~ Commercial wildlife pet and propagation permit: \$50.

(11) ~~[(2)]~~ Commercial fish propagation permit: \$50.

Section 3. ~~[(4)]~~ Licenses, tags and permits listed in this section shall be valid for three (3) years from the date of issue.

(1) Falconry permit: \$45.

(2) Noncommercial wildlife pet and propagation permit: \$75.

Section 4. ~~[(6)]~~ Licenses, tags and permits listed in this section shall be valid for the date or dates specified on each.

(1) Short-term nonresident licenses:

(a) Three (3) day fishing license: \$12.50.

(b) Fifteen (15) day fishing license: \$20.

(c) Five (5) day hunting license (not valid for big game): \$27.50.

(d) Three (3) day fur bearer's license: \$40.

(2) Wildlife transportation permit: \$25.

(3) Special commercial fishing permit: \$500.

(4) Commercial waterfowl shooting area permit: \$100.

(5) Shoot to retrieve field trial permits:

(a) Per trial (maximum four (4) days): \$50.

(b) Single day: \$15.

(6) Boat dock permits (per year): \$5.

(7) Peabody or Cyprus AMAX-Robinson Forest event permit: \$25.

Section 5. ~~[(6)]~~ Licenses, tags and permits listed in this section shall be valid on a per unit basis as specified.

(1) Bird bands (each): \$.25.

(2) Ballard waterfowl hunt (per person, per day): \$15.

(3) Horse stall rental (per space, per day): \$2.

(4) Dog kennel rental (per dog, per day): \$.50.

(5) ~~Conservation education camp fee: \$50.~~

~~[(6)]~~ Pond stocking fee (per stocking): \$25.

Section 6. ~~[(7)]~~ The following licenses shall be valid from April 1 through March 31 of the following year:

(1) Fur processor's license (resident): \$150.

(2) Fur buyer's license (resident): \$50.

(3) Fur buyer's license (nonresident): \$230. ~~[Except for scientific or educational collecting permits as specified in 301 KAR 4:070 the licenses, tags and permits authorized by this administrative regulation shall not be changed, altered, or defaced in any manner. All licensee, tags and permits are nontransferable.]~~

Section 7. ~~[(8)]~~ These fees shall apply to all licenses, tags and permits issued with an effective beginning date on or after January 1, 1997 ~~[(1995)]~~.

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 23, 1996

FILED WITH LRC: September 12, 1996 at 11 am.

ECONOMIC DEVELOPMENT CABINET

Kentucky Economic Development Finance Authority
(As Amended)

307 KAR 2:020. Kentucky Tourism Development Act Sales Tax Credit Program.

RELATES TO: KRS 11A.233, 154.20-010(1), 1996 Ky. Acts ch. 335, sec. 1 to 7

STATUTORY AUTHORITY: KRS 11A.233, 154.20-010(1), 1996 Ky. Acts ch. 335, secs. 4, 5

NECESSITY, FUNCTION, AND CONFORMITY: 1996 Ky. Acts ch. 335, sec. 4 requires the authority to establish standards for

preliminary approval and final approval of an eligible company and its tourism attraction project for inducements granted pursuant to the Kentucky Tourism Development Act Sales Tax Credit Program. This administrative regulation establishes such standards.

Section 1. Definitions. (1) "Agreement" is defined in 1996 Ky. Acts ch. 335, sec.1.

(2) "Approved company" is defined in 1996 Ky. Acts ch. 335, sec. 1.

(3) "Approved costs" is defined in 1996 Ky. Acts ch. 335, sec.1.

(4) "Authority" is defined in 1996 Ky. Acts ch. 335, sec.1.

(5) "Eligible company" is defined in 1996 Ky. Acts ch. 335, sec.1.

(6) "Final approval" is defined in 1996 Ky. Acts ch. 335, sec.1.

(7) "Inducements" is defined in 1996 Ky. Acts ch. 335, sec.1.

(8) "Preliminary approval" is defined in 1996 Ky. Acts ch. 335, sec.1.

(9) "Tourism attraction project" is defined in 1996 Ky. Acts ch. 335, sec.1.

Section 2. Preliminary Approval Standards. The authority shall grant preliminary approval to an eligible company and its tourism attraction project based upon:

(1) The information contained in the written request submitted to the authority by the secretary of the Tourism Cabinet;

(2) The application submitted to the Tourism Cabinet for a tourism attraction project in accordance with Section 3 of 300 KAR 2:010; and

(3) A completed Cabinet for Economic Development Economic Incentive Disclosure Statement filed with the secretary of the Tourism Cabinet as part of the application in accordance with Section 3 of 300 KAR 2:010.

Section 3. Final Approval Standards. The authority shall grant final approval to an eligible company and its tourism attraction project based upon:

(1) The information contained in the written request submitted to the authority by the secretary of the Tourism Cabinet;

(2) The application submitted to the Tourism Cabinet for a tourism attraction project in accordance with Section 3 of 300 KAR 2:010;

(3) The written recommendation of the secretary of the Tourism Cabinet in accordance with Section 4 of 300 KAR 2:010; and

(4) The written report of the consulting firm engaged by the secretary of the Tourism Cabinet which evaluates the eligible company's tourism attraction project.

Section 4. Agreement Contents. As part of an agreement the authority may require the approved company to:

(1) Grant access of its records to the authority;

(2) Submit annual, quarterly, or monthly progress reports to the authority; and

(3) Submit annual, quarterly, or monthly financial reports to the authority.

Section 5. ~~[Fees. As part of an agreement the authority shall require the approved company to pay to the authority the following fees:]~~

~~(1) An administrative fee of one-tenth (1/10th) of one (1) percent of the estimated maximum inducements for the entire period which is due and payable upon execution of the agreement; and~~

~~(2) The legal fees for the preparation of the agreement by the authority's counsel which are payable upon execution of the agreement.~~

~~Section 6.]~~ Incorporation by Reference. (1) The "Cabinet for Economic Development Economic Incentive Disclosure Statement (9/96)" is incorporated by reference.

(2) A copy of the disclosure statement form may be inspected, copied or obtained at the office of the Cabinet for Economic Develop-

ment, 24th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

HAROLD G. DORAN, JR., Chair

APPROVED BY AGENCY: September 11, 1996

FILED WITH LRC: September 13, 1996 at 9 a.m.

TRANSPORTATION CABINET

Department of Highways

Division of Transportation Planning

Division of Operations

(As Amended)

603 KAR 5:230. The extended weight coal or coal by-products haul road system and associated bridge weight limits.

RELATES TO: KRS 177.9771, 189.230

STATUTORY AUTHORITY: KRS 177.9771(10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.9771(2) requires the Secretary of the Transportation Cabinet to certify those public highways which meet certain criteria as the extended weight coal or coal by-products haul road system. KRS 177.9771(1) requires that roads which are currently, or have been in the past, state-maintained toll roads always be included on the extended weight coal or coal by-products haul road system. KRS 189.230 provides that the Department of Highways may prescribe gross vehicle weight limits for bridges lower than the limits prescribed in KRS 177.9771 on any bridge which may be damaged or destroyed to the point of catastrophic failure if gross vehicle weights exceed certain limits. This administrative regulation identifies in an official order which is incorporated by reference the extended weight coal or coal by-products haul road system and the bridges on the system which the Department of Highways has judged may be so damaged and prescribes the maximum weight limit for each of these bridges. Further, KRS 177.9771(9) requires the Transportation Secretary to meet with certain local governing bodies and give consideration to their concerns before adding to or deleting from the extended weight coal or coal by-products haul road system and establishes procedures to be followed by local governing bodies requesting this consideration. The official order incorporated by reference sets forth the road segments which were reported to the Transportation Cabinet as having had 50,000 tons or more of coal or coal by-products transported over them during calendar year 1995, the toll roads, and the bridges which are posted for lower weight limits.

Section 1. Definitions. The following terms when used in this administrative regulation or the material incorporated by reference in the administrative regulation shall have the following meanings:

(1) "AASHTO" means the American Association of State Highway and Transportation Officials.

(2) "Catastrophic failure" means a failure that is marked by sudden or unpredictable damage ranging from extreme misfortune to utter ruin.

(3) "CO" means county.

(4) "Coal by-products" means any of the following: fly ash, bottom ash, wet bottom boiler slag, scrubber sludge, burned coal waste (red dog), coal slag, and coal cinders.

(5) "CR" means a public highway, road, or street not maintained by the Kentucky Department of Highways.

(6) "FROM" means the beginning milepoint and terminus of a road segment on the extended weight coal or coal by-product haul road system.

(7) "I" means an interstate and defense highway maintained by the Kentucky Department of Highways.

(8) "KY" means a state numbered highway maintained by the Kentucky Department of Highways.

(9) "LN" means line.

(10) "Local governing body" means the fiscal court of any county, the city council or commission of a city of the first through fourth classes or the council of an urban county government.

(11) "P" means parallel bridge.

(12) "PKWY" means parkway.

(13) "TO" means the ending milepoint and terminus of a road segment on the extended weight coal or coal by-product haul road system.

(14) "TY I" means a single unit truck consisting of two (2) single axles.

(15) "TY II" means a single unit truck consisting of one (1) steering axle and two (2) axles in tandem arrangement.

(16) "TY III" means a single unit truck consisting of one (1) steering axle and three (3) axles in tridem arrangement.

(17) "TY IV" means a tractor-semitrailer combination with five (5) or more axles.

(18) "US" means a United States numbered highway maintained by the Kentucky Department of Highways.

(1) "TY I" means a single unit truck consisting of two (2) single axles.

(2) "TY II" means a single unit truck consisting of one (1) steering axle and two (2) axles in tandem arrangement.

(3) "TY III" means a single unit truck consisting of one (1) steering axle and three (3) axles in tridem arrangement.

(4) "TY IV" means a tractor-semitrailer combination with five (5) or more axles.

(5) "KY" means a state numbered highway maintained by the Kentucky Department of Highways.

(6) "US" means a United States numbered highway maintained by the Kentucky Department of Highways.

(7) "I" means an interstate and defense highway maintained by the Kentucky Department of Highways.

(8) "CR" means a public highway, road, or street not maintained by the Kentucky Department of Highways.

(9) "MP" means milepoint.

(10) "FROM" means the beginning milepoint and terminus of a road segment on the extended weight coal haul road system.

(11) "TO" means the ending milepoint and terminus of a road segment on the extended weight coal haul road system.

(12) "Catastrophic failure" means a failure that is marked by sudden or unpredictable damage ranging from extreme misfortune to utter ruin.

(13) "AASHTO" means the American Association of State Highway and Transportation Officials.

(14) "CO" means county.

(15) "LN" means line.

(16) "Mpt." means milepoint.

(17) "PKWY" means parkway.

(18) "Local governing body" means the fiscal court of any county, the city council or commission of a city of the first through fourth classes or the council of an urban county government.

(19) "Coal by-products" means any of the following: fly ash, bottom ash, wet bottom boiler slag, scrubber sludge, burned coal waste (red dog), coal slag, and coal cinders.

(20) "P" means parallel bridge.]

Section 2. Evaluation of Bridges. (1) The Department [of Highways] shall determine which [the] bridges on the extended weight coal or coal by-products haul road system [which] may be damaged or destroyed to the point of catastrophic failure by a vehicle [motor vehicles] operating at the weight[e] authorized by KRS 177.9771 by using the AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985 interim revisions. [This determination shall be based upon an analysis of the bridges in accordance with the guidelines and ratings set forth in the AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984

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and 1985 Interim Revisions.]

(2) The load factor method of analysis shall ~~[may]~~ be used if ~~[only when]~~ a bridge is known to have been designed by this ~~[that]~~ method.

(3) If ~~[When]~~ the allowable stress method of analysis is used, the maximum allowable stress in steel members shall not exceed sixty-nine (69) percent of the yield strength of the steel.

(4) If neither the load factor or allowable stress method of analysis can be used, the Department of Highways shall conduct an on-site inspection to determine if the bridge shows appreciable signs of deterioration or distress or otherwise poses a significant hazard to the traveling public.

~~[(2) When the analysis specified in subsection (1) of this section cannot be applied to a bridge, the Department of Highways shall determine if any bridge may be damaged or destroyed to the point of catastrophic failure in accordance with the AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985 Interim Revisions. Before making such a determination the Department of Highways shall conduct an on-site inspection to determine whether the bridge shows appreciable signs of deterioration or distress or otherwise poses a significant hazard to the traveling public.]~~

Section 3. Limiting Weight on Bridges. The department shall use the guidelines in the AASHTO Manual for Maintenance Inspection Bridges to set a weight limit for a bridge deemed at risk of catastrophic failure pursuant to KRS 189.230(2). ~~[When the Department of Highways determines that a bridge on the extended weight coal or coal by-products haul road system may be damaged or destroyed to the point of catastrophic failure, the department may adopt a weight limit for the bridge in accordance with the guidelines set forth in the AASHTO Manual for Maintenance Inspection Bridges, 1983 edition and 1984 and 1985 Interim Revisions.]~~

Section 4. Dimension Limits on the Extended Weight Coal Haul Road System. A motor vehicle[s] displaying a valid extended weight coal haul decal or cooperative license plate issued pursuant to KRS 177.9771 and being operated on a road segment set forth in Transportation Cabinet Official Order 97181, Official Order 97246, or Official Order 97311, [the official order incorporated by reference in Section 10 [Section 5] of this administrative regulation may be operated at, but] shall not exceed, the dimension limits [but shall not exceed the dimension limits] set forth in 603 KAR 5:070, Section 4.

Section 5. The Extended Weight Coal and Coal By-product Highway System and Limited Bridges. (1) Except as amended by Official Order 97246 and Official Order 97311, the highways or portions of highways listed in Transportation Cabinet Official Order 97181 [96646] [or portions of those highways, are certified as meeting the criteria of and] are designated as the extended weight coal and coal by-products haul road system.

(2) ~~[The Department of Highways has determined that] The bridges listed in Transportation Cabinet [beneath the highways on the extended weight coal or coal by-products haul road system in] Official Order 97181 [96646] have been determined by the department to be at risk of damage or destruction to the point of catastrophic failure and a weight limit has been established. [may be damaged or destroyed to the point of catastrophic failure as provided in Section 2 of this administrative regulation and has established a weight limit for each as set forth in Section 3 of this administrative regulation.]~~

~~[(3) Official Order 97181 [96646, effective on October 13, 1995,] is incorporated by reference in Section 10 [as a part] of this administrative regulation.]~~

Section 6. Restricted Bridge Use. A person shall not operate, or knowingly cause to be operated, on a ~~[any]~~ bridge listed in Official

Order 97181 ~~[96646]~~ a ~~[any]~~ vehicle whose gross vehicle weight exceeds the weight limits specified for that bridge.

Section 7. Bridge Posted Weight Limits. In accordance with KRS 189.230(3), the Department of Highways shall post the gross vehicle weight limits for each bridge listed in Official Order 97181 ~~[96646]~~.

Section 8. Additional Bridge Restrictions. A person shall not operate, or knowingly cause to be operated, on a ~~[any]~~ bridge on the extended weight coal or coal by-products haul road system a ~~[any]~~ vehicle whose gross vehicle weight exceeds the limits specified by a notice posted pursuant to KRS 189.230(3).

Section 9. (1) A resolution of a local governing body making a recommendation to the secretary, pursuant to KRS 177.9771(9), [Local Resolutions. Resolutions of local governing bodies issued pursuant to KRS 177.9771(9) making recommendations to the Secretary of Transportation] shall be submitted to Secretary of Transportation, Transportation Cabinet, State Office Building, 501 High Street, Frankfort, Kentucky 40622.

(2) The resolution shall set forth:

(a) A specific description of the road or road segment under consideration; and

(b) A specific description of the [The resolution shall further set forth with specificity those conditions which give rise to] inherent and definite hazardous [s or create special] condition[s]; or

(c) The factors which may create a special condition, [which the Secretary of the Transportation Cabinet needs to consider.]

Section 10. Incorporation by Reference. (1) The following material [A copy of the AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985 Interim Revisions] is [hereby] incorporated by reference in [as part of] this administrative regulation:

(a) AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985 Interim Revisions; [and]

(b) Transportation Cabinet Official Order 97181 adopted by the Transportation Cabinet on August, 1996;

(c) Transportation Cabinet Official Order 97246 issued by the Transportation Cabinet on August 30, 1996;

(d) Transportation Cabinet Official Order 97311 issued by the Transportation Cabinet on October 7, 1996.

(2) [(3)] A copy of the AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985 Interim Revisions may be viewed at the Transportation Cabinet, Department of Highways, Division of Operations, 7th Floor, State Office Building, 501 High Street, Frankfort, Kentucky. Office hours are 8 a.m. until 4:30 p.m., eastern time on weekdays. Copies of the AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985 Interim Revisions may be obtained from the American Association of State Highway and Transportation Officials, 444 North Capitol Street, N.W., Suite 225, Washington, D.C. 20001.

(3) [(4)] [(2)] All of the official orders [Official Order 97181] [96646] incorporated by reference in [Section 5 of] this administrative regulation may be viewed, copied, or obtained from the Office of the Secretary, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-4890. The business hours are 8 a.m. until 4:30 p.m. eastern time on weekdays.

J.M. YOWELL, P.E., State Highway Engineer
FRED N. MUDGE, Secretary

APPROVED BY AGENCY: October 7, 1996

FILED WITH LRC: October 9, 1996 at 11 a.m.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
Office of Chief State School Officer
(As Amended)

701 KAR 5:020. Kentucky High School Athletic Association; procedures for appeal of decisions to the Kentucky Board of Education. [Elementary and secondary education hearing officer.]

RELATES TO: KRS 156.070

STATUTORY AUTHORITY: KRS 156.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 requires the Kentucky [State] Board of [for Elementary and Secondary] Education to provide for appeals from decisions of the Kentucky High School Athletic Association. This administrative regulation establishes relevant appeal [hearing] procedures.

Section 1. A review [hearing] officer[~~who shall be a member of the board;~~] shall conduct [a hearing, or] a review on the law and record, as appropriate, of an appeal [all appeals] from the Kentucky High School Athletic Association.

Section 2. (1) An aggrieved party who wants to appeal the ruling of the Kentucky High School Athletic Association shall file a notice of appeal within ten (10) days of the date the Kentucky High School Athletic Association issues its decision.

(a) The notice of appeal shall be filed with the Secretary of the Kentucky Board of Education and a copy of the notice shall be mailed to the Commissioner of the Kentucky High School Athletic Association.

(b) The notice shall clearly state:

1. The reasons for the appeal; and

2. If the appellant requests to present additional evidence to the review officer, the nature of the evidence and the reason the evidence was not introduced previously.

(c) Upon receipt of the copy of the notice of appeal, the commissioner shall immediately send the record of the matter, including a transcript or tape recording of the hearing before the association, to the secretary.

(2) If the appealing party wishes to submit written arguments in support of the appeal, the party shall file the written arguments with the secretary within ten (10) days after the notice of appeal was filed. A copy of the written arguments shall be mailed to the commissioner.

(3)(a) If the commissioner wishes to respond to the notice of appeal or the written arguments, the commissioner shall submit a written response within fifteen (15) days of the date the notice of appeal was filed. The written response shall be mailed to the appealing party, with a copy sent to the secretary of the state board.

(b) If additional time to submit a response is needed, the commissioner may request one (1) extension of an additional five (5) days from the secretary of the state board. [Any aggrieved party may appeal the ruling of the Kentucky High School Athletic Association within ten (10) days of the date of the Kentucky High School Athletic Association hearing, or its written decision if no ruling is made at the hearing, to the Kentucky [State] Board of [for Elementary and Secondary] Education, by filing notice with the Secretary of the Kentucky [State] Board of [for Elementary and Secondary] Education and by mailing a copy to [of the same] the Commissioner of the Kentucky High School Athletic Association. Appeals not timely filed shall not be considered [heard]. The secretary of the board shall immediately notify the commissioner of the Kentucky High School Athletic Association of the appeal and the commissioner shall immediately [forthwith] send the record of the matter, including a transcript or tape recording of the hearing before the association, to

~~the secretary.~~

~~(1) The notice of appeal need not be in any prescribed form, but shall clearly state reasons for the appeal. If the appellant requests to present additional evidence to a review [hearing] officer, the notice also shall set forth the nature of the [such] evidence and reasons has not been previously introduced.~~

~~(2) [The notice of appeal may also request oral argument before a hearing officer, and if it does, it shall also state the reasons for such request.~~

~~(3) Written arguments (or briefs) may be filed with the secretary within ten (10) days after notice of the appeal has been filed, with a copy sent by mail to the Commissioner of the Kentucky High School Athletic Association.~~

~~(3) [(4)] The Commissioner of the Kentucky High School Athletic Association may respond to the written argument within five (5) days but may have one (1) extension of an additional five (5) days for good cause shown. The response shall be made by mail to the appellant with a copy sent to the secretary of the state board.]~~

~~[(5) Unless the hearing officer grants the motion to introduce additional evidence or the request for an oral argument, the appeal shall be considered on the written record alone. Only in extraordinary cases where additional evidence is allowed to be introduced shall the appeal be considered de novo in nature.]~~

Section 3. (1) The review [hearing] officer shall issue [make] findings of fact, conclusions of law and recommendations to the parties and to the Kentucky [State] Board of [for Elementary and Secondary] Education[~~and [such] shall allow ten (10) days for written exceptions and responses to the state board. Except in cases of clear and compelling justification, the parties shall not have a right to make oral argument in person to the state board.~~

(2) The parties shall have ten (10) days to submit written exceptions and responses to the state board.

(3) The state board shall make its decision based on the information forwarded by the review officer and the exception and responses submitted by the parties. Except in cases of clear and compelling justification, the parties shall not have a right to make oral argument in person to the state board.

Section 4. ~~[The board may accept or reject the submission of the hearing officer in total or in part, may return the matter to the hearing officer for further proceedings or may have the parties appear before the board for further proceedings and ultimate decision. In any event, the board, in making its final decision, shall adopt or incorporate appropriate findings and conclusions.]~~

Section 5. ~~Because of the varied nature of the matters that may from time to time be assigned to a review [hearing] officer, and because time may be of the essence, in order for the submission of the review [hearing] officer to be presented to the board at a scheduled meeting of the board, the review [hearing] officer may [is hereby authorized, consistent with the limitations of the assignment, to] set [such] time frames and other procedural matters to [as will] assure due process to the parties and allow the submission to the board within the time prescribed.~~

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070 (4).

WILMER S. CODY, Commissioner
Department of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: August 8, 1996

FILED WITH LRC: August 12, 1996 at 4 p.m.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
Office of Chief State School Officer
(As Amended)

701 KAR 5:055. Removal hearing procedures.

RELATES TO: KRS 156.132

STATUTORY AUTHORITY: KRS 156.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.132

authorizes ~~[provides authority to]~~ the Kentucky ~~[State]~~ Board of for ~~Elementary and Secondary~~ Education to remove local board of education members, superintendents, and public school officers upon a finding of misconduct or certain other offenses. This administrative regulation establishes procedures to be followed prior to and during the evidentiary hearing regarding the charges brought for removal.

Section 1. **Definition. "Officer being charged" or "officer charged" means a** ~~[Definitions. "Officer" means]~~ district board member, superintendent of schools, or other public school officer who is charged with an offense under KRS 156.132.

Section 2. Preliminary Matters. ~~[(1) The statement of charges required by KRS 156.132(4) and (5) shall be served personally or by certified mail upon the officer being charged.~~

~~[(2) At any time]~~ Before the matter is submitted for final decision, the statement of charges may be amended or supplemented. If the amended or supplemented statement of charges presents new charges, the officer being charged shall be afforded a reasonable opportunity, and not less than twenty (20) ~~[thirty (30)]~~ days, to prepare his defense.

Section 3. Prehearing Procedures. ~~[If within the twenty (20) days provided in KRS 156.132(4) and (5) the officer being charged notifies the State Board for Elementary and Secondary Education (state board) of his intention to appear and answer the charges, the following prehearing procedures shall apply:~~

~~[(1) If the officer charged retains an attorney to represent him at the hearing on the charges, the attorney shall file a written entry of appearance. All future notices, correspondence and other documents relative to the hearing shall be transmitted to that attorney on behalf of the officer charged.~~

~~[(2) No later than five (5) days before the scheduled hearing on the charges, the attorney for the chief state school officer shall provide the officer and the state board a proposed witness list, identifying the specific counts to which each witness may testify, and he shall provide a list of proposed exhibits which may be presented at the hearing.~~

~~[(3) No later than five (5) days before the scheduled hearing on the charges, the officer charged shall provide the attorney for the chief state school officer and the state board a proposed witness list, identifying the specific counts to which each witness may testify, and he shall provide a list of proposed exhibits which may be presented at the hearing.~~

~~[(4) A witness or exhibit shall not be utilized at the hearing if not on the proposed witness or exhibit list, except when good cause is demonstrated or for rebuttal purposes.~~

~~[(5) Subpoenas may be issued by the chairman of the state board upon the request of any party. Preparation and service of the subpoena and compliance with the subpoena shall be the responsibility of the party requesting the subpoena.]~~

~~[(1) [(6)] The testimony of a [any] material witness may be taken by deposition [only] if:~~

~~(a) The witness will be unavailable at the time and date of the scheduled hearing or the witness cannot be compelled to attend; and~~

~~(b) Written authorization of the hearing officer [chairman of the~~

~~state board]~~ is provided or there is agreement of the parties.

~~[(2) [(7)] If there is no agreement between the parties, the party requesting the deposition shall file a written request with the hearing officer [chairman of the state board] stating:~~

~~(a) The name and address of the witness whose testimony is desired;~~

~~(b) The nature and materiality of the testimony; and~~

~~(c) The reasons why the witness will be unable or cannot be compelled to attend the hearing.~~

~~[(3) [(8)] Upon a proper showing, the hearing officer [chairman of the state board] may issue an interim order requiring the witness to appear and to testify by deposition.~~

~~[(4) [(9)] The request for deposition shall be filed as soon as it becomes known that a witness will be unavailable at the time and date of the scheduled hearing. An [Any] objection shall be filed no more than three (3) days after the filing of the written request.~~

~~[(5) [(10)] The cost of the deposition shall be paid by the party requesting the deposition.~~

Section 4. Hearing Procedures. (1) The Kentucky Board of Education shall conduct a hearing in accordance with KRS Chapter 13B. [The following hearing procedures shall apply:

~~(1) The chairman of the state board, the panel chairman, or the hearing officer may restrict the number of witnesses and set a reasonable time limit on the length of the hearing.~~

~~(2) Each party may cross-examine a witness called to testify by the opposing party on matters relevant to the issues.~~

~~(3) The hearing shall not be conducted according to the technical rules relating to evidence and witnesses. Any relevant evidence may be admitted if it is the sort of evidence upon which reasonable prudent persons rely in the conduct of their serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions.~~

~~(4) Hearsay evidence may be presented; however, irrelevant, immaterial, grossly prejudicial, highly unreliable, or unduly repetitious evidence may be excluded by the chairman of the state board, the panel chairman, or the hearing officer.~~

~~(5) When an exhibit is presented in the hearing on behalf of a party, the party shall have available sufficient copies of the document for the court reporter, each of the state board members, the state board's counsel, and the opposing party.]~~

[(2) [(6)] At the request of a party or on his own volition, the hearing officer may reschedule a hearing if there is good cause or the parties agree to reschedule the hearing. [The scheduled hearing may be rescheduled or continued only upon a showing of good cause or agreement of the parties, and written authorization of the chairman of the state board.]

[(3) [(7)] The party seeking the continuance shall file with the hearing officer [chairman of the state board] a written request stating the reason for the request or a statement indicating the agreement of the parties. If the request to reschedule is made by a party, the requesting party shall file the request at least ten (10) days prior to the scheduled hearing. An objection to the request shall be filed within three (3) days after the filing of the request.

~~[(4) [(8)] The request for a continuance shall be filed no less than ten (10) days prior to the scheduled hearing. Any objection to the request shall be filed no more than three (3) days after the filing of request.]~~

~~[(9) If the hearing is held by a hearing officer or panel pursuant to KRS 156.071:~~

~~(a) The hearing officer or panel shall prepare a written recommendation of disposition, which shall include proposed findings of fact and conclusions of law;~~

~~(b) The recommendations shall be provided to the parties, who shall have ten (10) days from the date of entry of the written recommendations in which to file any exceptions to the recommendations;~~

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~~(e) The party opposing the exceptions shall have ten (10) days from the filing of the exceptions in which to file any written response to the exceptions; and~~

~~(d) The written recommendations with exceptions and responses, if any, shall be forwarded to the state board for its final decision.~~

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070 (4).

WILMER S. CODY, Commissioner
Department of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: August 8, 1996

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EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
Office of Chief State School Officer
(As Amended)

701 KAR 5:090. Teacher disciplinary hearings.

RELATES TO: KRS 161.770, 161.790

STATUTORY AUTHORITY: KRS ~~[156.020]~~ 156.070, 161.790

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.790 requires the chief state school officer to appoint an impartial three (3) member tribunal to conduct an administrative hearing and make the final determination on charges concerning a local school district's proposal to discipline or place on involuntary leave a teacher when the teacher gives timely notice of his intent to answer the charges. [KRS 161.770 and 161.790 provide for the chief state school officer, now the Commissioner of Education, to appoint an impartial three (3) member tribunal to hear evidence and make the final administrative determination whenever a local school district proposes to discipline or place on involuntary leave a certificated employee.] This administrative regulation establishes necessary administrative and hearing procedures with respect to the tribunal process.

Section 1. A local school district ~~[board of education or]~~ superintendent ~~[as applicable under statute]~~ proposing to discipline (except for a private reprimand) or place on involuntary leave a teacher ~~[certificated employee]~~ shall immediately after notice to the employee transmit a copy of the notice of the action to the chief state school officer, along with advice as to the date of the receipt of the notice by the employee.

Section 2. ~~[If the employee fails to contest the proposed action, by written intent filed with the chief state school officer and the local superintendent within ten (10) days of receipt of the notice of the proposed action by the employee, the chief state school officer shall transmit appropriate notice that the district's action has become final. Failure to transmit such notice shall not affect the finality of the local district's action.]~~

Section 3. (1) If, after a requested hearing has been scheduled by the chief state school officer, or his designee, a continuance is requested by the teacher, the teacher ~~[certificated employee, the employee]~~ shall specifically and in writing waive the statutory hearing deadlines and any subsequent backpay award for the period of the requested continuance. if ~~[unless]~~ the continuance request was initiated by the school district, this waiver shall not be required. A ~~[No]~~ continuance initiated by the teacher shall not ~~[employee shall]~~

be granted without the appropriate waiver.

(2) A continuance requested by the teacher ~~[certificated employee]~~ may be granted for good cause shown, including ~~[but not limited to]~~ pending criminal charges making it inadvisable for the employee to testify at an ~~[any]~~ administrative hearing or ~~[and]~~ late entry of an attorney into the case on behalf of the employee. An objection ~~[Objections]~~ to a continuance request by the school district shall be considered on a case-by-case basis.

(3) A continuance requested by the school district, and not agreed to by the employee, may ~~[shall]~~ be granted ~~[only]~~ upon documentation of ~~[the existence of]~~ an emergency or other circumstance[s] making it impossible or prejudicially impractical for the district to adequately present its case at the scheduled hearing.

(4) A request for continuance made ~~[All requests for continuances]~~ prior to the three (3) member tribunal convening shall be submitted ~~[directed]~~ in writing to the hearing officer ~~[office of the chief state school officer]~~, and the hearing officer ~~[chief state school officer or his designee]~~ shall consider and grant or deny all prehearing continuance ~~[such] requests~~.

~~[(5) After convening a hearing, the three (3) member tribunal shall consider and rule upon all other requests for continuances.]~~

Section 3. ~~[4.]~~ (1) ~~[The chief state school officer shall, whenever practicable, provide a legal adviser for the three (3) member tribunal, and]~~ The local school district shall pay all travel expenses of the hearing officer ~~[legal adviser]~~.

(2) The local school district shall, no later than the convening of the hearing, advise the tribunal members how to claim their per diem and travel expenses.

~~[Section 5. (1) No later than seven (7) days after an employee files a notice to contest, the school district shall provide the employee, and the chief state school officer and the panel members, with a proposed witness list and general summary of testimony and a list of proposed exhibits. The employee shall provide such documents no later than two (2) days prior to the scheduled hearing. No proposed witness or exhibit not on the list shall be utilized at the hearing except for good cause demonstrated to the tribunal or for rebuttal.]~~

~~[(2) No later than one (1) day prior to a scheduled hearing, any party may submit to the other, and to the chief state school officer and the tribunal members, proposed findings of fact and conclusions of law. If a tribunal continues a hearing once convened or defers its decision, any right to submit proposed findings and conclusions shall be governed by ruling of the tribunal.]~~

~~[(3) Prehearing documents shall be submitted to panel members through the chief state school officer, and the chief state school officer or his designee shall have discretion to eliminate potentially prejudicial or inadmissible information from prehearing documents and from the notice of charges to be supplied to panel members until the panel has an opportunity to rule upon such matters.]~~

Section 4. A hearing before the tribunal shall be conducted in accordance with KRS Chapter 13B. ~~[6. At the hearing, both the school district and the certificated employee shall be allowed to direct reasonable voir dire to the tribunal members, such voir dire going solely to the tribunal members' possible bias, meeting statutory eligibility requirements, or improper prior knowledge of the case.]~~

Section 7. (1) ~~Once the hearing has been convened and the parties given the opportunity for appropriate motions and responses, voir dire, and opening statements, the local school district shall have the burden of proof and the burden of going forward with its evidence.]~~

~~[(2) Technical rules of evidence shall not apply, but all witnesses shall be subject to cross examination and any finding of fact by a tribunal shall be supported by some substantial and legally competent evidence.]~~

Section 5. ~~[8.]~~ (1) If, for any reason and after testimony has commenced, a tribunal member becomes unavailable to complete the hearing of the evidence of both parties, an appropriate substitute tribunal member shall be appointed by the chief state school officer and provided by the school district with a written transcript of all prior proceedings at the hearing unless waived under subsection (2) of this section.

(2) A hearing may be concluded and a decision rendered ~~[in such circumstances]~~ by a two (2) member tribunal ~~[only]~~ upon express agreement of both parties.

~~[Section 9. The three (3) member tribunal shall render its decision by findings of fact and conclusions of law spread upon the stenographic record of the proceedings or by separate written decision incorporating appropriate findings and conclusions. Any decision spread upon the stenographic record shall be considered final as of the date such decision is read into the record.]~~

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070 (4).

WILMER S. CODY, Commissioner
Department of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: August 8, 1996

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EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
Office of Management Support Services
(As Amended)

702 KAR 1:080. Transfer of annexed property; hearing.

RELATES TO: KRS ~~[156.034]~~ 160.045

STATUTORY AUTHORITY: KRS 156.070, 156.160, 160.045

NECESSITY, FUNCTION, AND CONFORMITY: ~~[KRS 156.034 requires that administrative regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990;]~~ KRS 160.045 requires the Kentucky Board of Education to conduct an administrative hearing concerning the transfer of annexed property when statutory conditions are met. This administrative regulation establishes the determinations that the state board shall make when it approves the transfer of property in an administrative hearing held in accordance with KRS 160.045 and Chapter 13B. ~~[KRS 160.045 requires the Kentucky [State] Board of [for Elementary and Secondary] Education to grant and schedule an administrative [hold a] hearing and be the final arbiter at the administrative level of annexation disputes under that statute. This administrative regulation provides procedures for an orderly hearing to resolve differences between local boards of education with regard to the transfer or annexation of property.]~~

Section 1. Upon receipt of a petition of a board of education by reason of the provisions of KRS 160.045, the chief state school officer, or his designated representative, shall conduct an impartial investigation of the facts and conditions attendant to the proposed annexation and provide each affected board of education a report which sets forth the factual findings of his investigation and his recommendations based upon those findings.

Section 2. ~~[If [In the event] either affected board of education appeals the decision of the chief state school officer to the Kentucky [State] Board of [for Elementary and Secondary] Education, the board shall schedule an administrative hearing in accordance with KRS Chapter 13B.]~~ [at its next regularly scheduled meeting, the chief state school officer shall file notice of such appeal by certified mail on the respective boards of education fixing the time and place of the hearing of the appeal.]

~~[Section 3.]~~ [Each board of education, at least ten (10) days prior to the hearing on the appeal, shall present to the State Board for Elementary and Secondary Education and the other affected local board of education, a brief which shall set forth arguments for or against the transfer of property.]

Section 4. Oral arguments and rebuttals shall be heard by the State Board for Elementary and Secondary Education. Each affected board of education shall be represented by one (1) person who may be an attorney, the superintendent of schools, or a board member.

(1) Arguments shall be limited to thirty (30) minutes and rebuttals to ten (10) minutes for each board of education.

(2) Interested persons shall be permitted to present arguments for or against approval of transfer, but rebuttals shall not be permitted by any person other than the representative designated by the board of education. The time for arguments by interested persons shall be specified by the Chairman of the State Board for Elementary and Secondary Education at the time of the hearing.

(3) Any member of the State Board for Elementary and Secondary Education shall have the privilege of questioning the representatives of boards of education or any interested persons who present arguments for or against approval of transfer.

Section 5. After the hearing is completed, but before any action is taken, the chief state school officer, or a member of his staff, shall make, subsequent to completion of the hearing, recommendations concerning his findings and investigation of the proposed annexation to the State Board for Elementary and Secondary Education. These recommendations shall be read in the presence of all interested persons and copies of the written recommendations shall be given to the parties involved in the dispute.

Section 6. The State Board for Elementary and Secondary Education shall by appropriate action approve or reject the transfer of property involved. This action shall not be subject to rehearing. However, the matter may be again brought before the State Board for Elementary and Secondary Education for a new hearing if new facts warrant after all steps provided in KRS 160.045 have been followed and new efforts have been made to solve the problem locally.

Section 7. The Kentucky [State] Board of [for Elementary and Secondary] Education shall, in case of approval of transfer of property:

- (1) Specify the effective date of transfer;
- (2) Determine the ratio of the current assessed value of all property in the district relinquishing the property;
- (3) Specify the amount required to repay the transferred property's proportionate share of the ~~[said]~~ district's current bonded indebtedness;
- (4) Calculate the amount and when payment shall be made to the district relinquishing the property; and
- (5) Specify pertinent details which will affect the transfer of property.

~~[Section 8. The State Board for Elementary and Secondary Education shall cause to be made a stenographic record of all public hearings and such copies of the transcript thereof as it requires for its own purpose. Participants desiring copies of transcripts may obtain~~

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~~the same from the official reporter upon payment of the cost thereof.]~~

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070 (4).

WILMER S. CODY, Commissioner
Department of Education

JOSEPH W. KELLY, Chairman

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EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Division of Finance

(As Amended)

702 KAR 3:100. Data form, professional staff.

RELATES TO: KRS 157.320 ~~[456.034]~~, 157.390, 157.420

STATUTORY AUTHORITY: KRS 156.070, 157.320

NECESSITY, FUNCTION, AND CONFORMITY: ~~[KRS 156.034 requires that administrative regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resubmitted to the Legislative Research Commission prior to December 30, 1990;]~~ KRS 157.320(9) authorizes the Kentucky Board of Education to promulgate administrative regulations recommended by the chief state school officer that are necessary for carrying out the purposes of KRS 157.310 to 157.440, relating to the Fund to Support Education Excellence in Kentucky (SEEK). KRS 157.390 requires ~~[sets forth]~~ that the SEEK base funding level of a local school district for teachers' salaries ~~[shall]~~ be based on categories of experience established ~~[set forth]~~ therein. KRS ~~[and]~~ 157.420 establishes ~~[sets forth various]~~ restrictions on a local district's teachers' salaries allotment. This administrative regulation allows the Department of Education to collect ~~[assignment and]~~ salary data on teachers employed by the school district.

Section 1. ~~[Definition. "Teacher" means any person for whom certification is required as a basis of employment in the public schools of the Commonwealth.]~~

~~Section 2.]~~ The Department of Education professional staff data form ~~[dated November 10, 1990, is hereby incorporated by reference, and]~~ shall be completed ~~[during the week of September 15]~~ for a ~~[any]~~ teacher paid by ~~[and/or]~~ under the supervision of the local district as of September 15 and shall be submitted to the Department of Education prior to October 1 of each school year. ~~[board of education. The completed forms shall be forwarded to the Division of School District Finance not later than October 1 of each school year. This form may be copied or viewed at the Department of Education, Capital Plaza Tower, Monday through Friday, from 8 a.m. to 4:30 p.m.]~~

Section 2. An amendment ~~[3. Amendments]~~ to the professional staff data form shall be submitted to the Department of Education no later than ten (10) days after the close of the school year. The amendment shall include new teacher employees and teacher terminations for the current school year which occurred between September 15 and the close of the school year. ~~[2. Changes of personnel, vacancy, new position staffed, or position abolished between September 15 and January 31 shall be reported on the February amendment to the professional staff data form. This amendment shall be completed February 1 and is due in the Division~~

~~of School District Finance on or before February 5.]~~

Section 4. The professional staff data form file layout, dated July 1, 1996, is incorporated herein by reference and may be obtained, copied and inspected at the Division of Finance, Attendance and Data Collection Branch, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070 (4).

WILMER S. CODY, Commissioner
Department of Education

JOSEPH W. KELLY, Chairman

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EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Office of District Support Services

(As Amended)

702 KAR 3:270. SEEK funding formula.

RELATES TO: KRS 156.035, 156.070, 157.320(9), 157.360, 157.370, 157.410, 157.430, 157.440, 157.620, 158.135, 160.470, 160.476 ~~[160.477]~~

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.035 and 156.070 set forth the Kentucky ~~[State]~~ Board of ~~[for Elementary and Secondary]~~ Education's plenary powers over the management and control of local school districts and disbursement of state appropriations. KRS 156.160 requires ~~[gives]~~ the Kentucky ~~[State]~~ Board of ~~[for Elementary and Secondary]~~ Education ~~[the authority]~~ to promulgate administrative regulations ~~[deemed necessary]~~ for the preparation of budgets and salary schedules for the school districts under its management and control. This administrative regulation is necessary to provide guidelines for the calculations to distribute the funds to school districts through the program to Support Education Excellence in Kentucky (SEEK).

Section 1. Definitions. (1) "At-risk student amount" means fifteen (15) percent of the per pupil guaranteed base funding amount calculated ~~[provided]~~ pursuant to KRS 157.360(1) times the average of the highest number of approved applications for free meals in each of the eight (8) months (September through May excluding December) of the prior fiscal year and times the number of state agency children served pursuant to KRS 158.135.

(2) "Calculated base SEEK funding" means the guaranteed base funding provided in the biennial budget pursuant to KRS 157.360(1) plus the add-on components of the SEEK calculation including at-risk, home and hospital, exceptional children and transportation per KRS 157.360(2).

(3) "Collection rate" means the tax receipts collected for the prior year divided by the maximum revenue collectible. The maximum revenue collectible shall be the prior year's permissive tax revenue plus the levied rates per \$100 of assessed value for real and tangible property and motor vehicles times the prior year assessment of real and tangible property and motor vehicles.

(4) "Debt service outstanding" means the amount of debt service in excess of eighty (80) percent of the allotment for the capital outlay component of SEEK plus the local revenue generated by the five (5)

cent equivalent tax levy required to participate in [for] the Facility Support Program of Kentucky under [participation—per] KRS 157.620(1)(a).

(5) "Exceptional child amount" means the December 1 exceptional child count of the preceding fiscal year by exceptionality weighted as follows:

(a) 2.35 times the per pupil base funding amount calculated pursuant to [per] KRS 157.360(1) for students with severe disabilities;

(b) 1.17 times the per pupil base funding amount calculated pursuant to [per] KRS 157.360(1) for students with moderate disabilities; and

(c) .24 times the per pupil base funding amount calculated pursuant to [per] KRS 157.360(1) for students with communications disabilities.

(6) "Growth" means the percent change in the second month average daily attendance times the prior year adjusted average daily attendance.

(7) "Home and hospital instruction amount" means the total of the prior year's home and hospital average daily attendance [current year's first semester home and hospital average daily attendance plus the prior year's second semester home and hospital average daily attendance] times the per pupil base funding amount calculated pursuant to [per] KRS 157.360(1), less the allotment for capital outlay as set forth in the Biennial Budget.

(8) "Levied equivalent tax rate" means estimated permissive tax revenue plus the current year's levied real estate tax rate, tangible tax rate and motor vehicle tax rate per \$100 of assessed value times the current year's assessment of real estate, tangible property and motor vehicles times the prior year's collection rate divided by the total current year's property and motor vehicle assessment.

(9) "Release time" means regularly scheduled time missed by students with school district approval.

(10) "Shared time average daily attendance" means the average daily attendance for nonresident [nondistrict] students who attend the district's [public] schools on a part-time basis while enrolled in another district or nonpublic school.

(11) "State equalization amount" means 150 percent of the statewide average per pupil property assessment as provided in the biennial budget.

(12) "Tier I revenue" means revenue produced by a school district tax levy which, when equalized by state funds with the state equalization amount established by [per] KRS 157.440(1)(a), generates up to the maximum revenue allowable under [per] KRS 157.440(1)(a); ~~fifteen (15) percent above the calculated base SEEK funding.~~

(13) "Tier II revenue" means revenue produced by a school district tax levy above the Tier I tax levy which generates no more than the maximum revenue allowable under [per] KRS 157.440(2); ~~thirty (30) percent above the combined calculated base SEEK funding and Tier I revenue.~~

(14) "Transportation funding" means prior fiscal year calculated transportation costs for students in grades primary through twelve (12) transported by school districts as calculated by the Division of Pupil Transportation, Department of Education, pursuant to KRS 157.370 and adjusted by current year second month growth in transported students.

(15) "Vocational educational deduct" means a deduct factor to be applied against the per pupil guaranteed base funding in those instances where a student spends a portion of the school day at a state-operated vocational center.

Section 2. SEEK Calculation Formula. (1) Required data for the SEEK calculation shall include:

(a) Property assessments from the Department of Property Taxation, Revenue Cabinet provided pursuant to [per] KRS 160.470(5);

(b) Tax rates levied by school districts;

(c) Equivalent tax rates based on tax levies;

(d) Home and hospital average daily attendance reported by the Pupil Attendance Branch, Division of Finance, Department of Education;

(e) Prior year adjusted average daily attendance reported by the Pupil Attendance Branch, Division of Finance, Department of Education (calculated according to the formula in subsection (3) of this section [in accordance with subsection (3) calculation below]);

(f) The growth factor report from the Pupil Attendance Branch, Division of Finance, Department of Education;

(g) Transportation funding reported by the Division of Pupil Transportation, Department of Education;

(h) The number of at-risk students reported by the Division of School and Community Nutrition, Department of Education;

(i) The number of exceptional students in each disability category as reported by the Division of Exceptional Children Services, Department of Education;

(j) Vocational education average daily attendance reported by the Pupil Attendance Branch, Division of Finance, Department of Education; and

(k) The state equalization amount.

(2) Assumptions used in the SEEK calculation shall include:

(a) Equivalent tax rates (ETR) shall be the lower of the ETR levied in the prior odd numbered year under [per] KRS 157.440(1)(a) and the current year;

(b) Adjusted average daily attendance (AADA) plus growth shall be the prior year AADA plus the second month's percent attendance growth times prior year AADA; and

(c) Percentage reduction in the allotments may be made to at-risk student, exceptional child, and home and hospital instruction amounts and to the state portion of Tier I funding and to transportation funding due to appropriations in the biennial budget.

(3) AADA shall be calculated for students in grades primary through twelve (12) as follows:

(a) Average daily attendance (ADA) shall be the aggregate days attendance as reported by local school districts divided by the number of school days taught as reported by local school districts.

(b) Adjusted average daily attendance shall be:

1. The ADA plus;

2. The shared time ADA as reported by local school districts minus;

3. The ADA for noncontract, nonresident students as reported by local school districts minus;

4. The release time as reported by local school districts minus;

5. One-half (1/2) of the total aggregate kindergarten days attendance as reported by local school districts divided by the number of days taught minus;

6. The ADA for over-age and under-age students as reported by local school districts. [Aggregate days attendance as reported by local school districts:

1. Divided by the number of school days taught as reported by local school districts;

2. Equals average daily attendance (ADA);

(b) ADA:

1. Plus shared time ADA as reported by local school districts;

2. Minus ADA for noncontract, nonresident students as reported by local school districts;

3. Minus release time as reported by local school districts;

4. Minus one-half (1/2) of the total aggregate kindergarten days attendance as reported by local school districts divided by the number of days taught;

5. Minus ADA for over-age students as reported by local school districts;

6. Equals adjusted average daily attendance.]

(4) The SEEK calculation shall be determined as follows:

(a) Calculated base SEEK funding shall be:

1. The per pupil guaranteed base funding amount calculated pursuant to KRS 157.360(1) times;

2. The prior year AADA plus growth plus;

3. The at-risk student amount plus;

4. The exceptional child amount plus;

5. The home and hospital instruction amount plus;

6. The transportation funding.

(b) The total state SEEK base shall be the calculated base SEEK funding minus the local effort required pursuant to KRS 160.470(12)(a).

(c) The state SEEK funding amount shall be:

1. The total state SEEK base plus;

2. The total state Tier I funding (in accordance with subsection (6) of this section) minus;

3. The vocational education deduct amount (in accordance with subsection (7) of this section) plus;

4. The hold harmless provision if provided in the biennial budget plus;

5. The prior year adjustments (if any) minus;

6. The pro rata adjustments under KRS 157.430 (if any). [Per pupil guaranteed base funding per KRS 157.360(1):

1. Times prior year AADA plus growth;

2. Plus at-risk student amount;

3. Plus exceptional child amount;

4. Plus home and hospital instruction amount;

5. Plus transportation funding;

6. Equals calculated base SEEK funding;

(b) Calculated base SEEK funding:

1. Minus local effort required per KRS 160.470(12)(a);

2. Equals total state SEEK base;

3. Plus total state Tier I funding (in accordance with subsection (6) of this section calculation below);

4. Minus vocational education deduct amount (in accordance with subsection (7) of this section calculation below);

5. Plus hold harmless provision if provided in the biennial budget;

6. Plus prior year adjustments (if any);

7. Minus pro rata adjustments per KRS 157.430 (if any);

8. Equals state SEEK funding.]

(5) The formula for the maximum Tier I equivalent tax rate allowable per KRS 157.440(1)(a) shall be [as follows:] guaranteed base funding per KRS 157.360(1):

(a) The guaranteed base funding amount calculated pursuant to KRS 157.360(1) plus;

(b) The calculated at-risk, exceptional child, home and hospital, and transportation amounts times;

(c) Fifteen (15) percent divided by;

(d) The greater of the state equalization amount and the local district per pupil assessment. [Plus calculated at-risk, exceptional child, home and hospital and transportation amounts:

(b) Times fifteen (15) percent;

(c) Divided by the greater of the state equalization amount and the local district per pupil assessment.]

(6) State Tier I and Tier II funding formulas.

(a) 1. The total Tier I revenue shall be the total calculated base SEEK funding pursuant to KRS 157.360 times the maximum Tier I participation of fifteen (15) percent pursuant to KRS 157.440(1)(a);

2. The total per pupil Tier I revenue shall be the total Tier I revenue divided by the prior year AADA plus growth;

3. The state portion per pupil Tier I funding shall be the total per pupil Tier I revenue minus the per pupil local portion Tier I (school district's per pupil assessment divided by the state equalization amount times total per pupil Tier I revenue);

4. The total state Tier I funding shall be:

a. The state portion per pupil Tier I funding times;

b. The prior year AADA plus growth minus;

c. The pro rata adjustments due to appropriation in the biennial budget. [For local districts which have levied an equivalent tax rate at or above the maximum Tier I equivalent tax rate, the state Tier I funding formula shall be as follows:

1. Total calculated base SEEK funding per KRS 157.360;

a. Times maximum Tier I participation fifteen (15) percent per KRS 157.440(1)(a);

b. Equals total Tier I revenue;

c. Divided by prior year AADA plus growth;

d. Equals total per pupil Tier I revenue;

2. Total per pupil Tier I revenue:

a. Minus per pupil local portion Tier I (school district's per pupil assessment divided by the state equalization amount times total per pupil Tier I revenue);

b. Equals state portion per pupil Tier I funding;

c. Times prior year AADA plus growth;

d. Minus pro rata adjustments due to appropriation in the biennial budget;

e. Equals total state Tier I funding.]

(b) For local districts which have not levied at or above the maximum Tier I equivalent tax rate under [per] KRS 157.440(1)(a), the state Tier I funding formula shall be as follows:

1. The levied Tier I equivalent tax rate shall be the levied equivalent tax rate minus the required minimum thirty (30) cents equivalent tax rate under KRS 160.470(12)(a) and five (5) cents levy under KRS 157.620(1)(a);

2. The per pupil total Tier I revenue shall be the levied Tier I equivalent tax rate times the state equalization amount;

3. The state portion per pupil Tier I funding shall be the per pupil total Tier I revenue minus the per pupil local portion Tier I (school district's per pupil assessment divided by the state equalization amount times total per pupil Tier I revenue);

4. The total state Tier I funding shall be:

a. The state portion per pupil Tier I funding times;

b. The prior year AADA plus growth minus;

c. The pro rata adjustments due to appropriation in the biennial budget.

(c) The Tier II local revenue (not subject to state equalization) shall be calculated as follows:

1. The levied equivalent tax rate minus;

2. The required minimum thirty (30) cents equivalent tax rate under KRS 160.470(12)(a), the five (5) cents levy under KRS 157.620(1)(a), and the maximum Tier I equivalent tax rate times;

3. The total district assessment of property and motor vehicles. [Levied equivalent tax rate:

a. Minus required minimum thirty (30) cents equivalent tax rate per KRS 160.470(12)(a) and five (5) cents levy per KRS 157.620(1)(a);

b. Equals levied Tier I equivalent tax rate;

c. Times state equalization amount;

d. Equals per pupil total Tier I revenue;

2. Per pupil total Tier I revenue:

a. Minus per pupil local portion Tier I (school district's per pupil assessment divided by the state equalization amount times total per pupil Tier I revenue);

b. Equals state portion per pupil Tier I funding;

c. Times prior year AADA plus growth;

d. Minus pro rata adjustments due to appropriation in the biennial budget;

e. Equals total state Tier I funding.

(c) The Tier II calculation formula shall be as follows: Levied equivalent tax rate:

1. Minus required minimum thirty (30) cents equivalent tax rate per KRS 160.470(12)(a), the five (5) cents levy per KRS 157.620(1)(a), and the maximum Tier I equivalent tax rate;

2. Times total district assessment of property and motor vehicles;

3. Equals Tier II local revenue (not subject to state equalization).]

(7) The vocational education (voc ed) deduct formula shall be as follows: ~~[Total state SEEK base:]~~

(a) The per pupil deduct amount shall be:

1. The total state SEEK base divided by;

2. The calculated base SEEK funding times;

3. The per pupil guaranteed base funding amount calculated pursuant to KRS 157.360(1) times;

4. The voc-ed deduct percentage as provided for in the biennial budget.

(b) The total voc-ed deduct amount shall be the per pupil deduct amount times the voc-ed ADA. [Divided by calculated base SEEK funding;

~~(b) Times per pupil guaranteed base funding per KRS 157.360(1);~~

~~(c) Times voc-ed deduct percentage as provided for in the biennial budget;~~

~~(d) Equals per pupil deduct amount;~~

~~(e) Times voc-ed ADA;~~

~~(f) Equals total voc-ed deduct amount.]~~

Section 3. Facilities Support Program of Kentucky (FSPK) Calculation. (1) Data required for the FSPK calculation formula shall include:

(a) Property assessments from the Department of Property Taxation, Revenue Cabinet, **as required by** ~~[per]~~ KRS 160.470(5);

(b) Equivalent tax rates based on tax levies from school districts;

(c) Prior year AADA as reported by the Pupil Attendance Branch, Division of Finance, Department of Education;

(d) Total annual debt service for school building revenue bonds; and

(e) State equalization amount.

(2) Assumptions used in the FSPK calculation shall include:

(a) A ~~[No]~~ school district shall **not** receive state equalization funds until the full five (5) cent equivalent tax required for participation has been levied;

(b) A school district ~~[School districts]~~ which **has** ~~[have]~~ levied a five (5) cent equivalent tax for building purposes **under** ~~[per]~~ KRS 157.620(1)(a) shall qualify to receive state equalization funding when the district's outstanding debt service as of October 1 of each odd-numbered year is within \$10,000 of the required amount; and

(c) A school district's eligibility for participation in the FSPK program shall be based on prior year AADA. State equalization funds shall be calculated based on prior year AADA plus growth.

(3) The FSPK eligibility calculation shall be as follows: ~~[Amount generated by a five (5) cent equivalent tax levy per KRS 157.620(1)(a).]~~

(a) The total revenue available for debt service shall be the amount generated by a five (5) cent equivalent tax levy under KRS 157.620(1)(a).

(b) The debt service amount needed for equalization shall be the total revenue available for debt service minus the total current year debt service (from school district's outstanding school revenue bond issues).

(c) If the calculation in paragraph (b) of this subsection is a positive amount, the district shall not be eligible for equalization. [Equals total revenue available for debt service;

~~(b) Minus total current year debt service (from school district's outstanding school revenue bond issues);~~

~~(c) Equals debt service needed for equalization (positive amounts indicate ineligibility for equalization).]~~

(4) Once a school district has been determined eligible for state FSPK funds, the state equalization calculation shall be as follows: ~~[Maximum eligibility (state equalization amount times .0005).]~~

(a) The per pupil state equalization amount shall be the maximum eligibility amount (which is the state equalization amount times .0005) minus the local effort (which is the per pupil assessment times .0005).

(b) The prorated state FSPK amount shall be:

1. The per pupil state equalization times;

2. The prior year AADA plus growth times;

3. The pro rata adjustments due to an appropriation in the biennial budget. [Minus local effort (per pupil assessment times .0005);

~~(b) Equals per pupil state equalization;~~

~~(c) Times prior year AADA plus growth;~~

~~(d) Times pro rata adjustments due to appropriation in the biennial budget;~~

~~(e) Equals prorated state FSPK amount.]~~

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070 (4).

WILMER S. CODY, Commissioner
Department of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: August 8, 1996

FILED WITH LRC: August 12, 1996 at 4 p.m.

EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Office of District Support Services

(As Amended)

702 KAR 5:130. Vehicles designed to carry nine (9) passengers or less ~~[fewer than ten (10) passengers]~~, standards for.

RELATES TO: KRS 156.153, ~~[156.024,]~~ 156.160, 189.540

STATUTORY AUTHORITY: KRS 156.070, 156.160, 189.540

NECESSITY, FUNCTION, AND CONFORMITY: ~~[KRS 156.024 requires that administrative regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990; and] KRS 156.160 requires the Kentucky [State] Board of [for Elementary and Secondary] Education to promulgate [adept] administrative regulations relating to the transportation of children to and from school and those deemed necessary or advisable for the protection of the physical welfare and safety of public school children. KRS 189.540 requires the Kentucky Board of Education to promulgate an administrative regulation to govern the operation of district-owned passenger vehicles designed to carry nine (9) passengers or less, including the driver, and used for approved school activities under KRS 156.153(3). This administrative regulation establishes the guidelines and requirements relative to the transportation of pupils by local school districts in vehicles designed to carry nine (9) passengers or less ~~[fewer than ten (10) passengers]~~ and which are not classified as school buses.~~

Section 1. Definition. ~~[For the purpose of this administrative regulation, the word "Vehicle" [shall] means a [any] vehicle owned by a school [district] board or contracted to the board which is significantly used to transport pupils to and from school and which is designed by the manufacturer to carry fewer than ten (10) passengers. However, a vehicle used to transport students for approved school activities shall meet the requirements of KRS 156.153(3).~~

Section 2. Before a ~~[any]~~ vehicle ~~[owned by a school [district] board or contracted to the board]~~ is used to transport pupils, the superintendent of a local school district shall request permission from the Division of Pupil Transportation for authorization to use the ~~[such]~~ vehicle. ~~[; and] When the vehicle has been approved, it shall be entered on the district's school bus inventory.~~

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Section 3. A vehicle ~~[Any vehicle of nine (9) or fewer passengers, including the driver, that is owned by a school board]~~ may be used for the transportation of pupils from areas not accessible by a regular school bus to the nearest road available for the safe transfer of pupils to a regular school bus or vice versa, emergency transportation of students, approved school activities and for qualified special needs pupils. **A vehicle driver shall be a school district employee or a person contracted by the district.** ~~[Drivers of these vehicles are restricted to school district employees or employees contracted by the districts.]~~ ~~[Any vehicle owned by a school district board or contracted to the board shall be restricted to the transportation of pupils from areas not accessible to a regular school bus to the nearest road available for safe transfer of pupils to a regular school bus or vice versa; provided, that this requirement shall not apply to transportation of qualifying handicapped pupils or emergency transportation of pupils.]~~

Section 4. **A vehicle shall not** ~~[No vehicle owned by a school [district] board or contracted to the board shall]~~ be used to carry more pupils than the manufacturer's designed passenger capacity for that particular vehicle.

Section 5. Each vehicle ~~[owned by a school [district] board or contracted to the board]~~ shall have occupant restraint systems ~~[seat belts]~~ equal in number to the manufacturer's designed passenger capacity and installed in accordance with the original equipment manufacturer's specifications.

Section 6. Liability or indemnity insurance shall be purchased for each vehicle ~~[owned by the school [district] board or contracted to the board]~~. The coverage limits shall ~~[should]~~ be at least these ~~[minimum]~~ amounts:

Property Damage Each Accident	\$ 100,000
Bodily Injury Liability Per Person	250,000
Bodily Injury Liability Per Accident	1,000,000
Uninsured Motorist Coverage	Allowable Limit
	Per Person-Per Accident
"No-fault" Coverage Per Person	10,000

Section 7. Before a [any] vehicle ~~[owned by the school [district] board or contracted to the board]~~ is initially used to transport pupils, a safety inspection shall be made on the vehicle by a competent person to certify the vehicle is in safe operating condition. If the vehicle is found to be in unsafe operating condition, it shall not be used to transport pupils until necessary repairs are made.

Section 8. Each vehicle ~~[owned by the school [district] board or contracted to the board]~~ shall be inspected at least once each month that the vehicle is used to transport pupils, utilizing the same criteria for inspection **of a standard bus** ~~[as for standard school buses]~~. The written inspection shall be filed with the Division of Pupil Transportation on the **"School Transportation Vehicles Monthly Inspection Certification" form.** ~~[District Monthly Inspection Report"]~~

Section 9. Each vehicle ~~[owned by the school [district] board or contracted to the board]~~ when being used to transport pupils shall display a sign in clear view in the rear of the vehicle stating: "This vehicle is being used to transport school children."

Section 10. Each school year the school ~~[district]~~ board shall, ~~[each school year,]~~ provide the owner of a [any] vehicle that is contracted to the board with a written contract in which the responsibilities of the contractor are clearly defined. A copy of the contract and the method of determining the contract award shall be kept on file in the superintendent's office.

Section 11. The **"School Transportation Vehicles Monthly Inspection Certification** ~~[District Monthly Inspection Report]"~~ form dated June, 1996, is hereby ~~[adopted and]~~ incorporated by reference. This form may be inspected, copied, and obtained from the Division of Pupil Transportation, Department of Education, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070 (4).

WILMER S. CODY, Commissioner
Department of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: August 8, 1996

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EDUCATION, ARTS, AND HUMANITIES CABINET Kentucky Board of Education Department of Education Division of Management Assistance Programs (As Amended)

703 KAR 3:205. Management improvement program.

RELATES TO: KRS 158.780, 158.785

STATUTORY AUTHORITY: KRS 156.070, 156.160, 158.780, 158.785

NECESSITY AND FUNCTION: KRS 158.780 and 158.785 require the Kentucky [State] Board of [for Elementary and Secondary] Education to establish a program for management improvement services for school districts which demonstrate such a critical lack of efficiency or effectiveness in governance or administration that state mandated corrective action or state control of the district is required. This administrative regulation outlines the operational procedures for the management improvement program.

Section 1. (1) The Kentucky Department of Education shall collect data from local school districts pursuant to KRS 158.785(2). The data shall include instructional and operational data routinely submitted by the districts, and other information as requested by the Kentucky Department of Education.

(2) If a review of the data ~~[such as instructional and operational data,]~~ regarding a school district indicates significant deficiencies, the Department of Education staff shall conduct an on-site review.

(3) The on-site review shall include the examination of local school records and interviews with school district officials, staff, and community leaders. The on-site review may **include an examination of** ~~[examine]~~ school district operations in ~~[one (1) or more of the following areas]~~:

- (a) Governance policy and procedures;
- (b) Instructional programming and organization;
- (c) Fiscal management and accountability procedures;
- (d) The maintenance and condition of the physical plant;
- (e) Facility construction;
- (f) Student transportation; and
- (g) Community perception and support.

Section 2. (1) If the data review and school district investigation outlined in Section 1 of this administrative regulation reveal significant deficiencies, the commissioner of education shall determine whether **the significant deficiencies indicate the presence of critically ineffective or inefficient management. If it does, the commissioner shall order a management audit consistent with KRS 158.785**

and this administrative regulation. ~~[a comprehensive management audit is appropriate.]~~

(2) The comprehensive audit shall include an investigation of the district's compliance with state and federal statutes and administrative regulations and local board policies. The audit shall include an on-site review, investigation, and analysis of the governance and administration of the school district to determine if a significant lack of a pattern of efficiency and effectiveness exists in the following areas:

(a) Planning - failure to develop, adopt and implement planning processes that allow for public review and timely action by the board and administration regarding management of the administrative and business activities of the school district and of the management of the instructional program;

(b) Operational support - failure to provide the operational support services required to operate an efficient and effective school system including ~~[such factors as]~~:

1. Maintenance and operation of the physical plants - failure of the district to maintain school building cleanliness and safety including ~~[such factors as]~~:

a. Failure to develop and maintain an accurate record of the maintenance needs and expenditures.

b. Failure to budget and expend funds necessary to maintain the physical plant.

c. Failure to employ maintenance and operation staff who provide clean and safe school buildings.

d. Failure to make efficient use of personnel as indicated by excessive staffing when compared to school districts of similar size and funding.

e. Failure to make repairs that prevent costly and unnecessary maintenance expenditures.

f. Failure to ensure that existing facilities are adequately insured;

2. Facility construction - failure to manage a school facility construction program that is in compliance with 702 KAR Chapter 4 and is planned, executed, and completed to ensure that public funds are expended in a responsible manner including ~~a [such factors as]~~ failure to:

a. Develop and implement a planning process for identifying the need for new or improved facilities.

b. Maintain an up-to-date facility survey or ensure that regulatory approvals are secured.

c. Develop and implement plans to receive the allowable benefit from School Facilities Construction Commission.

d. Follow proper bidding requirements and develop and maintain accurate records of expenditures and authorization of expenditures on school construction projects.

e. Institute an administrative oversight process to ensure that facility construction activities are efficient and accountable for both local and state funds.

3. Maintenance and operation of the transportation system to provide and maintain an efficient transportation system including ~~a [such factors as]~~ failure to:

a. Provide training for personnel responsible for the safe transportation of children in accordance with Kentucky [State] Board of [for Elementary and Secondary] Education administrative regulations.

b. Develop and implement policies and procedures regarding the use of district-owned vehicles.

c. Purchase and maintain equipment to safely and efficiently transport children to school.

d. Establish transportation routes that minimize public expenditure and time children spend en route to school.

e. Follow bidding requirements for the purchase of equipment and materials necessary to conduct the school's transportation program.

4. School food services - failure to develop an efficient system of school food services including ~~a [such factors as]~~ failure to:

a. Develop and maintain an accurate record of school food service expenditures.

b. Utilize federal and local resources to operate a nutritious program in a cost effective manner.

c. Employ school food service staff who provide meals in accordance with federal and state guidelines.

d. Make efficient use of personnel as indicated by excessive staffing when compared to school districts of similar size and funding;

(c) Fiscal management - failure to perform the appropriate planning, budgeting, fund management, and accounting responsibilities required for the fiscal management of the school district including ~~a [such factors as]~~ failure to:

1. Assess the need for expenditures.

2. Recommend use of available funds according to an established set of priorities.

3. Maintain accurate records of expenditures and authorization of expenditures as required for auditing purposes.

4. Comply with purchasing requirements applicable to school districts.

5. Implement investment policies to ensure that all public funds are invested safely and productively.

(d) Personnel administration - failure to ensure school district staff are prepared to perform the required professional and staff responsibilities in an effective and efficient manner, including ~~a [such factors as]~~ failure to:

1. Develop and implement employment practices and procedures that ensure the selection and placement of the most qualified personnel.

2. Train and evaluate the professional staff of the district as required by applicable laws.

(e) Instructional management - failure to develop and maintain district-level instructional policy including ~~a [such factors as]~~ failure to:

1. Maintain a curriculum consistent with 703 KAR 4:060 and [the valued outcomes of] applicable laws.

2. Provide the resources necessary to support the instructional program.

(3) Deficiencies identified and established in some or all of the factors listed in this section may constitute a pattern of a significant lack of effectiveness and efficiency in the governance and administration of the school district.

Section 3. (1) Following the comprehensive audit, the department staff shall prepare a report of the comprehensive audit and the commissioner shall determine if there exists a pattern of a significant lack of effectiveness and efficiency in the governance or administration of the school district.

(2) If the commissioner determines that the comprehensive audit does establish an existing pattern of a significant lack of effectiveness and efficiency and state assistance or state management is necessary to correct the inefficiencies and ineffectiveness, he shall place a recommendation to declare the district "state-assisted" or "state-managed" before the state board as specified in Section 4 of this administrative regulation.

(3) If the commissioner does not place a recommendation before the state board, the department shall convey the comprehensive report to the school district for its information and use.

(4) If the local district agrees with the commissioner's recommendation to declare the district "state-assisted" or "state-managed" and the district waives the right to participate in the hearing before the state board, the commissioner ~~shall [with]~~ place this recommendation before the Kentucky [State] Board of [for Elementary and Secondary] Education for ~~its [their]~~ approval without a hearing.

Section 4. The procedure for submitting a recommendation to the state board regarding the declaration of a school district as a "state-assisted" or "state-managed" district shall include the following:

(1) The commissioner shall file with the state board his written recommendation along with supporting information, and he shall arrange the scheduling of a hearing on the matter before the state

board; and

(2) ~~The hearing procedures established in KRS Chapter 13B shall be applicable. [At least twenty (20) days before the scheduled hearing, the commissioner of education shall provide the school district's superintendent and the school district's board of education with a copy of the written recommendation and supporting information, as well as written notice of the date and place at which the hearing before the state board shall be held;~~

~~(3) The commissioner and the school district may be represented by counsel and may present witnesses; and~~

~~(4) After completion of the hearing, the state board may declare the school district as a state-assisted or state-managed district, and the board shall issue written findings, specifying the basis for the declaration.]~~

Section 5. (1) If a school district is declared a state-assisted or state-managed district, the district shall develop and implement an improvement plan that identifies the deficiencies and the corrective actions necessary to improve school district governance and administration. The improvement plan shall be subject to approval by the state board.

(2) The improvement plan shall include:

(a) Specific objectives and strategies to correct deficiencies in defined time frames; and

(b) The identification of local board and individual administrative staff responsibilities and activities that shall be required to improve school district governance and administration.

(3) A school district declared state-assisted shall remain a state-assisted district until:

(a) The commissioner recommends to the state board and it determines that sufficient progress has been made in implementing the improvement plan; or

(b) The state board makes a determination that the district shall be state-managed.

Section 6. The local school district declared a state-assisted or state-managed district shall provide to the commissioner monthly reports indicating the status of improvement activities in the district.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070 (4).

WILMER S. CODY, Commissioner
Department of Education

JOSEPH W. KELLY, Chairman

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EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
Office of Special Instructional Services
(As Amended)

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, 157.224, 157.260, 167.015

NECESSITY, FUNCTION, AND CONFORMITY: 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 local education agency (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 shall ~~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), 20 USC 1415.

(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 Section 1(2) of 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 a [any] member of the ARC. A teacher organization official[s] 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 an [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) Acting 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 an [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 an [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, 20 USC 1415;

(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 provide[s] 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.

A 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:

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1. ~~[(a)]~~ Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

2. ~~[(b)]~~ Scheduling the meeting at a mutually agreed upon time and place;

~~[(b)]~~ ~~[(e)]~~ 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 may indicate~~[e]~~ 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 shall ~~[is to]~~ be informed in writing that the 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 shall recognize ~~[only recognizes]~~ one (1) agent at a ~~[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.

~~[(c)]~~ ~~[(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, including ~~[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.

~~[(d)]~~ ~~[(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 documenting the action.

~~[(e)]~~ ~~[(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.

~~[(f)]~~ ~~[(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 a procedure ~~[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, including ~~[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. (1) The LEA shall protect the rights of a child or youth by assigning a surrogate parent if:

~~[(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 if ~~[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 Families and Children ~~[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 a person[s] as a surrogate parent[s] who:

(a) Does not have a ~~[he]~~ conflicting vested interest;

(b) Is ~~[Are]~~ committed to personally and thoroughly acquainting himself ~~[themselves]~~ with the child and his needs;

(c) Is ~~[Are]~~ familiar with the educational system within the state;

(d) Is ~~[Are]~~ readily accessible to the child;

(e) Is ~~[Are]~~ age eighteen (18) or older; and

(f) Is ~~[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, including ~~[such as]~~ the rights to:

(a) Receive notice of proposed or refused action[s];

(b) Provide or deny consent;

(c) Participate in ARC meetings as the parent;

(d) Protection[s] 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 a ~~[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 requests.

(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; and

2. The procedures for requesting a due process hearing.

(b) A request[s] for a hearing[s] 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) A ~~[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 shall ~~[to]~~ ensure the selection, training, and maintenance of a registry of hearing officers to serve at a due process hearing. A person[s] to be considered for appointment as an impartial hearing officer[s] may come from a variety of working environments, including ~~[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) An exceptional child ~~[fee]~~ due process hearing[s] shall be conducted in accordance with KRS Chapter 13B. ~~[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.~~

~~(e) 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.]~~

~~(5) [(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.]~~

~~(6) [(r)] The hearing officer may dismiss a [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.~~

~~(7) [(s)] 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.~~

~~(e) Prior to the due process hearing, the parent shall[;~~

~~4.] 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.]~~

~~(8) [(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.~~

~~(9) [(7)] Funding hearings. The total costs involved in holding a~~

due process hearing, excluding those costs caused to be incurred by the parents or [A] 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.

~~(10) [(9)] 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.]~~

~~(b) [(e)] 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.~~

~~(11) [(9)] Timelines for the hearing.~~

(a) No later than forty-five (45) days after the Division of Exceptional Children Services receives a written request for a due process hearing, 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 or the parents may make a written offer of settlement to the other party ~~[parents]~~. The LEA or the parents shall not submit a copy of a [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.]~~

~~(d) [(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.~~

~~(12) [(40)] The decision of the hearing officer shall be final unless either party appeals the decision.~~

~~(13) [(44)] 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 (ECAB). (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) A ~~[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 the ~~[such]~~ hearing, may appeal the ~~[such]~~ order in writing by certified mail to the Exceptional Children Appeals Board within thirty (30) calendar days of the entry of the ~~[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 an ~~[any]~~ appeal filed, the provisions of Section 11(7)(46)(a)8 and ~~(b) [(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 shall ensure~~[e]~~ 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.

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(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 provider[s].

(3) If the LEA considers a suspension that will cumulatively exceed ten (10) days during a school year, parents shall be provided notice of ~~the [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 is [are] not appropriate or is not being fully and correctly implemented, appropriate modifications shall be [are] determined at the ARC meeting and ~~[no]~~ further disciplinary action shall not occur [occur].

(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 for that specific behavior.

(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, in accordance with this administrative regulation and KRS Chapter 13B, 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) A local admissions and release committee[s] may consider placement of a student [students] with visual disabilities at KSB and a student [students] with hearing disabilities at KSD, even though the child does [they do] not meet the criteria for admission set by the Kentucky Department of Education.

(2) A local admissions and release committee[s] shall not automatically place a student [students] at KSB and KSD who does not meet the [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 be made according to the due process procedures outlined in this administrative regulation. The KSB/KSD admissions criteria may be considered but shall not be [are not] binding upon the decision-makers.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070 (4).

WILMER S. CODY, Commissioner
Department of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: August 8, 1996

FILED WITH LRC: August 12, 1996 at 4 p.m.

WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education Department for Adult Education and Literacy (As Amended)

785 KAR 1:010. Testing program.

RELATES TO: KRS 151B.023, 151B.110, 151B.125

STATUTORY AUTHORITY: KRS 151B.023, 151B.110, 151B.125

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.110 delegates to the State Board for Adult and Technical Education the responsibility for adult education programs and services in Kentucky. KRS 151B.023(4) provides that the Department for Adult Education and Literacy is the agency solely designated for the purposes of adopting state plans required for federal adult education programs and services in Kentucky. KRS 151B.125 recognizes the General Educational Development (GED) test for high school equivalency purposes in Kentucky. This administrative regulation establishes the means whereby adults may be tested by official GED testing centers to determine their eligibility for receiving a high school equivalency diploma.

Section 1. (1) The GED test[s] shall provide a valid means of measuring the educational achievement of an adult who is a nonhigh school graduate [adults who are nonhigh school graduates] and of comparing the adult's [their] competency with that of high school graduates. The test[s] shall be a high school level battery [batteries] consisting of five (5) comprehensive examinations: Test 1: Writing Skills Test (Parts I and II); Test 2: Social Studies Test; Test 3: Science Test; Test 4: Interpreting Literature and the Arts Test; and Test 5: Mathematics Test.

(2) An applicant shall be certified as test-ready. An applicant presenting a GED-on-TV voucher from Kentucky Educational Television study shall not be required to meet the test-readiness prerequisite.

(3) ~~(2)~~ The GED test[s] shall be administered to an applicant with a Kentucky address, officially withdrawn from school, who has reached his nineteenth (19) birthday. An officially withdrawn an applicant who is [applicants who are] at least seventeen (17) years of age and whose [their] last enrolled class has graduated or who has [have] been out of formal classroom for a period of one (1) year may be administered the GED test. An applicant[s], officially withdrawn from school, who is [are] sixteen (16) years of age shall meet one (1) of the following criteria:

(a) Committed or placed in state correctional facility; or

(b) Completed Job Corps Program of instruction.

(4)(a) An ~~[(3)]~~ applicant[s] at least sixteen (16) years of age who believes exigent circumstances exist and who does not meet the conditions of subsection (3) ~~[(2)]~~(a) or (b) of this section may request an exemption[s] from the local school superintendent or designee in the district where the applicant resides.

(b) An exemption[s] granted on the basis of exigent circumstances or a denial[s] shall be in writing. A copy of the decision shall be mailed or faxed within five (5) working days to the state GED administrator. Dissatisfaction resulting from a denial[s] may be appealed to the Commissioner of the Department for Adult Education and Literacy.

(c) Exigent circumstances may include: sentenced by a court to an educational program and program completed or admission to a postsecondary program which is contingent upon earning a high school equivalency diploma (GED).

(5) Official GED testing centers shall be established under contract with the GED Testing Service of the Commission on Accreditation with locations authorized by the State Board for Adult and Technical Education. GED testing services for individuals confined to state correctional and health institutions shall be approved by the State Board for Adult and Technical Education.

(6) ~~[(4)]~~ Testing fees shall be established by the State Board for Adult and Technical Education at a uniform fee of twenty-five (25) dollars or five (5) dollars per subtest. The Department for Adult Education and Literacy shall not charge a fee for testing services provided for individuals confined to state correctional and health institutions.

(7) An ~~[(5)]~~ applicant[s] seeking a high school equivalency diploma shall complete the appropriate application form provided for this purpose prior to taking the GED test. This form shall be available from local adult education providers, local school superintendents or the Department for Adult Education and Literacy. Military personnel shall not be required to complete the application form prior to taking the test. Military personnel shall complete an application form before a high school equivalency diploma shall be issued. Military personnel may use the Military GED Application (Form 300-M).

(8) ~~[(6)]~~ If an applicant passes the five (5) subtests with a minimum standard test score of forty (40) ~~thirty-five (35)]~~ but does not attain an average standard score of forty-five (45), he shall be eligible to retake a subtest in an attempt to raise the overall standard score. The testing center proctor shall recommend which subtest may be retaken.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "GED Testing Application (DAEL-6)", revised 10/96 edition, Cabinet for Workforce Development, Department for Adult Education and Literacy; and

(b) "Application for High School Equivalency Diploma or Certificate (Military GED Application) (Form 300-M)", revised 7/85 edition, GED Testing Service, Washington, D.C.

(2) This material may be inspected, copied, or obtained at the Department for Adult Education and Literacy, Capital Plaza Tower, Third Floor, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: August 15, 1996

FILED WITH LRC: September 13, 1996 at 10 a.m.

**LABOR CABINET
Department of Workers' Claims
(As Amended)**

803 KAR 25:012. Resolution of medical fee disputes.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS Chapter 13A, 342.020, 342.035, 342.125, 342.260, 342.325, 342.735

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 requires the Commissioner of the Department of Workers' Claims to promulgate ~~prepare such~~ administrative regulations ~~as he consid-~~ ers necessary to carry on his work and the work of the administrative law judges under KRS Chapter 342. KRS 342.325 requires that questions arising under KRS Chapter 342 which are not settled by agreement of the parties shall be determined by an administrative law judge, and KRS 342.735 requires the commissioner to promulgate ~~establish~~ administrative regulations to expedite the payment of medical expense benefits. ~~The function of~~ This administrative regulation ~~is to~~ regulates the resolution of medical fee disputes before the administrative law judges.

Section 1. Procedure. (1) Disputes regarding payment, nonpayment, reasonableness, necessity, or work-relatedness of a ~~any~~ medical expense, treatment, procedure, statement, or service which has been rendered or shall ~~will~~ be rendered under KRS Chapter 342 will be resolved by an administrative law judge following the filing of a Form 112 (Medical Fee Dispute).

(2)(a) The Form 112 shall be accompanied by the following items: copies of all disputed bills, supporting affidavit(s) setting forth facts sufficient to show that the movant is entitled to the relief sought, ~~any~~ necessary supporting expert testimony, and the ~~any~~ final decision from a utilization review or medical bill audit with the supporting medical opinion.

(b) A single Form 112 may encompass statements, services, and treatment previously rendered as well as future statements, services, and treatment of the same nature or for the same condition, if specifically stated.

(3) An ~~Any~~ employee, provider of medical services, employer or employer's medical payment obligor may file a Form 112 to seek adjudication of a dispute involving medical expenses.

(4) If an ~~ne~~ application for adjustment of claim concerning the injury or disease which is the subject of the dispute has ~~not~~ been filed, copies of the Form 112 and attachments sufficient to serve the ~~all~~ other parties, including the employee, the employer, the medical payment obligor, and the medical provider, shall be filed with the commissioner, who shall make service on the ~~all~~ named parties. An opposing party ~~parties~~ may thereafter file a response[s], accompanied by affidavits setting forth facts sufficient to show that the movant is not entitled to the relief sought, within twenty (20) days after service by the commissioner. A response[s] shall be served on the commissioner and the ~~all~~ parties. This dispute shall ~~will~~ be assigned to the Frankfort Administrative Law Judge motion docket, where it may be summarily decided upon the pleadings or assigned for further proof time and resolution by an administrative law judge.

(5) If an application for adjustment of claim is pending concerning the injury or disease which is the subject of the dispute, the movant shall file a Form 112 with the commissioner and shall also serve copies on the ~~all~~ other parties of record. The movant shall further file a motion to join the medical provider~~(s)~~ as a party to the claim. This motion shall conform with the requirements of 803 KAR 25:010, Section 4.

(6) Following resolution of a workers' compensation claim by opinion or order of an administrative law judge, including an order approving settlement of a disputed claim, a motion to reopen pursuant to 803 KAR 25:010, Section 4(6), shall be filed in addition to the Form 112. Unless utilization review has been initiated, the motion to reopen

and Form 112 shall [must] be filed within thirty (30) days following receipt of a complete statement for services pursuant to 803 KAR 25:096. The motion to reopen and Form 112 shall be served on the [all] parties, upon the employee, even if represented by counsel, and upon the medical providers. If [When] appropriate, the pleadings shall also be accompanied by a motion to join the medical provider as a party. This dispute shall [will] be assigned to the Frankfort Administrative Law Judge motion docket, where it may be summarily decided upon the pleadings, or be assigned to an administrative law judge for further proof time and final resolution.

(7) If an appeal is pending before the Workers' Compensation Board concerning the injury or disease which is the subject of the dispute, the Form 112 shall be accompanied by a motion for a partial remand to the administrative law judge assigned to the claim, unless entitlement to medical services is dependent upon resolution of issues on appeal. If entitlement to medical services is dependent upon resolution of issues on appeal, the Form 112 shall be accompanied by a motion to the Workers' Compensation Board to hold the Form 112 in abeyance pending a final decision on the appeal.

(8) If the contested expense is subject to utilization review, a [no] medical fee dispute shall not be filed prior to completion of the utilization review process. The thirty (30) day period for filing a medical fee dispute shall be [is] tolled by commencement of the utilization review process. Notice of utilization review shall be provided to the [all] affected parties pursuant to 803 KAR 25:096. The employer or its medical payment obligor shall have thirty (30) days following the final utilization review or medical bill audit decision to file a medical fee dispute.

(9) Repeated filing of identical Form 112's concerning the same subject matter shall not be necessary if [are unnecessary ones] an administrative law judge has ruled on both the past expenses and the necessity of future expenses. If [When] an order from an administrative law judge encompassing future treatment or expenses becomes final, the medical provider shall not tender future statements for services encompassed by the order to the employer or its medical payment obligor.

(10) A [Any] party aggrieved by a decision of the administrative law judge in a medical fee dispute may appeal to the Workers' Compensation Board by following the procedures set forth in 803 KAR 25:010, Section 13.

Section 2. [Burden of Proof. (1) Prior to a final decision or award establishing an employee's right to medical services for a work-related condition under KRS Chapter 342, the burden of proving entitlement to the service and the reasonableness and necessity of the service shall be upon the employee and the provider of medical services, pursuant to KRS 342.735.

(2) Following a final award or order establishing the employee's right to medical services under KRS Chapter 342, upon receipt of a medical statement comporting with 803 KAR 25:096, the burden of proof regarding any lack of work-relatedness, reasonableness, or necessity falls upon the employer or employer's medical payment obligor.

Section 3. Sanctions. (1) If the administrative law judge determines that proceedings have been brought, caused to be brought, prosecuted or defended without reasonable grounds, the entire cost of the proceedings, including attorneys fees, may be assessed upon the offending party pursuant to KRS 342.310. Sanctions shall be assessed, as appropriate, if [when] an employer or a medical payment obligor challenges bills without reasonable medical or factual foundation, or if [when] a medical provider, without reasonable foundation, submits bills for nonwork-related conditions to an employer or its medical payment obligor. Filing a medical fee dispute prior to exhaustion of [any] required utilization review or medical bill audit procedures shall [will also] subject the movant to sanctions pursuant to KRS 342.310.

Section 3. [4.] Expedited Medical Fee Disputes. (1) If, prior to the filing of a formal application for adjustment of claim, a dispute arises requiring expedited determination of the reasonableness, appropriateness or employer's liability for proposed medical care, the lack of which could lead to serious physical or mental disability or death, an employee or employer may seek an expedited determination by filing a written request (on Form 120EX), together with:

(a) An affidavit of the employee or other witness that the injury or disease which is the subject of the dispute is compensable under KRS Chapter 342 in the format prescribed in Appendix A.

(b) An affidavit of a physician which explains why failure to obtain or undertake the proposed medical care within forty-five (45) days could lead to serious physical or mental disability or death of the employee. The physician's affidavit shall set forth the diagnosis of the patient, the clinical and diagnostic findings upon which the diagnosis is based, the proposed treatment, and reason [detail] why immediate initiation of the proposed treatment is necessary. If [Where] feasible, an estimate of the cost of the proposed treatment shall be presented. The format for a physician's affidavit is set forth in Appendix B.

(c) [Any] Other affidavits or authenticated documents necessary to demonstrate that the movant is entitled to the relief sought.

(2) The Form 120EX and attachments shall be filed in triplicate with the commissioner who shall serve copies on the [all] named parties. A respondent[s] to a Form 120EX may file a response[s] within ten (10) days of the date on which the Form 120EX is served by mail. Service shall be deemed complete the third day after mailing by the commissioner. A response[s] shall be accompanied by affidavits setting forth facts sufficient to demonstrate that the movant is not entitled to the relief sought, and shall be served on the other parties by the respondent.

(3) The chief administrative law judge may refer the matter to an ombudsman to attempt to effectuate a resolution of the dispute.

(4) The administrative law judge to whom a request for expedited determination of medical issues is assigned shall issue a ruling within seven (7) days after expiration of the response time.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 112, "Medical Fee Dispute", (August 15, 1996 Edition), Department of Workers Claims; and

(b) Form 120EX, "Request for Expedited Determination of Medical Issue", (July 14, 1994 Edition), Department of Workers Claims.

(2) This material may be inspected, copied, or obtained at the Department of Workers Claims, Monday through Friday, 9 a.m. to 4 p.m., at the following locations:

(a) Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

(b) 410 West Chestnut Street, Louisville, Kentucky 40202;

(c) 220B North 8th Street, Paducah, Kentucky 42001; or

(d) 101 Summit Drive, Pikeville, Kentucky 41501.

[Section 5. Forms. (1) Title and edition. Form 112, "Medical Fee Dispute", August 15, 1996 edition and Form 120EX, July 14, 1994 Edition are hereby incorporated by reference in this administrative regulation.

(2) Public notices.

(a) Forms can be inspected and copied at main and branch offices of the Department of Workers Claims.

1. Frankfort — Perimeter Park West — Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

2. Louisville — 410 West Chestnut Street, Louisville, Kentucky 40202;

3. Paducah — 220B North 8th Street, Paducah, Kentucky 42001;

4. Pikeville — 101 Summit Drive, Pikeville, Kentucky 41501.

(b) Office hours of each office are 9 a.m. to 4 p.m. local time, Monday through Friday, inclusive for this purpose.]

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APPENDIX A AFFIDAVIT OF EMPLOYEE

Affiant, (Name), first being duly sworn, states that the attached Request for Expedited Determination of Medical Issue (Form 120EX) concerns treatment for a condition compensable under the Kentucky Workers' Compensation Act. Affiant further states as follows:

1. Date and time of work-related injury or date on which occupational disease was discovered:
2. Brief description of how injury occurred or how occupational disease was acquired:
3. Date and identity of person to whom notice of injury or occupational disease was given:
4. Medical treatment at issue:
5. Attempts, if any, to obtain approval for contested treatment:

Signature:
STATE OF:
COUNTY OF:

Subscribed and sworn to before me by (name) this (day) day of (month), 19(year).

Notary Public:

My commission expires:

APPENDIX B AFFIDAVIT OF PHYSICIAN EXPEDITED MEDICAL DISPUTE

Affiant (Name), a physician whose area of specialization is (specialization), first being duly sworn, states that the attached Request for Expedited Determination of Medical Issue (Form 120EX) concerns a work-related injury or disease.

(1) The following medical care is required: (describe proposed medical care)

- (2) The current working diagnosis is as follows:
- (3) The proposed treatment is medically necessary because:
- (4) The estimated cost of the proposed treatment is:

Affiant further states that failure of (Name of workers' compensation patient) to obtain or undertake this proposed medical care within the next forty-five (45) days could lead to serious physical or mental disability or death because:

Signature:
W.C. Medical Index No.:
Address:
STATE OF:
COUNTY OF:

Subscribed and sworn to before me by (name) this (day) day of (month), 19(year).

Notary Public:

My commission expires:

[Section 1. Definition. "Physician" shall have the same meaning as in KRS 342.0011(32).

Section 2. Procedure. (1) Any employee, provider of medical services, employer or employer's medical payment obligor may seek adjudication of a dispute regarding the payment or nonpayment of any medical expense by filing a Request to Resolve Medical Fee Dispute (Form 112).

(2) A Request to Resolve Medical Fee Dispute (Form 112) may

be filed to resolve questions concerning the payment, nonpayment, reasonableness, necessity or work-relatedness of any medical expense, treatment, procedure, statement or service performed, rendered, or about to be performed or rendered under KRS Chapter 342.

(3) A Form 112, copies of disputed bills and supporting affidavits setting forth facts sufficient to show that the movant is entitled to the relief sought shall be filed with the commissioner, with sufficient copies to serve all other parties, within thirty (30) days of the date of receipt of a statement for services or within thirty (30) days of the time in which the compensability of a medical expense or treatment is known to be in dispute, whichever first occurs. The commissioner shall serve copies on all named parties unless an application for adjustment of claim is pending concerning the injury or disease which is the subject of the dispute, in which event service shall be made by the movant. Opposing parties may file responses within twenty (20) days after notice of the request to resolve medical fee dispute. A response shall be accompanied by affidavits setting forth facts sufficient to show the movant is not entitled to the relief sought, and shall be served on the other parties.

(4) Requests to resolve medical fee disputes shall be assigned as follows:

(a) If an application for adjustment of claim has not been filed concerning the injury or disease which is the subject of the dispute, the commissioner shall assign the request to the Frankfort administrative law judge motion docket and the request shall be processed in the same manner as other motions in claims to which an administrative law judge has not been permanently assigned.

(b) If an application for adjustment of claim is pending concerning the injury or disease which is the subject of the dispute, the request shall be assigned to the same administrative law judge to whom the application for adjustment of claim has been assigned.

(c) If an award or other final decision has been rendered by an administrative law judge concerning the injury or disease which is the subject of the dispute, the request shall be accompanied by a motion to reopen in accordance with KRS 342.125 and other applicable law and shall initially be placed upon the Frankfort administrative law judge motion docket. Service shall be made upon all opposing parties by the movant.

(d) If an appeal is pending before the board concerning the injury or disease which is the subject of the dispute, the request shall be accompanied by a motion for a partial remand to the administrative law judge who ruled on the application for adjustment of claim, unless entitlement to medical services under KRS 342.020 is dependent upon resolution of the appeal. If entitlement to medical services is dependent upon resolution of the appeal, the request shall be accompanied by a motion to the board to hold the request in abeyance pending a final decision on the appeal.

Section 3. Scope of Request and Burden of Proof. (1) A single request may encompass statements, services and treatment previously rendered as well as future statements, services and treatment of the same nature, or for the same condition, if noted in the request, in which event the dispute shall be deemed continuing and repeated requests concerning the same subject matter need not be made.

(2) If a final award or decision has not been previously entered establishing the employee's right to medical services under the Act, the burden of proving entitlement shall be upon the employee or provider of medical services, while the burden with respect to unreasonableness and nonnecessity shall fall upon the employer or employer's medical payment obligor.

(3) An administrative law judge shall review all pleadings, affidavits, or other evidence in the record and render a decision which shall be filed of record and served on all parties to the dispute. The administrative law judge shall not be precluded from taking any other action deemed necessary to resolve the dispute.

(4) If the administrative law judge determines that such proceed-

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~~ings have been brought, caused to be brought, prosecuted, or defended without reasonable ground, the whole cost of the proceedings may be assessed upon the party who has brought, caused to be brought, prosecuted, or defended the proceedings without reasonable ground as provided by KRS 342.310.~~

~~(5) Any party aggrieved by the decision of the administrative law judge may appeal to the Workers' Compensation Board by following the procedures set out in Section 12 of 803 KAR 25:011.~~

Section 4. Expedited Medical Fee Disputes. (1) If prior to the filing of a formal application for adjustment of claim a dispute arises requiring expedited determination of the reasonableness, appropriateness or employer's liability for proposed medical care, the lack of which could lead to serious physical or mental disability or death, an employee or employer may seek an expedited determination by filing a written request (on Form 120EX), together with:

(a) An affidavit of the employee or other witness that the injury or disease which is the subject of the dispute is compensable under KRS Chapter 342 in the format prescribed in Appendix A.

(b) An affidavit of a physician which explains why failure to obtain or undertake the proposed medical care within forty five (45) days could lead to serious physical or mental disability or death of the employee. The physician's affidavit shall set forth the diagnosis of the patient, the clinical and diagnostic findings upon which the diagnosis is based, the proposed treatment, and detail why immediate initiation of the proposed treatment is necessary. Where feasible, an estimate of the cost of the proposed treatment shall be presented. The format for a physician's affidavit is set forth in Appendix B.

(c) Any other affidavits or authenticated documents necessary to demonstrate that the movant is entitled to the relief sought.

(2) The Form 120EX and attachments shall be filed in triplicate with the commissioner who shall serve copies on all named parties. Respondents to a Form 120EX may file responses within ten (10) days of the date on which the Form 120EX is served by mail. Service shall be deemed complete the third day after mailing by the commissioner. Responses shall be accompanied by affidavits setting forth facts sufficient to demonstrate that the movant is not entitled to the relief sought, and shall be served on the other parties by the respondent.

(3) The chief administrative law judge may refer the matter to an ombudsman to attempt to effectuate a resolution of the dispute.

(4) The administrative law judge to whom a request for expedited determination of medical issues is assigned shall issue a ruling within seven (7) days after expiration of the response time.

APPENDIX A EXPEDITED MEDICAL DISPUTE AFFIDAVIT OF EMPLOYEE

Affiant, (Name), first being duly sworn, states that the attached Request for Expedited Determination of Medical Issue (Form 120EX) concerns treatment for a condition compensable under the Kentucky Workers' Compensation Act. Affiant further states:

1. Date and time of work related injury or date on which occupational disease was discovered:

2. Brief description of how injury occurred or how occupational disease was acquired:

3. Date and identity of person to whom notice of injury or occupational disease was given:

4. Medical treatment at issue:

5. Attempts, if any, to obtain approval for contested treatment:

Signature:
(Date):

STATE OF:
COUNTY OF:

Subscribed and sworn to before me by (Name) this (day) day of (month), 19__.

Notary Public:
My commission expires:

APPENDIX B EXPEDITED MEDICAL DISPUTE AFFIDAVIT OF PHYSICIAN

Affiant, (Name), a physician whose area of specialization is (specialization), first being duly sworn, states that the attached Request for Expedited Determination of Medical Issue (Form 120EX) concerns a work related injury or disease.

(1) The following medical care is required: (describe proposed medical care):

(2) The current working diagnosis is as follows:

(3) The proposed treatment is medically necessary because:

(4) The estimated cost of the proposed treatment is:

Affiant further states that failure of (Name of Workers' Compensation Patient) to obtain or undertake this proposed medical care within the next 45 days could lead to serious physical or mental disability or death because:

Signature:
(Date):
W. C. Medical Index No.:
Address:

STATE OF:
COUNTY OF:

Subscribed and sworn to before me by (Name) this (day) day of (month), 19__.

Notary Public:
My commission expires:

Section 5. Forms. (1) Revised Form 112 and Form 120EX are adopted effective October 26, 1992, and are incorporated by reference in this administrative regulation.

(2) Information available:

(a) Information and material is available for public inspection and copying at main, regional, and branch offices of the agency:

1. Frankfort Perimeter Park West Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

2. Louisville Fourth Floor The Meyer Building, 624 West Main Street, Louisville, Kentucky 40202;

3. Lexington 950 Commerce National Building, Lexington, Kentucky 40507;

4. Paducah 220B North 8th Street, Paducah, Kentucky 42001.

5. Pikeville The Justice Building, 3rd Floor, 314 316 Second Street, Pikeville, Kentucky 41501.

(b) Office hours of each office are 9 a.m. to 4 p.m., Monday through Friday, inclusive, for this purpose.]

WALTER W. TURNER, Commissioner
APPROVED BY AGENCY: October 9, 1996
FILED WITH LRC: October 9, 1996 at noon

ADMINISTRATIVE REGISTER - 2485

LABOR CABINET Department of Workers' Claims (As Amended)

803 KAR 25:089. Workers' Compensation Medical Fee Schedule for Physicians.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.020, 342.035

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035 requires the Commissioner of the Department of Workers' Claims to promulgate administrative regulations to ensure that all fees, charges and reimbursements for medical services under KRS Chapter 342 are limited to charges that are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. ~~[The function of]~~ This administrative regulation regulates ~~[is to regulate]~~ the fees of "physicians" as defined in KRS 342.0011(32).

Section 1. Definitions. (1) "Medical fee schedule" means ~~[refers to]~~ the ~~[1994]~~ Workers' Compensation Medical Fee Schedule for Physicians.

(2) "Physician" is defined by KRS 342.0011(32) ~~[shall have the same meaning as in KRS 342.0011]~~, and may also include other health care or medical services providers to whom a procedure code listed in the medical fee schedule is applicable if another fee schedule of the Department of Workers' Claims does not apply.

Section 2. Services Covered. The medical fee schedule shall govern~~[e]~~ all medical services provided to injured employees by physicians under KRS Chapter 342, and shall also apply ~~[also applies]~~ to other health care or medical services providers to whom a listed CPT code is applicable if another fee schedule of the Department of Workers' Claims does not apply, unless a lower fee is required by KRS 342.035 or a managed care plan approved by the commissioner pursuant to administrative regulations.

Section 3. Fee Computation. The appropriate fee for a procedure covered by the medical fee schedule shall be ~~[is]~~ obtained by multiplying the listed unit value for the medical procedure by the applicable conversion factor. The resulting fee shall be ~~[is]~~ the maximum fee allowed for the service provided.

Section 4. Incorporation by Reference. (1) The 1994 Workers' Compensation Medical Fee Schedule for Physicians, (September 13, 1996 edition), Department of Workers' Claims, is hereby incorporated by reference.

(2) Information and material is available for public inspection and copying at main, regional, and branch offices of the agency:

(a) Frankfort - Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

(b) Louisville - 410 West Chestnut Street, Suite 700, [Fourth Floor - The Meyer Building, 624 West Main Street] Louisville, Kentucky 40202;

(c) ~~[Lexington - 950 National City Plaza, Lexington, Kentucky 40507;~~

~~(d) Paducah - 220B North 8th Street, Paducah, Kentucky 42001;~~

~~(e) [e] Pikeville - 101 Summit Drive [The Justice Building, 3rd Floor, 314 316 Second Street], Pikeville, Kentucky 41501.~~

~~(f) [f] Office hours of each office are 9 a.m. to 4 p.m., Monday through Friday, inclusive, for this purpose. Copies of the medical fee schedule may be obtained from the agency upon payment of reproduction costs.~~

VALTER W. TURNER, Commissioner

APPROVED BY AGENCY: September 13, 1996

FILED WITH LRC: September 13, 1996 at noon

LABOR CABINET Department of Workers' Claims (As Amended)

803 KAR 25:096. Selection of physicians, ~~[and]~~ treatment plans and statements for medical services.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS ~~[Chapter 13A,]~~ 342.020, 342.035, 342.260, 342.320, 342.735

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 requires the Commissioner of the Department of Workers Claims to promulgate ~~[such]~~ administrative regulations ~~[as he considers]~~ necessary to carry on the work of the department under KRS Chapter 342. KRS 342.735 requires the commissioner to promulgate ~~[establish]~~ administrative regulations to expedite the payment of medical expense benefits. This administrative regulation regulates ~~[The function of 803 KAR 25:096 is to regulate]~~ the selection of physicians and provides for treatment plans under KRS Chapter 342 in order to assure high quality medical care at a reasonable cost.

Section 1. Definitions. (1) "Designated physician" means the physician selected by the employee for treatment pursuant to KRS 342.020(5).

(2) "Emergency care" means:

(a) Those medical services required for the immediate diagnosis or treatment of a medical condition that if not immediately diagnosed or treated could lead to a serious physical or mental disability or death; or

(b) Medical services which are immediately necessary to alleviate severe pain.

(3) "Long-term medical care" means:

(a) Medical treatment or medical rehabilitation that is reasonably projected to require a regimen of medical care for a period extending beyond ninety (90) days.

(b) Medical treatment that ~~[in fact]~~ continues for a period of more than ninety (90) days.

(c) Medical treatment including the recommendation that the employee not engage in the performance of the employee's usual work for a period of more than sixty (60) days.

(4) ~~[(2)]~~ "Physician" is defined in ~~[shall have the same meaning as in]~~ KRS 342.0011(32).

(5) "Statement for services" means:

(a) For nonpharmaceutical bills, a completed Form HCFA 1500, or for a hospital, a completed Form UB-92, with an attached copy of legible treatment notes, hospital admission and discharge summary, or other supporting documentation for the billed medical treatment, procedure, or hospitalization; and

(b) For pharmaceutical bills, a bill containing the identity of the prescribed medication, the number of units prescribed, the date of the prescription, and the name of the prescribing physician.

~~[(2)] "Designated physician" means the physician selected by the employee for treatment under KRS 342.020. The designated physician shall have sole authority to make referrals, as reasonably necessary, to specialists and appropriate treatment facilities. Except for emergency treatment, only treatment by or on referral from the designated physician shall be compensable.~~

(6) ~~[(4)]~~ "Treatment plan" means a written plan which may consist of copies of charts, consultation reports or other written documents maintained by the employee's designated physician discussing symptoms, clinical findings, results of diagnostic studies, diagnosis, prognosis, and the objectives, modalities, frequency, and duration of treatment. It shall include, as appropriate, details of the course of ongoing and recommended treatment and the projected results, and may be amended, supplemented or changed as conditions warrant.

~~[(5)] "Emergency care" means those medical services required for~~

the immediate diagnosis or treatment of a medical condition that if not immediately diagnosed or treated could lead to a serious physical or mental disability or death, or medical services which are immediately necessary to alleviate severe pain.

(6) "Statement for services" for the purposes of KRS 342.020(1), means a completed Form HCFA 1500 or, in the case of a hospital, a completed Form UB-92, or successors to such forms prescribed by the Commissioner of Insurance, with an attached copy of legible treatment notes, hospital admission and discharge summary, or other supporting documentation for the billed medical treatment, procedure, or hospitalization. For pharmaceutical bills, a statement for services means a bill containing at least the following information: identity of prescribed medication, number of units prescribed, date of prescription, and name of prescribing physician.]

Section 2. Employer's Obligation to Supply Kentucky Workers' Compensation Designation and Medical Release Card (Form 113). Within ten (10) days following receipt of notice of a work injury or occupational disease causing lost work time or necessitating medical treatment, the medical payment obligor shall mail a Form 113 to the employee, including a self-addressed, postage prepaid envelope for returning the Form 113. Failure by the medical payment obligor to timely mail the form shall waive an [waives any] objection to treatment by other than a designated physician prior to receipt by the employee of the form.

Section 3. Employee Selection of Physician. (1) Except for emergency care, [all] treatment for a work-related injury or occupational disease shall be rendered under the coordination of a single physician selected by the employee. The employee shall give notice to the medical payment obligor of the identity of the designated physician by tendering the completed Form 113, including a written acceptance by the designated physician, within ten (10) days after treatment is commenced by that physician.

(2) Within ten (10) days following [upon] receipt of a Form 113 designating a treating physician, the medical payment obligor shall tender a card to the employee, which shall be presented to a medical provider[s] each time that medical services are sought in connection with the work-related injury or occupational disease.

(3) The card shall serve as notice to a [the] medical provider[s] of the identity of the designated physician, who shall have the [has] sole authority to make referrals to treatment facilities or to specialists.

(a) The card shall bear the legend "First Designated Physician-Workers' Compensation" and shall further contain the following information:

1. Name and telephone number of the first designated physician;
2. Name, Social Security number, date of birth, and date of work injury or occupational disease and last exposure of the employee; and
3. Name and telephone number of the medical payment obligor.

(b) The reverse side of the first designated physician card shall contain:

1. A notice that [all] treatment shall [must] be performed by or on referral from the first designated physician; and

2. Shall further contain space for the identification and notification of a change of designated physician.

(4) Failure by the medical payment obligor to timely mail the "First Designated Physician" card shall waive an [waives any] objection to treatment by other than a designated physician prior to receipt by the employee of the card.

Section 4. Change of Designated Physician. (1) Following initial selection of a designated physician, the employee may change designated physicians once without authorization of the employer or its medical payment obligor. Referral by a designated physician to a specialist shall not constitute a change of designated physician unless the latter physician is specifically selected by the employee as the second designated physician.

(2) Following a decision to change the designated physician, the employee shall complete the back of the first designated physician card and return the card with the name of the second designated physician to the medical payment obligor, which shall issue a second card within ten (10) days.

(3) The card shall bear the legend "Second Designated Physician-Workers' Compensation" and shall further contain the information required on the first designated physician card. The reverse side of the card shall contain a notice that:

(a) Treatment shall [all treatment must] be performed by or on referral from the second designated physician; and

(b) [shall further contain] A [notice that any] further change of designated physician shall [will] require the written consent of the employer, its medical payment obligor or the administrative law judge.

(4) Failure by the medical payment obligor to timely mail the "Second Designated Physician" card shall waive an [waives any] objection to treatment by other than a designated physician prior to receipt by the employee of the card.

(5) [3] If [One] an employee's two (2) choices of designated physician have been exhausted, he shall [may] not, except as required by medical emergency, make an additional selection[s] of a physician[s] without the written consent of the employer, its medical payment obligor, or the administrative law judge [medical payment obligor's written consent or the consent of an administrative law judge]. This [Such] consent shall not be unreasonably withheld.

(6) [4] If the employer provides medical services through a managed health care system, it may establish alternate methods for provider selection within the managed health care plan.

Section 5. Treatment Plan. (1) A treatment plan shall be prepared if: [when any of the following occur:]

(a) Long-term medical care is required as a result of a work-related injury or occupational disease; or

(b) The employee has received treatment with passive modalities, including electronic stimulation, heat or [4] cold packs, massage, ultrasound, diathermy, whirlpool, or similar procedures for a period exceeding sixty (60) days. The treatment plan shall detail the need for the [such] passive treatment, the benefits, if any, derived from the [such] treatment, the risks attendant with termination of the treatment, and the projected period of future treatment; or

(c) An elective surgical procedure or placement into a resident work hardening, pain management, or medical rehabilitation program is recommended. The treatment plan shall set forth specific and measurable performance goals for the employee through the [any] surgery, work hardening, or medical rehabilitation program.

(2) The designated physician shall provide a copy of the treatment plan to the medical payment obligor seven (7) days in advance of an elective surgical procedure or placement into a resident work hardening, pain management, or medical rehabilitation program. In all other instances when a treatment plan is required, a copy of the treatment plan shall be provided within fifteen (15) days following a request by the medical payment obligor. An [All] amendment[s], supplement[s], or change[s] to a treatment plan shall [also] be furnished within fifteen (15) days following a request.

(3) Preparation of a treatment plan shall be [is] a necessary part of the care to be rendered and shall be [is] an integral part of the fee authorized in the medical fee schedule for the underlying services. An [No] additional fee shall not be charged for the preparation of a treatment plan or progress report[s], except for the reasonable cost of photocopying and mailing the [such] records.

Section 6. Tender of Statement for Services. If the medical services provider fails to submit a statement for services as required by KRS 342.020(1) without reasonable grounds, the medical bills shall not be compensable. [As required by KRS 342.020(1), the provider of medical services shall submit a statement

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~~for services within forty-five (45) days of the date treatment is initiated and every forty-five (45) days thereafter, as long as services are rendered. Failure to submit statements for services within forty-five (45) days, without reasonable grounds therefor, shall result in a finding that the bills are not compensable.~~

Section 7. Written Denial of Statement for Services Prior to the Resolution of Claim. Prior to resolution of a workers' compensation claim by opinion or order of an administrative law judge, the medical payment obligor shall notify the medical provider and employee of its denial of a specific statement for services, or payment for ~~all~~ future services from the same provider, in writing within forty-five (45) days following receipt of a completed statement for services. A copy ~~(Copies)~~ of the ~~written~~ denial shall be mailed to the employee, employer, and medical service provider~~(s)~~. The ~~written~~ denial shall include a statement of the reasons for denial and a brief synopsis of available utilization review or medical bill audit procedures with relevant telephone contact numbers. A ~~The written~~ denial shall ~~should~~ be made only for good faith reasons. Upon receipt of a ~~written~~ denial from a medical payment obligor, a medical provider may tender a statement for services to other potential payment sources or to the patient.

Section 8. Payment or Challenge to Statement for Services Following Resolution of Claim. (1) Following resolution of a claim by an opinion or order of an administrative law judge, including an order approving settlement of a disputed claim, the medical payment obligor shall tender payment or file a medical fee dispute with an appropriate motion to reopen the claim, within thirty (30) days following receipt of a completed statement for services ~~(as defined in Section 1(6) of this administrative regulation)~~.

(2) The thirty (30) day period provided in KRS 342.020(1) shall be ~~colled during a period in which~~ ~~(by occurrence of any of the following):~~

(a) ~~(During any period in which)~~ The medical provider ~~has~~ submitted an incomplete statement for services, ~~including a statement which lacks relevant treatment notes or a hospital admission and discharge summary~~. The payment obligor shall promptly notify the medical provider of a ~~any~~ deficient statement and shall request specific documentation. The medical payment obligor shall tender payment or file a medical fee dispute within thirty (30) days following receipt of the required documentation; or

(b) ~~(During such period as)~~ A medical provider fails to respond to a reasonable information request from the employer or its medical payment obligor pursuant to KRS 324.020(4); or

(c) ~~(During such period as)~~ The employee's designated physician fails to provide a treatment plan if ~~when~~ required by this administrative regulation; or

(d) ~~(During the pendency of)~~ The utilization review required by 803 KAR 25:190 is pending. The thirty (30) day period for filing a medical fee dispute shall commence on the date of rendition of the final decision from the utilization review or medical bill audit. A ~~Any~~ medical fee dispute filed thereafter shall include a copy of the final utilization review or medical bill audit decision and the ~~all~~ supporting medical opinions.

(3) An ~~No~~ obligation for payment or challenge shall not arise if ~~arises when~~ a statement for services clearly indicates that the services were not performed for a work-related condition.

Section 9. Payment Pursuant to Fee Schedules. If the statement for services contains charges in excess of those provided in the ~~an~~ applicable fee schedule adopted by the commissioner in 803 KAR 25:089, 803 KAR 25:091, and 803 KAR 25:092, the medical payment obligor shall make payment in the scheduled amount and shall serve a ~~the~~ written notice of denial ~~provided in 803 KAR 25:199~~ setting forth the reason for refusal to pay a greater amount. Following receipt of a final medical bill audit reconsideration decision

pursuant to 803 KAR 25:190, the medical provider may dispute the amount of payment within thirty (30) days by filing a medical fee dispute in accordance with 803 KAR 25:012.

Section 10. Patient Billing. (1) A medical provider may tender ~~(Nothing in this section shall prevent a medical provider from tendering)~~ a statement for services to a patient once it has received a written denial from the medical payment obligor or has received an opinion by an administrative law judge finding that the services were unrelated to a ~~any~~ work injury or occupational disease.

(2) The medical provider shall not bill a patient for services which have been found to be unreasonable or unnecessary by an administrative law judge, if the medical provider has been joined as a party to a workers' compensation claim or to a medical fee dispute and has had an opportunity to present any contrary evidence.

Section 11. Request for Payment for Services Provided or Expenses Incurred to Secure Medical Treatment. (1) If ~~When~~ an individual who is not a physician or medical provider provides compensable services for the cure or relief of a work injury or occupational disease, including home nursing services, the ~~that~~ individual shall submit a fully completed Form 114 to the employer or medical payment obligor within sixty (60) days of the date the service is initiated and every sixty (60) days thereafter, if appropriate, for so long as the services are rendered.

(2) Expenses incurred by an employee for access to compensable medical treatment for a work injury or occupational disease, including reasonable travel expenses, out-of-pocket payment for prescription medication, and similar items shall ~~also~~ be submitted to the employer or its medical payment obligor within sixty (60) days of incurring of the expense. A request ~~All requests~~ for payment~~(s)~~ shall be made ~~up~~ on a Form 114.

(3) Failure to timely submit the Form 114, without reasonable grounds, may result in a finding that the expenses are not compensable.

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

(a) Form 113, "Notice of Designated Physician", (August 15, 1996 Edition), Department of Workers Claims; and

(b) Form 114, "Request for Payment for Services or Reimbursement for Compensable Expenses", (August 15, 1996 Edition), Department of Workers Claims.

(2) This material may be inspected, copied, or obtained at the Department of Workers Claims, Monday through Friday, 9 a.m. to 4 p.m., at the following locations:

(a) Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

(b) 410 West Chestnut Street, Louisville, Kentucky 40202;

(c) 220B North 8th Street, Paducah, Kentucky 42001; or

(d) 101 Summit Drive, Pikeville, Kentucky 41501. ~~(Forms (1) Title and edition. Form 113, "Notice of Designated Physician", August 15, 1996 edition and Form 114 "Request for Payment for Services or Reimbursement for Compensable Expenses", August 15, 1996 edition are hereby incorporated by reference in this administrative regulation.~~

(2) Public notice.

(a) Forms are available and can be inspected and copied at main and branch offices of the Department of Workers Claims.

1. Frankfort — Perimeter Park West — Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

2. Louisville — 410 West Chestnut Street, Louisville, Kentucky 40202;

3. Paducah — 220B North 8th Street, Paducah, Kentucky 42001;

4. Pikeville — 101 Summit Drive, Pikeville, Kentucky 41501.

(b) Office hours of each office are 9 a.m. to 4 p.m. local time, Monday through Friday, inclusive for this purpose.]

[KRS 342.260 requires the Workers' Compensation Board to prepare such administrative regulations as it considers necessary to carry on its work and the work of the administrative law judges under KRS Chapter 342. KRS 342.735 requires the board to establish administrative regulations to expedite the payment of temporary total disability and medical expense benefits. The function of 803 KAR 25:096 is to regulate the selection of physicians and provide for treatment plans under KRS Chapter 342 in order to assure high quality medical care at a reasonable cost.

Section 1. Definitions. (1) "Long term medical care" means:

(a) Medical treatment or medical rehabilitation that is reasonably projected to require a regimen of medical care for a period extending beyond three (3) months;

(b) Medical treatment that in fact continues for a period of more than three (3) months;

(c) Medical treatment including the recommendation that the employee not engage in the performance of the employee's usual work for a period of more than sixty (60) days;

(2) "Physician" means physicians and surgeons, psychologists, optometrists, dentists, podiatrists, and osteopathic and chiropractic practitioners acting within the scope of their license;

(3) "Designated physician" means the physician selected by the employee for treatment under KRS 342.020;

(4) "Treatment plan" means a written plan which may consist of copies of charts, consultation reports or other written documents maintained by the employee's designated physician discussing symptoms, clinical findings, results of diagnostic studies, diagnosis, prognosis, and the objectives, modalities, frequency and duration of treatment. It shall include, as appropriate, details of the course of ongoing and recommended treatment and the projected results;

(5) "Emergency care" means those medical services required for the immediate diagnosis or treatment of a medical condition that if not immediately diagnosed or treated could lead to serious physical or mental disability or death, or medical services that are immediately necessary to alleviate severe pain.

Section 2. Kentucky Workers' Compensation Physician Designation and Medical Release Card. (1) As soon as practicable after receiving notice of the occurrence of a work-related injury or occupational disease for which the employee has sought or intends to seek medical treatment, the employer or employer's medical payment obligor shall mail to the worker the Kentucky Workers' Compensation Physician Designation and Medical Release Card in the format of Form 113 or similar format approved by the Department of Workers' Claims.

Section 3. Employee Selection of Physician. (1) Except for emergency care, all treatment for a work-related injury or occupational disease shall be rendered under the coordination of a single physician selected by the employee. The employee shall give notice to the employer, as soon as practicable, of the selection of a "designated physician". The designated physician may refer the employee to such additional physicians or medical service providers as are reasonably necessary for treatment or evaluation.

(2) A physician accepting the employee's selection of him as "designated physician" shall forward a completed copy of the Kentucky Workers' Compensation Physician Designation and Medical Release Card to the representative of the medical payment obligor.

(3) Following his initial selection of a designated physician, the employee may change designated physicians not more than one (1) time without authorization by the employer or its medical payment obligor. Thereafter, the employee may not, except as may be required by medical emergency, make additional selections of physicians without the employer's or medical payment obligor's or an administrative law judge's written consent. Such consent shall not be unreasonably withheld.

(4) This administrative regulation does not prohibit the direct utilization of licensed medical professionals acting within the scope of their authority.

Section 4. Necessity for Treatment Plan. (1) When as a result of a work-related injury or disease an employee has been placed under long term medical care, the designated physician shall prepare a treatment plan. A treatment plan may be amended, supplemented or changed as conditions warrant.

(2) If the employee has received treatment with passive modalities, which may include electronic stimulation, heat/cold, massage, ultrasound, diathermy, whirlpool or similar modes over a period exceeding sixty (60) days, a treatment plan shall be prepared which details the need for such treatment; the benefits, if any, derived from such treatment; the risks attendant with termination of such treatment; and the time frame in which such treatment is proposed to continue.

(3) A treatment plan shall be prepared and furnished to the employer or its payment obligor seven (7) days in advance of an elective surgical procedure or placement of the employee in a resident work hardening, pain management or medical rehabilitation program. The treatment plan shall set forth specific and measurable performance goals for the employee through any surgery, work hardening, or medical rehabilitation program.

(4) Except as provided in subsection (3) of this section, whenever a treatment plan is required to be prepared, amended, supplemented or changed pursuant to this administrative regulation, it shall be served by mail upon the employer or its medical payment obligor within fifteen (15) days of request.

(5) Preparation of a treatment plan as required by these administrative regulations is a necessary part of the care to be rendered to the patient and is an integral part of the fee authorized in a medical fee schedule for the underlying services. No additional fee shall be charged for the preparation of a treatment plan or progress reports, except a reasonable amount for the photocopying and mailing of such records.

Section 5. Experimental or Questioned Procedures. (1) When the employee has chosen a medical doctor as his designated physician, charges for treatment, diagnostic modalities, or methods which have been determined by the American Medical Association to be experimental, ineffective, of questionable value, cost ineffective, or harmful to the patient, shall be deemed nonecompensable under KRS 342.020 unless rendered with the employer's or medical payment obligor's consent.

(2) When the employee has chosen a chiropractor as his designated physician or the designated physician has referred the employee to a chiropractor, charges for treatment, diagnostic modalities, or methods which have been determined by the American Chiropractic Association to be experimental, ineffective, of questionable value, cost ineffective, or harmful to the patient, shall be deemed nonecompensable under KRS 342.020 unless rendered with the employer's or medical payment obligor's consent.

(3) After a Kentucky Workers' Compensation Physician Designation and Medical Release Card has been issued to the employee, the employee shall present the card to medical providers each time medical services are sought in connection with the work-related injury or occupational disease. The card will serve as authorization by the employee to the medical provider to release information as required by KRS 342.020(4).

(4) If the employee elects to change his designated physician, this shall be noted upon the Kentucky Worker's Compensation Physician Designation and Medical Release Card, and the physician accepting the new designation shall promptly forward a copy of the card reflecting the change to the medical payment obligor.

(5) The medical payment obligor shall have available, during regular business hours, an agent who will answer telephone inquiries from medical providers or the employee concerning the claim.

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Section 6. Forms. (1) Form 113 is hereby adopted and incorporated in this administrative regulation by reference.

(2) Information available.

(a) Information and material is available for public inspection and copying at main, regional, and branch offices of the agency:

1. Frankfort Perimeter Park West Building C, 1270 Louisville Road, Frankfort, Kentucky 40604;

2. Louisville Fourth Floor The Meyer Building, 624 West Main Street, Louisville, Kentucky 40202;

3. Lexington 950 Commerce National Building, Lexington, Kentucky 40507;

4. Paducah 220B North 8th Street, Paducah, Kentucky 42001; and

5. Pikeville The Justice Building, 3rd Floor, 314 316 Second Street, Pikeville, Kentucky 41501.]

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 9, 1996 at noon

LABOR CABINET Department of Workers' Claims (As Amended)

803 KAR 25:190. Utilization review and medical bill audit.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.035(5), 342.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 provides that the Commissioner of the Department of Workers' Claims shall promulgate administrative regulations necessary to carry on the work of the Department of Workers' Claims, and the commissioner may promulgate administrative regulations not inconsistent with the provisions of KRS Chapter 342. KRS 342.035(5) provides that the Commissioner of the Department of Workers' Claims shall promulgate administrative regulations that require each insurance carrier, group self-insurer and individual self-insured employer to certify to the commissioner the program it has adopted to insure compliance with the medical fee schedule provisions of KRS 342.035(1) and (4). KRS 342.035(5) also requires the commissioner to promulgate administrative regulations governing medical provider utilization review activities conducted by an insurance carrier, group self-insurer or self-insured employer pursuant to KRS Chapter 342. [The function of] This administrative regulation [is to] insure that [all] insurance carriers, group self-insurers, and individual self-insured employers implement a utilization review and audit program.

Section 1. Definitions. (1) "Commissioner" is defined by KRS 342.0011(9). [means the Commissioner of the Department of Workers' Claims.]

(2) "Denial" means a determination by the utilization reviewer that the medical treatment or service under review is not medically necessary or appropriate and, therefore, payment is not recommended.

(3) "Medical bill audit" means the review of medical bills for services which have been provided to assure compliance with adopted fee schedules.

(4) [(2)] "Preauthorization" means a review by the utilization review program of the medical necessity and appropriateness of medical services prior to the service being rendered.

(5) [(4)] "Utilization review" means a review of the medical necessity and appropriateness of medical care and services for purposes of recommending payments [determining the availability of payment] for a compensable injury or disease [injuries or diseases]. Medical services which are rendered or requested for incidents which are noncompensable under KRS Chapter 342 shall not be [are not]

subject to utilization review [under this administrative regulation].

(6) [(5)] "Utilization review and medical bill audit plan" means the written plan submitted to the commissioner by each insurance carrier, individual self-insured employer, group self-insurer, or vendor describing the procedures governing utilization review and medical bills audit activities.

(7) [(6)] "Vendor" means a person or entity which is not required [by this administrative regulation] to implement a utilization review or medical bill audit program, but which implements a utilization review and medical bill audit program for purposes of offering those services to insurance carriers, individual self-insured employers or group self-insurers.

Section 2. Utilization Review and Medical Bill Audit Program. (1) The utilization review program shall assure that:

(a) A utilization reviewer is [reviewers are] appropriately qualified;

(b) Treatment rendered to an injured worker[s] is medically necessary and appropriate; and

(c) Necessary medical services are not withheld or unreasonably delayed.

(2) The medical bill audit program shall assure that:

(a) A statement or payment [statements and payments] for medical goods and services and charges for a deposition, report, or photocopy complies [depositions, reports, and photocopies comply] with KRS Chapter 342 and applicable administrative regulations;

(b) A medical bill auditor is [auditors are] appropriately qualified; and

(c) A statement [statements] for medical services is [are] not disputed without reasonable grounds.

Section 3. Utilization Review and Medical Bill Audit Plan Approval. (1) An insurance carrier, individual self-insured employer, and group self-insurer [All insurance carriers, individual self-insured employers, and group self-insurers] shall fully implement and [thereafter] maintain a utilization review and medical bill audit program.

(2) Each insurance carrier, individual self-insured employer and group self-insurer shall provide to the commissioner a written plan describing the utilization review and medical bill audit program. The commissioner shall approve a utilization review and medical bill audit plan which complies [plans which comply] with the requirements of this administrative regulation and KRS Chapter 342.

(3) A vendor[s] shall submit to the commissioner for approval a written plan describing the utilization review and medical bill audit program. The utilization review and medical bill audit program described in the written plan shall comply with [all] the requirements of this administrative regulation. Upon approval, the vendor shall [will] receive written notice from the commissioner.

(4) Utilization review shall [may only] be performed by a private review agent certified by the Kentucky [Human Resources] Cabinet for Health Services pursuant to KRS 211.461 to 211.466. [Prior to obtaining approval by the commissioner for a utilization review plan, each applicant shall be certified by the Kentucky Cabinet for Human Resources as a private review agent pursuant to KRS 211.461 to 211.466.] A medical bill audit plan shall [plans do] not require certification by the Kentucky Cabinet for Health Services [Human Resources].

(5) An insurance carrier, individual self-insured employer, and group self-insurer [insurance carriers, individual self-insured employers, and group self-insurers] which contracts with an approved vendor[s] for utilization review or medical bill audit services shall notify the commissioner of the contractual arrangement. The contractual arrangement may provide for separate utilization review and medical bill audit vendors.

(6) A plan[s] shall be approved for a period of four (4) years, or until December 31, 2000, whichever is later. At least ninety (90) days

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prior to December 31, 2000, and every four (4) years thereafter, an insurance carrier, individual self-insured employer, group self-insurer, and approved vendor ~~[insurance carriers, individual self-insured employers, group self-insurers and approved vendors]~~ shall apply for renewal of the approval. During the term of an approved plan, the commissioner shall ~~[must]~~ be notified as soon as practicable of a ~~[any]~~ material change in the approved plan or a ~~[any]~~ change in the selection of a vendor.

Section 4. Utilization Review and Medical Bill Audit Written Plan Requirements. The written utilization review and medical bill audit plan submitted to the commissioner shall include the following elements:

(1) A description of the process, policies and procedures whereby decisions shall be made.

(2) A description of the specific criteria utilized in the decision making process, including a description of the specific medical guidelines used as the resource to confirm the medical diagnosis and to provide consistent criteria and practice standards against which care quality and related costs are measured.

(3) A description of the criteria by which claims, medical services and medical bills shall ~~[will]~~ be selected for review.

(4) A description of the qualifications of internal and consulting personnel who shall ~~[will]~~ conduct utilization review and medical bill audit and the manner in which the personnel shall be ~~[are]~~ involved in the review process.

(5) A description of the process to assure that treatment plans shall be ~~[are]~~ obtained for review by qualified medical personnel if a ~~[in all instances where]~~ treatment plan is required by ~~[plans are required under]~~ 803 KAR 25:096.

(6) A description of the process to assure that a physician shall be ~~[is]~~ designated by each injured employee as required under 803 KAR 25:096.

(7) A description of the process for rendering and promptly notifying the medical provider~~[s]~~ and employee~~[s]~~ of the initial utilization review decision~~[s]~~.

(8) A description of the reconsideration process within the structure of the utilization review and medical bill audit program.

(9) An assurance that a database shall be ~~[is]~~ maintained recording the instances of utilization review, medical bill audit, the name of the reviewer, the extent of the review, the conclusions of the reviewer, and the action, if any, taken as the result of the review. Data shall be maintained for a period of no less than two (2) years and shall be ~~[is]~~ subject to audit by the commissioner, or his agent pursuant to KRS 342.035(5)(b).

(10) An assurance that a toll free line shall be ~~[is]~~ provided for an employee or medical provider ~~[employees and medical providers]~~ to contact the utilization reviewer. The reviewer or a representative of the reviewer shall be reasonably accessible to interested parties at least five (5) days per ~~[a]~~ week, forty (40) hours per ~~[a]~~ week during normal business hours.

(11) A description of the policies and procedures that shall ~~[will]~~ be implemented to protect the confidentiality of patient information.

(12) An assurance that the acute low back pain practice parameter adopted by the commissioner pursuant to KRS 342.035(8)(a) shall be ~~[is]~~ incorporated in the plan as the standard for evaluating applicable low back claims. Additional medical guidelines which may be adopted by the commissioner pursuant to KRS 342.035(8)(a) shall be incorporated in a utilization review plan~~[s]~~.

Section 5. Claim Selection Criteria. (1) Unless the claim is denied as noncompensable, a claim shall be ~~[claims are]~~ subject to utilization review if ~~[when any of the following occur]~~:

(a) ~~[Upon]~~ A medical provider requests preauthorization of a ~~[provider's request for preauthorization of any]~~ medical treatment or procedure; or

(b) ~~[Upon]~~ Notification of a surgical procedure or resident

placement pursuant to an 803 KAR 25:096 treatment plan is received; or

(c) The ~~[When]~~ total medical costs cumulatively exceed \$3000; or

(d) The ~~[When]~~ total lost work days cumulatively exceed thirty (30) days; or

(e) ~~[By order of]~~ An administrative law judge orders a review.

(2) If ~~[When]~~ applicable, utilization review shall ~~[must]~~ begin no later than fifteen (15) days following the occurrence of a ~~[any]~~ claims selection criteria. The initial utilization review decision shall ~~[must]~~ be rendered within thirty (30) days of the initiation of the utilization review process.

(3) A medical provider may request an expedited utilization review determination for proposed medical treatment or services, the lack of which could reasonably be expected to lead to serious physical or mental disability or death. The expedited utilization review determination shall be provided within twenty-four (24) hours following a request for expedited review.

(4) Initiation of utilization review shall toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020. The thirty (30) day period shall commence on the date of the final utilization review decision.

(5) Each medical bill ~~[, regardless of the amount of the bill,]~~ shall be audited within seven (7) days of receipt to assure:

(a) Compliance with applicable fee schedules;

(b) Accuracy; and

(c) That a physician has been designated in accordance with 803 KAR 25:096.

(6) A medical bill audit shall ~~[dees]~~ not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020.

~~[(4) Initiation of utilization review shall toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020. The thirty (30) day period shall commence on the date of the final utilization review decision.]~~

Section 6. Utilization Review and Medical Bill Audit Personnel Qualifications. (1) Utilization review personnel shall have education, training, and experience necessary for evaluating the clinical issues and services under review. A licensed physician, registered nurse, licensed practical nurse, medical records technician ~~[Only licensed physicians, registered nurses, licensed practical nurses, medical records technicians]~~ or other personnel, who through training and experience is ~~[are]~~ qualified to issue decisions on medical necessity or appropriateness, shall issue the initial utilization review approval~~[s]~~.

(2) A licensed physician ~~[Only licensed physicians]~~ shall issue an initial utilization review denial~~[s]~~. A licensed physician ~~[Only licensed physicians]~~ shall supervise utilization review personnel in making utilization review recommendations. Personnel shall hold the ~~[any]~~ license required by the jurisdiction in which they are employed.

(3) Personnel conducting a medical bill audit, shall have the education, training or experience necessary for evaluating medical bills and statements.

Section 7. Written Notice of Denial. (1) Following initial review, a written notice of denial shall be issued to both the treating physician and the employee in a timely manner no more than ~~[, but in no event to exceed]~~ thirty (30) days from the initiation of the utilization review process. The notice of denial shall be clearly entitled "UTILIZATION REVIEW - NOTICE OF DENIAL" and shall contain:

(a) A statement of the medical reasons for denial;

(b) The name, state of licensure and medical license number of the reviewer; and

(c) An explanation of utilization review reconsideration rights. ~~[The reason for denial shall indicate the medical basis for the decision.]~~

(2) Payment for medical services shall not be denied on the basis

of lack of information absent documentation of a good faith effort to obtain the necessary information.

Section 8. Reconsideration. (1) A reconsideration process to appeal an initial decision shall be provided within the structure of utilization review [whereby initial decisions may be appealed]. An [Any] aggrieved party may request reconsideration of the utilization review decision. Reconsideration of the initial utilization review decision shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer. A written decision shall be rendered within twenty-one (21) days of receipt of a request for reconsideration. The written decision shall be clearly entitled "UTILIZATION REVIEW - RECONSIDERATION DECISION". If the reconsideration decision is made by an appropriate specialist or subspecialist, the written decision shall further be entitled "FINAL UTILIZATION REVIEW DECISION". Those portions of the medical record that are relevant to the reconsideration, if authorized by the patient and in accordance with state or federal law, shall be considered and providers shall be given the opportunity to present additional information.

(2) If a utilization review denial is upheld upon reconsideration and a board eligible or certified physician in the appropriate specialty or subspecialty area has not previously reviewed the matter, an aggrieved party may request further review by a board eligible or certified physician in the appropriate specialty or subspecialty. A written decision shall be rendered within ten (10) days of the request for specialty reconsideration. The specialty decision shall be clearly entitled "FINAL UTILIZATION REVIEW DECISION".

(3) A reconsideration process to appeal an initial decision shall be provided within the structure of medical bill audit [whereby initial decisions may be appealed]. An [Any] aggrieved party may request reconsideration of the medical bill audit decision. Reconsideration shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer. A written decision shall be rendered within seven (7) [twenty-one (21)] days of receipt of a request for reconsideration. The written decision shall be clearly entitled "MEDICAL BILL AUDIT - RECONSIDERATION DECISION". A request for reconsideration of the medical bill audit decision shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020.

[Section 1. Definitions. (1) "Commissioner" means the Commissioner of the Department of Workers' Claims.

(2) "Utilization review and medical bill audit plan" means the written plan submitted to the Commissioner of the Department of Workers' Claims by each insurance carrier, individual self insured employer and group self insurer describing the procedures governing utilization review and medical bills audit activities.

(3) "Utilization review" means the system used to manage and assess patient care through case by case assessment of the medical necessity and appropriateness of medical care and services for purposes of determining the availability of payment for compensable injuries or diseases. Medical services which are rendered or requested for incidents which are nonecompensable under KRS Chapter 342 are not subject to utilization review under this administrative regulation.

(4) "Medical bill audit" means the review of medical bills for services which have been provided to assure compliance with adopted fee schedules.

Section 2. Utilization Review and Medical Bill Audit Program. (1) The utilization review program shall assure that: utilization reviewers are appropriately qualified; that treatment rendered injured workers is medically necessary and appropriate; and that necessary medical services are not withheld or unreasonably delayed.

(2) The medical bill audit program shall assure that: statements and payments for medical goods and services and charges for

depositions, reports, and photocopies comply with KRS Chapter 342 and applicable administrative regulations; medical bill auditors are appropriately qualified; and, statements for medical services are not disputed without reasonable grounds.

(3) Each insurance carrier, individual self insured employer, and group self insurer shall fully implement and thereafter maintain a utilization review and medical bill audit program no later than February 1, 1996.

Section 3. Utilization Review and Medical Bill Audit Plan Requirements. No later than December 1, 1995 each insurance carrier, individual self insured employer and group self insurer shall provide to the commissioner a written plan for the implementation of a utilization review and medical bill audit program. The utilization review and medical bill audit plan shall include:

(1) A description of the process, policies and procedures whereby decisions shall be made;

(2) A description of the specific criteria utilized in the decision making process including treatment protocols or standards in any software, database or other resource used in the development of the review processes;

(3) A description of the criteria by which claims, medical services and medical bills will be selected for review;

(4) A description of the qualifications of internal and consulting personnel who will conduct the utilization review, demonstrating education, training, and experience pertinent to evaluating the clinical issues and services under review and the manner in which the personnel are involved in the review process. The plan shall demonstrate that only licensed physicians, registered nurses, licensed practical nurses, medical records technicians or other personnel, who through training and experience are qualified to issue decisions on medical necessity or appropriateness, shall approve utilization review decisions. Only licensed physicians shall issue utilization review denials and only licensed physicians shall supervise utilization review personnel conducting case review. Personnel making utilization review recommendations and decisions shall hold any license required by the jurisdiction in which they are employed;

(5) A description of the qualifications of internal and consulting personnel who will conduct medical bill audits, demonstrating education, training and experience pertinent to evaluating medical bills and statements. Personnel conducting medical bill audits shall hold any license required by the jurisdiction in which they are employed;

(6) A process to assure that treatment plans are obtained for review by qualified medical personnel in all instances where treatment plans are required under 803 KAR 25:096;

(7) A timetable for implementation of a utilization review and medical bill audit program which shall provide for full implementation no later than February 1, 1996;

(8) A system for promptly notifying treating physicians and other providers of utilization review denials. Notices of denials shall contain a statement of the reasons for denial, the name, state of licensure and medical license number of the reviewer, and reconsideration rights. Payment for medical services shall not be denied on the basis of lack of information absent documentation of a good faith effort to obtain the necessary information;

(9) A database recording the instances of utilization review, medical bill audit, the name of the reviewer, the extent of the review, the conclusions of the reviewer, and the action, if any, taken as the result of the review. Data shall be maintained for a period of no less than two (2) years and is subject to audit by the commissioner, or his designee pursuant to KRS 342.035(5)(b);

(10) A provision for the audit of each medical bill, medical report, and deposition fee regardless of the amount of the bill;

(11) A description of the policies and procedures to assure that the reviewer or a representative of the reviewer shall be reasonably accessible to interested parties at least five (5) days/week, forty (40)

hours/week during normal business hours.

~~(12) A description of a reconsideration process, within the structure of utilization review and medical bill audit, whereby initial determinations may be appealed. Any medical provider may request reconsideration by the utilization reviewer or medical bill auditor. Reconsideration of the initial utilization review decisions shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer. A decision shall be rendered within twenty-one (21) days of receipt of a request for reconsideration. If the denial is upheld, upon reconsideration and a board eligible or certified physician in the appropriate specialty or subspecialty area has not previously reviewed the matter, the provider may request further review by a board eligible or certified physician in the appropriate specialty or subspecialty; a final decision shall be rendered within ten (10) days of the request for specialty reconsideration. The carrier's obligation to render payment is tolled during the period of reconsideration. The appeal procedure shall provide for timely notice to anyone aggrieved by the initial decision of the right to appeal and shall provide for a written decision upon appeal; and~~

~~(13) A description of the policies and procedures that will be implemented to protect the confidentiality of patient information.]~~

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: October 9, 1996

FILED WITH LRC: October 9, 1996 at noon

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
Division of Explosives and Blasting
(As Amended)

805 KAR 4:085. Dealer registration; record requirements.

RELATES TO: KRS 351.350, 351.365, 351.367(6), (7), (9), 26
 CFR 55.121-55.129

STATUTORY AUTHORITY: KRS ~~[Chapter 13A,]~~ 351.335(1)

NECESSITY AND FUNCTION: KRS 351.335(1) authorizes ~~[requires]~~ the Department of Mines and Minerals to promulgate rules and administrative regulations concerning the manufacture, transportation, sale, storage, or use of explosives and unassembled components of explosives and the maintenance of such explosives which has a direct bearing on safety to life and property. This administrative regulation establishes requirements for explosive dealer registration and the retention of records relating to explosives transactions. ~~[effects the provisions of that law.]~~

Section 1. A person intending to engage in business as an importer, manufacturer, or dealer of explosive materials is required by KRS 351.365 to register with the Department of Mines and Minerals. Registration shall be done, prior to engaging in business, by filling out the registration form (EC-12). This form shall be completed and submitted to the department annually. [Dealer Registration. Each person intending to engage in business as an importer or a manufacturer of, or a dealer in, explosive materials shall, before commencing such business, be required annually to register with the Department of Mines and Minerals. Each person shall annually fill out the registration form (EC-12), revised December 1996 [1979], incorporated herein by reference. This form may be obtained from the Department of Mines and Minerals, 3572 Ironworks Pike, Lexington, Kentucky 40511 during normal business hours from 8 a.m. to 4:30 p.m.]

Section 2. Record Requirements. (1) A ~~[Each]~~ person, corporation or entity engaged in the manufacture, purchase, distribution or selling, of explosives shall maintain, in a permanent form, ~~[such]~~

records of importation, production, shipment, receipt, sale or other disposition, including the number of the permit to purchase explosives.

(2) All records shall be retained for a period of not less than five (5) years from the date the transaction occurs or until discontinuance of business or operations. All records shall be subject to inspection and examination by the Department of Mines and Minerals.

(3) The records required to be maintained pursuant to Title 26, part 55.121-55.129 of the Code of Federal Regulations of the Bureau of Alcohol, Tobacco, and Firearms shall satisfy the requirements of this section.

Section 3. Magazine Identification. (1) ~~[All permanent, fixed, or stationary magazines shall be registered annually with the Department of Mines and Minerals. Registration forms EC-11, revised December, 1990, is incorporated herein by reference. This form may be obtained from the Department of Mines and Minerals, 3572 Ironworks Pike, Lexington, Kentucky 40511 during normal business hours from 8 a.m. to 4:30 p.m.]~~

~~(2) A magazine~~ [All [portable] magazines] shall have identification tags. A semitrailer ~~[Semitrailer]~~ containing blasting agents is ~~[are]~~ excluded from this requirement if it has ~~[provided they have]~~ a current license plate attached.

~~(3) An identification tag~~ [The identification tags] shall be approximately three (3) inches long by two (2) inches wide and shall be lettered or painted directly onto the magazine or attached so ~~[such]~~ that normal use and weather will not render the tag illegible.

~~(4) The tag[s]~~ shall provide the following information:

- (a) Name of owner;
- (b) Address;
- (c) Person responsible for security of the magazine; and
- (d) Telephone number.

Section 4. Incorporation by Reference. (1) Form "(EC-12)", (revised December 1996), is incorporated by reference.

(2) It may be inspected, copied, or obtained from the Department of Mines and Minerals, 3572 Ironworks Pike, Lexington, Kentucky 40511 during normal business hours, Monday through Friday, 8 a.m. to 4:30 p.m.

LAURA M. DOUGLAS, Secretary

JOHN L. FRANKLIN, Commissioner

APPROVED BY AGENCY: September 11, 1996

FILED WITH LRC: September 13, 1996 at 8 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
Division of Explosives and Blasting
(As Amended)

805 KAR 4:093. Permit to purchase or possess explosives.

RELATES TO: KRS 351.367, 351.370

STATUTORY AUTHORITY: KRS 351.335(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.335(1) authorizes ~~[requires]~~ the Department of Mines and Minerals to promulgate rules and administrative regulations concerning the manufacture, transportation, sale, storage, or use of explosives and unassembled components of explosives, and the maintenance of such explosives which have a direct bearing on safety to life and property. This administrative regulation establishes guidelines for the necessity of and procedure for obtaining a permit for the purchase of possession of explosives. ~~[effects the provisions of that statute.]~~

Section 1. (1) Each person, firm, association, or corporation

intending to purchase or take possession of explosives shall complete the application form (EC-52), and pay the application fee established by KRS 351.367(2). ~~[revised August 1996. This form may be obtained from the Department of Mines and Minerals, 3572 Ironworks Pike, Lexington, Kentucky 40511 during normal business hours from 8 a.m. to 4:30 p.m.]~~

(2) Each holder of a permit to purchase or possess explosives shall provide a copy of his permit to the explosive dealer or distributor prior to the transfer of the explosive materials.

(3) A permit to purchase or possess explosives shall be obtained prior to purchasing or taking possession of any explosive materials, including all high explosives, blasting agents, and detonators, and two (2) component, binary explosive compounds.

(4) The following materials are exempt from the requirement to obtain a permit:

(a) Oil well perforating charges of less than ninety (90) grams each;

(b) All grades of blackpowder suitable for firearms;

(c) All fireworks; and

(d) Any propellant powder for firearms or rockets.

(5) Any person who signs the application for a permit, either as an individual or as a representative of a corporation, firm, or association, shall be accountable for the explosives purchased under the terms of the permit.

(6) A permit holder may purchase explosives for use on several different business locations or construction sites, if [provided that] the person designated on the permit application is [shall be] the central agent ordering the explosives, and is [shall be] responsible for the security and disposition of the explosives at all sites.

(7) If a single corporation or company has multiple business sites, each of which purchases explosives independently, each site shall obtain its own permit.

Section 2. Incorporation by Reference. (1) Form "(EC-52)", (revised August 1996), is incorporated by reference.

(2) It may be inspected, copied, or obtained from the Department of Mines and Minerals, 3572 Ironworks Pike, Lexington, Kentucky 40511 during normal business hours, Monday through Friday, 8 a.m. to 4:30 p.m.

LAURA M. DOUGLAS, Secretary

JOHN L. FRANKLIN, Commissioner

APPROVED BY AGENCY: September 5, 1996

FILED WITH LRC: September 13, 1996 at 8 a.m.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Mines and Minerals
Division of Explosives and Blasting
(As Amended)

805 KAR 4:140. Misfires.

RELATES TO: KRS 351.315, 351.350

STATUTORY AUTHORITY: KRS ~~[Chapter 13A,]~~ 351.335(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.335(1)

authorizes [requires] the Department of Mines and Minerals to promulgate rules and administrative regulations concerning the manufacture, transportation, sale, storage, or use of explosives and unassembled components of explosives, and the maintenance of such explosives which has a direct bearing on safety to life and property. This administrative regulation establishes safety guidelines for licensed blasters in the event of a misfire. [effects the revisions of that law.]

Section 1. (1) If a misfire is found, the blaster shall guard the blasting area and exclude [provide proper safeguards for excluding]

all employees from the danger zone.

(2) No other work shall be done except that necessary to remove the hazard of the misfire and only those employees necessary to do the work shall remain in the danger zone.

(3) No attempt shall be made to extract explosives from any charged or misfired hole; a new primer shall be put in and the hole reblasted. If refiring on the misfired hole presents a hazard, the explosives may be removed by washing out with water or, if [where] the misfire is under water, blown out with air.

(4) If there is a misfire [are any misfires] while using cap and fuse, all employees shall remain away from the charge for at least one (1) hour.

(5) If [When] electric blasting caps have been used, employees shall not return to misfired holes for at least fifteen (15) minutes.

(6) If [When] a completely nonelectric initiation system, other than safety fuse, has been used, persons shall not return to a misfired hole[s] for at least fifteen (15) minutes.

(7) [No] Drilling, digging, or picking shall not be permitted until all missed holes have been detonated or the authorized representative has approved that work can proceed.

(8) A misfire [Misfires] shall be handled under the direction of the blaster in charge. All connections shall be carefully traced and a search made for unexploded charges.

~~[(9) All misfires and premature detonations shall be reported to the department within three (3) days of such occurrence. The blaster shall provide information regarding the date and time of the occurrence, the type of explosives and initiation system used, and the cause of the malfunction if it is known.]~~

LAURA M. DOUGLAS, Secretary

JOHN L. FRANKLIN, Commissioner

APPROVED BY AGENCY: September 11, 1996

FILED WITH LRC: September 13, 1996 at 8 a.m.

PUBLIC PROTECTION AND REGULATION CABINET Department of Mines and Minerals (As Amended)

805 KAR 5:070. Minimum requirements for roof support and the roof control plan approval process.

RELATES TO: KRS ~~[364.020,]~~ 352.201

STATUTORY AUTHORITY: KRS 351.070(13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 352.201

requires each underground coal mine to formulate and follow an approved roof control plan. ~~[The minimum standards of roof support which are required by the department as a part of its roof control plan approval process are not currently set out in statute or administrative regulation.]~~ This proposed administrative regulation establishes those minimum standards for roof support and the roof control plan approval process.

Section 1. Definitions. The definitions established in KRS 351.010 and 352.010 shall apply to this administrative regulation, in addition to those set out below:

(1) ~~[(2)]~~ "Automated temporary roof support" or "ATRS" means a mechanical device used to temporarily support the roof while roof bolts are being installed.

(2) ~~[(3)]~~ "Automated temporary roof support system" means the devices and mechanisms - including the ATRS - used, and methods followed by which ATRS is activated and set to support the roof.

(3) ~~[(4)]~~ "Mining height" means the distance between the bottom of the coal seam and the bottom of permanent mechanical roof support, and specifically does not include or apply to the brushing of top or bottom for construction work and to coal left unmined for purposes of providing additional roof support.

(4) ~~[(5)]~~ "Pillar recovery" means any reduction in pillar size during retreat mining.

(5) ~~[(4)]~~ "Roof control plan" means the plan and its revisions which has been adopted by the licensee for support of the mine roof and approved by the commissioner or his authorized representative pursuant to KRS 352.201(1).

Section 2. Mining Methods. (1) The method of mining shall not expose any person to hazards caused by excessive widths of rooms, crosscuts and entries, or faulty pillar recovery methods. Pillar dimensions shall be compatible with effective control of the roof, face, ribs and coal or rock bursts.

(2) A sightline or other method of directional control shall be used to maintain the projected direction of mining in entries, rooms, crosscuts and pillar splits.

(3) A sidecut shall be started only from an area that is supported in accordance with the roof control plan.

(4) A working face shall not be mined through into an unsupported area of active workings, except when the unsupported area is inaccessible.

(5) Additional roof support shall be installed where:

(a) The width of the opening specified in the roof control plan is exceeded by more than twelve (12) inches; and

(b) The distance over which the excessive width exists is more than five (5) feet.

Section 3. Roof Bolting. ~~[The following material is incorporated by reference: American Society for Testing and Materials (ASTM), Designation: F 432-95, "Standard Specification for Roof and Rock Bolts and Accessories, 1995 Edition." Copies of the material incorporated by reference may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103, (610) 832-9500; it is also available for public inspection at the Department of Mines and Minerals, Administration Building, 3572 Iron Works Pike, Lexington, Kentucky, Monday through Friday, from 8 a.m. until 4:30 p.m.]~~

(1) For roof bolts and accessories addressed in American Society for Testing and Materials (ASTM, F 432-95), the licensee shall:

(a) Obtain a manufacturer's certification that the material was manufactured and tested in accordance with the specifications of ASTM; and

(b) Make this certification available to an authorized representative of the commissioner.

(2) Roof bolts and accessories not addressed in the material incorporated by reference may be used, if [provided that] the use of those roof bolts and accessories is approved by the commissioner or his authorized representative based on:

(a) Demonstrations which show that the materials have successfully supported the roof in an area of a coal mine with similar strata, opening dimensions and roof stresses; or

(b) Tests which show the materials to be effective for supporting the roof in an area of the affected mine which has strata, opening dimensions and roof stresses similar to those in the area where the roof bolts are to be used; during the test process, access to the test area shall be limited to persons necessary to conduct the test.

(3) A bearing plate shall be firmly installed with each roof bolt.

(4) A bearing plate[s] used directly against the mine roof shall be at least six (6) inches square ~~[or the equivalent]~~, except that if [where] the mine roof is firm and not susceptible to sloughing, bearing plates five (5) inches square ~~[or the equivalent]~~ may be used.

(5) A bearing plate[s] used with wood or metal materials shall be at least four (4) inches square ~~[or the equivalent]~~.

(6) Wooden materials that are used between a bearing plate and the mine roof in an area[s] which will be used for three (3) years or more shall be treated to minimize deterioration.

(7) When washers are used with roof bolts, the washers shall

conform to the shape of the roof bolt head and bearing plate.

(8) The diameter of a finishing bit[s] shall be within a tolerance of plus or minus 0.030 inch of the manufacturer's recommended hole diameter for the anchor used.

(9) When separate finishing bits are used, they shall be distinguishable from other bits.

Section 4. Tensioned Roof Bolts. (1) Roof bolts that provide support by creating a beam of laminated strata shall be at least thirty (30) inches long. Roof bolts that provide support by suspending the roof from overlying stronger strata shall be long enough to anchor at least twelve (12) inches into the stronger strata.

(2) Test holes, spaced at intervals specified in the roof control plan, shall be drilled to a depth of at least twelve (12) inches above the anchorage horizon of the bolts being used. When a test hole indicates that bolts would not anchor in competent strata, corrective action shall be immediately taken.

(3) The installed torque or tension ranges for roof bolts as specified in the roof control plan shall maintain the integrity of the support system and shall exceed neither the yield point of the roof bolt nor anchorage capacity of the strata.

(4) In each roof bolting cycle, the actual torque or tension of the first tensioned roof bolt installed with each drill head shall be measured immediately after it is installed. Thereafter, for each drill head used, at least one (1) roof bolt out of every four (4) installed shall be measured for actual torque or tension. If the torque or tension of any of the roof bolts measured is not within the range specified in the roof control plan, corrective action shall be taken.

(5) In a working place[s] from which coal is produced during any portion of a twenty-four (24) hour period, the actual torque or tension on at least one (1) out of every ten (10) previously installed, mechanically anchored, tensioned roof bolts shall be measured from the outby corner of the last open crosscut to the face in each advancing section. Corrective action shall be taken if the majority of the bolts measured:

(a) Do not maintain at least the following percentages of the minimum torque or tension specified in the roof control plan:

1. Seventy (70) percent; or

2. [of the minimum torque or tension specified in the roof control plan.] Fifty (50) percent if the roof bolt plates bear against wood; [or]

(b) Have exceeded the maximum specified torque or tension by fifty (50) percent.

(6) The licensee or a person designated by him shall certify by signature and date that measurements required by subsection (5) of this section have been made. This certification shall be maintained for at least one (1) year and shall be made available to an authorized representative of the commissioner and representatives of the miners.

(7) A tensioned roof bolt[s] installed in the roof support pattern shall not be used to anchor trailing cables or used for any other purpose that could affect the tension of the bolt. The hanging of trailing cables, line brattice, telephone lines, or other similar devices which do not place a sudden load[s] on the bolts is permitted.

(8) An angle compensating device[s] shall be used when tensioned roof bolts are installed at an angle[s] greater than five (5) degrees from the perpendicular to the bearing plate.

(9) The first nontensioned grouted roof bolt installed during each roof bolting cycle shall be tested during or immediately after the first row of bolts has been installed. If the bolt tested does not withstand at least 150 foot-pounds of torque without rotating in the hole, corrective action shall be taken.

Section 5. Installation of Roof Support Using Mining Machines with Integral Roof Bolters. When roof bolts are installed by a continuous mining machine with integral roof bolting equipment:

(1) The distance between roof bolts shall not exceed ten (10) feet crosswise;

(2) Roof bolts to be installed nine (9) feet or more apart shall be

installed with a wooden crossbar at least three (3) inches thick and eight (8) inches wide, or material which provides equivalent support; and

(3) Roof bolts to be installed more than eight (8) feet but less than nine (9) feet apart shall be installed with a wooden plank at least two (2) inches thick and eight (8) inches wide, or material which provides equivalent support.

Section 6. Conventional Roof Support. (1) When conventional roof support materials are used as the only means of support:

(a) The width of any opening shall not exceed twenty (20) feet;
(b) The spacing of roadway roof support shall not exceed five (5) feet;

(c) Supports shall be installed to within five (5) feet of the uncut face;

(d) If [When] supports nearest the face must be removed to facilitate the operation of face equipment, equivalent temporary support shall be installed prior to **their removal** [removing the supports];

(e) A straight roadway[e] shall not exceed sixteen (16) feet wide where full overhead support is used and fourteen (14) feet wide where only posts are used;

(f) A curved roadway[e] shall not exceed sixteen (16) feet wide; and

(g) The roof at the entrance of all openings along travelways which are no longer needed for storing supplies or for travel of equipment shall be supported by extending the line of support across the opening.

(2) Conventional roof support materials shall meet the following specifications:

(a) The minimum diameter of cross-sectional area of wooden posts shall be as follows:

Post Length (in inches)	Diameter of round post (in inches)	Cross-sectional area of split post (in square inches)
60 or less	4	13
Over 60 to 84	5	20
Over 84 to 108	6	28
Over 108 to 132	7	39
Over 132 to 156	8	50
Over 156 to 180	9	64
Over 180 to 204	10	79
Over 204 to 228	11	95
Over 228	12	113

(b) Wooden materials used for support shall have the following dimensions:

1. Cap blocks and footings shall have flat sides and be at least two (2) inches thick, four (4) inches wide and twelve (12) inches long;
2. Crossbars shall have a minimum cross-sectional area of twenty-four (24) square inches and be at least three (3) inches thick;
3. Planks shall be at least six (6) inches wide and one (1) inch thick.

(c) Cribbing materials shall have at least two (2) parallel flat sides.

(3)(a) A cluster of two (2) or more posts that provide equivalent strength may be used to meet the requirements of subsection (2)(a) of this section.

(b) A post shall not [except that no post shall] have a diameter less than four (4) inches or have a cross-sectional area less than thirteen (13) square inches.

(4) Materials other than wood used for support shall have support strength at least equivalent to wooden material meeting the applicable provisions of this section.

(5) Posts and jacks shall be tightly installed on solid footing.

(6) If a post is [When posts are] installed under roof susceptible

to sloughing, a cap block, plank, crossbar or materials that are equally effective shall be placed between the post and the roof.

(7) Blocks used for lagging between the roof and crossbars shall be spaced to distribute the load.

(8) A jack [Jacks] used for roof support shall be used with at least thirty-six (36) square inches of roof-bearing surface.

Section 7. Pillar Recovery. (1) Full and partial pillar recovery shall not be conducted on the same pillar line, except where physical conditions such as unstable floor or roof, falls of roof, oil and gas well barriers or surface subsidence require that pillars be left in place.

(2) Before mining is begun in a pillar split or lift:

(a) At least two (2) rows of breaker posts or equivalent support shall be installed as close to the initial intended breakline as practicable and across each opening leading into an area where full or partial pillar extraction has been completed; and

(b) A row of roadside-radius (turn) posts or equivalent support shall be installed leading into the split or lift.

(3) Before mining is started on a final stump:

(a) At least two (2) rows of posts or equivalent support shall be installed on not more than four (4) foot centers on each side of the roadway;

(b) 1. No more than one (1) roadway, which shall not exceed sixteen (16) feet wide, shall lead from solid pillars to the final stump of a pillar; and

2. If posts are used as the sole means of roof support, the width of the roadway shall not exceed fourteen (14) feet. [Before mining is started on a final stump, at least two (2) rows of posts or equivalent support shall be installed on not more than four (4) foot centers on each side of the roadway; only one (1) open roadway, which shall not exceed sixteen (16) feet wide, shall lead from solid pillars to the final stump of a pillar. Where posts are used as the sole means of roof support, the width of the roadway shall not exceed fourteen (14) feet.]

(4) During open-end pillar extraction:

(a) At least two (2) rows of breaker posts or equivalent support shall be installed on not more than four (4) foot centers.

(b) These supports shall be:

1. Installed between the lift to be started and the area where pillars have been extracted; and

2. Maintained to within seven (7) feet of the face.

(c) The width of the roadway shall not exceed sixteen (16) feet.

(d) If posts are used as the sole means of roof support, the width of the roadway shall not exceed fourteen (14) feet. [During open-end pillar extraction, at least two (2) rows of breaker posts or equivalent support shall be installed on not more than four (4) foot centers. These supports shall be installed between the lift to be started and the area where pillars have been extracted and shall be maintained to within seven (7) feet of the face, and the width of the roadway shall not exceed sixteen (16) feet. Where posts are used as the sole means of roof support, the width of the roadway shall not exceed fourteen (14) feet.]

Section 8. Installation and Use of Automated Temporary Roof Support Systems. This section establishes the requirements for and criteria of automated temporary roof support in an underground coal mine[s] in which both the coal bed thickness and the mining height exceed thirty (30) inches.

(1) All roof bolting machines and continuous mining machines with integral roof drills used in a working place in a coal mine shall be provided with an approved automated temporary roof support system unless other methods of temporarily supporting the roof have been approved by the commissioner.

(2) Automated temporary roof support systems and all other methods of temporarily supporting the roof shall be approved on an individual mine basis by the commissioner and shall become part of

the roof control plan required by KRS 352.201(1).

(3)(a) The commissioner may grant a waiver of the requirement for the use of an automated temporary roof support system if:

1. It has been demonstrated by the licensee and determined during an investigation by an authorized representative of the commissioner that:

a. The use of the system would create a greater danger in areas where permanent supports have been installed than the method employed or proposed for temporary support of the roof; or

b. The technology of an automated temporary roof support system does not exist to allow compliance with the requirements of subsection (5) of this section;

2. The configuration of the surface of the roof or other conditions make the use of an ATRS system ineffective or impractical; or

3. The licensee's present roof control plan provides adequate safety to the miner due to the geology or condition of the roof.

(b) In granting a waiver, the commissioner may approve the use of temporary jacks and posts in lieu of the ATRS. [The commissioner may grant a waiver of the requirement for the use of an automated temporary roof support system if it has been demonstrated by the licensee and determined during an investigation by an authorized representative of the commissioner that the use of such a system would create a condition which would cause a greater hazard to persons working in the area where permanent supports have been installed than the method presently being employed or proposed by the licensee for temporarily supporting the roof, or where the technology of an automated temporary roof support system does not exist to allow compliance with the requirements established in subsection (5) of this section. The commissioner may also grant a waiver if the configuration of the surface of the roof or other conditions make the use of an ATRS system ineffective or impractical, or where the geology or condition of the roof is such that the licensee's present roof control plan provides adequate safety to the miner. In granting a waiver as to the use of the automated roof temporary roof support system, the commissioner may approve the use of temporary jacks and posts in lieu of the ATRS.]

(4)(a) In the event of a mechanical breakdown in the ATRS, the licensee shall:

1. Provide for comparable temporary roof support;

2. Immediately notify the commissioner or his authorized representative of:

a. The temporary roof support being used; and

b. The provisions being made to repair or replace the ATRS.

(b) The commissioner or his authorized representative shall order the removal of miners from the work area, if it is determined that the roof support system being used during repair of the ATRS does not adequately provide for their safety. [In the event of a mechanical breakdown in the ATRS system, the licensee shall provide for comparable temporary roof support and immediately notify the commissioner or his authorized representative of the temporary roof support in use and the provisions being made to repair or replace the ATRS. The commissioner or his authorized representative may approve the procedure, subject to reasonable conditions.]

(5) A machine [All machines] using, or used as, an automated temporary roof support system shall comply with the following minimum requirements unless a waiver has been granted or another method of temporarily supporting the roof has been approved by the commissioner, pursuant to subsection (2) of this section:

(a) The [necessary] controls necessary to position the machine and place the ATRS against the roof shall be operated from under permanently supported roof, unless the design of the system provides adequate protection of the miner [while setting such supports];

(b) The ATRS shall be placed firmly against the roof prior to work in by the permanent roof supports and shall remain in place

while work is performed, unless the configuration of the roof surface prevents uniform placement of the ATRS; [The ATRS shall be placed firmly against the roof before any work is performed in by permanent roof supports and shall remain against the roof while work is being done, unless the configuration of the surface of the roof is such as to prevent the ATRS from being placed uniformly against that roof;]

(c) A hydraulic jack [All hydraulic jacks] affecting the support capacity of an ATRS shall have check valves or equivalent protection, to prevent support failure **if there is** [in the event of] a sudden loss of hydraulic pressure;

(d) An ATRS used in conjunction with single bolt installation shall elastically support, at a minimum, a deadweight load of 11,250 pounds for each five (5) feet by five (5) feet square area of the roof to be supported;

(e) An ATRS consisting of pads [and/or] crossbars used in single or multiple rows shall elastically support, at a minimum, a deadweight load in pounds of $450 \times ((L+5) \times (W+5))$, where L is the length of the support structure from tip to tip and W is the width taken at the center line of a support structure to the center line of another support structure;

(f) The actual capacity of the ATRS to support elastically a deadweight load shall be certified by a registered professional engineer;

(g) The distance that the ATRS may be set in by the last row of permanent supports shall be dependent on the row spacing requirements of the permanent roof supports and shall be authorized in the approved roof control plan; and

(h) A [No] person shall not work or travel in by the ATRS.

Section 9. Manual Installation of Temporary Support. (1) During manual installation of temporary support:

(a) Only a person engaged in installing the support shall proceed beyond permanent roof support;

(b) The first temporary support shall not be set more than five (5) feet from a permanent roof support and the rib.

(2) A temporary support shall be:

(a) Set so that the person installing the support remains between it and two (2) other supports which shall not be more than five (5) feet away;

(b) Completely installed prior to installation of the next temporary support;

(c) Placed on no more than five (5) foot centers.

(3) After temporary supports have been installed, work or travel beyond the permanent roof support shall be between:

(a) Temporary supports and the nearest permanent support; or

(b) Other temporary supports. [(1) When manually installing temporary support, only persons engaged in installing the support shall proceed beyond permanent support.

(2) When manually installing temporary supports, the first temporary support shall be set no more than five (5) feet from a permanent roof support and the rib. All temporary supports shall be set so that the person installing the supports remains between the temporary support being set and two (2) other supports which shall be no more than five (5) feet from the support being installed. Each temporary support shall be completely installed prior to installing the next temporary support.

(3) All temporary supports shall be placed on no more than five (5) foot centers.

(4) Once temporary supports have been installed, work or travel beyond permanent roof support shall be done between temporary supports and the nearest permanent support or between other temporary supports.]

Section 10. Warning Devices. Except during the installation of roof supports, the end of permanent roof support shall:

- (1) Be posted with a readily visible warning; or
- (2) ~~Have~~ a physical barrier ~~[shall be]~~ installed to impede travel beyond permanent support.

Section 11. Roof Testing and Scaling. (1) A visual examination of the roof, face and ribs shall be made immediately before any work is started in an area and during the workshift [thereafter] as conditions warrant.

(2) ~~If [Where]~~ the mining height permits and the visual examination does not disclose a hazardous condition, sound and vibration roof tests, or other equivalent tests, shall be made where supports are to be installed. ~~If [When]~~ sound and vibration tests are made, they shall be conducted:

(a) After the automated temporary roof support system is set against the roof and before other support is installed; or

(b) Prior to manually installing a roof support.

(3) Sound and vibration roof tests, or other equivalent tests, shall begin under supported roof and shall not progress ~~[æ]~~ further than the location where the next support is to be installed.

(4)(a) If a hazardous roof, face, or rib condition is detected, the condition shall be corrected before work or travel is conducted in the affected area.

(b) If the affected area is left unattended, each entrance to the area shall:

1. Be posted with a readily visible warning; or

2. Have a physical barrier installed to impede travel in the area.

(c) A bar for removing loose material shall be:

1. Available in the working place; or

2. On all face equipment, except haulage equipment; and

3. Of a length and design that will permit the removal of loose material from a position that will not expose the worker to injury from falling material. ~~[When a hazardous roof, face, or rib condition is detected, the condition shall be corrected before there is any other work or travel in the affected area. If the affected area is left unattended, each entrance to the area shall be posted with a readily visible warning, or a physical barrier shall be installed to impede travel into the area. A bar for taking down loose material shall be available in the working place or on all face equipment, except haulage equipment. Bars provided for taking down loose material shall be of a length and design that will allow the removal of loose material from a position that will not expose the person performing this work to injury from falling material.]~~

Section 12. Rehabilitation of Areas with Unsupported Roof. (1) General rehabilitation plans shall be submitted with the roof control plan.

(2) Before rehabilitating ~~an [each]~~ area where a roof fall has occurred or the roof has been removed by mining machines or ~~[by]~~ blasting:

(a) The licensee shall establish the clean-up and support procedures to be followed;

(b) ~~A person [All persons]~~ assigned to perform rehabilitation work shall be instructed in the clean-up and support procedures; and

(c) Ineffective, damaged or missing roof support at the edge of the area to be rehabilitated shall be replaced or other equivalent support installed.

(3) [(2)] A person performing rehabilitation shall be experienced in that work or supervised by a person, designated by the licensee, who is experienced. ~~[All persons who perform rehabilitation work shall be experienced in this work or they shall be supervised by a person experienced in rehabilitation work who is designated by the licensee.]~~

(4) [(3)] If [Where] work is not being performed to rehabilitate an area in active workings where a roof fall has occurred or the roof has been removed by mining machines or by blasting, each entrance to the area shall be supported by at least one (1) row of posts on not

more than five (5) foot centers, or equally effective support.

Section 13. Supplemental Support Materials, Equipment and Tools. (1) A supply of supplemental roof support materials and the tools and equipment necessary to install the materials shall be available at a readily accessible location on each working section or within four (4) crosscuts of each working section.

(2) The quantity of support materials, tools, and equipment made available in accordance with this section shall be sufficient to support the roof if adverse roof conditions are encountered, or in the event of a roof fall.

Section 14. Longwall Mining Systems. For each longwall mining section, the roof control plan shall specify:

(1) The methods that will be used to maintain a safe travelway out of the section through the tailgate side of the longwall; and

(2) The procedures that shall be followed if a ground failure prevents travel out of the section through the tailgate side of the longwall.

Section 15. Roof Control Plan. (1) When revisions are proposed to the roof control plan required by KRS 352.201, only the revised pages shall be submitted unless otherwise specified by the commissioner or his authorized representative.

(2) The licensee shall be notified in writing of the approval or denial of a proposed roof control plan or proposed revision.

(3) When approval of a proposed plan or revision is denied, the deficiencies of the plan or revision and recommended changes shall be specified and the licensee shall be afforded an opportunity to discuss the deficiencies and changes with the commissioner or his authorized representative.

(4) Before new support materials, devices or systems other than roof bolts and accessories are used as the only means of roof support, the commissioner or his authorized representative may require that the effectiveness of those new support materials, devices, or systems be demonstrated by experimental installations.

(5) ~~A [No]~~ proposed roof control plan or revision to a roof control plan shall not be implemented before it is approved.

(6) Before implementing an approved revision to a roof control plan, a person who is [all persons who are] affected by the revision shall be instructed in its provisions.

(7) The approved roof control plan and any revision~~[e]~~ shall be available to the miners and representative of miners at the mine.

Section 16. Roof Control Plan Information. The following information shall be included in each roof control plan:

(1) The name and address of the licensee;

(2) The name, address, mine identification number and location of the mine;

(3) The name and title of the company official responsible for the plan;

(4) A typical columnar section of the mine strata which shall:

(a) Show the name and the thickness of the coalbed to be mined and any persistent partings;

(b) Identify the type and show the thickness of each stratum up to and including the main roof above the coalbed and for distance of at least ten (10) feet below the coalbed; and

(c) Indicate the maximum cover over the area to be mined.

(5) A description and drawings of the sequence of installation and spacing of supports for each method of mining used;

(6) ~~If [When]~~ an automated temporary roof support system is used, the maximum distance that an automated temporary roof support system is to be set beyond the last row of permanent support;

(7) ~~If [When]~~ tunnel liners or arches are to be used for roof support, specifications and installation procedures for the liners or arches;

(8) Drawings indicating the planned width of openings, size of

pillars, method of pillar recovery, and the sequence of mining pillars;

(9) A list of all support material[s] required to be used in the roof, face and rib control system, including, if roof bolts are to be installed:

(a) The length, diameter, grade and type of anchorage unit to be used;

(b) The drill hole size to be used; and

(c) The installed torque or tension range for tensioned roof bolts.

(10) When mechanically anchored tensioned roof bolts are used, the intervals at which test holes shall be drilled;

(11) A description of the method of protecting persons:

(a) From falling material at drift openings; and

(b) When mining approaches within 150 feet of an outcrop.

(12) A ~~Each~~ drawing submitted with a roof control plan shall contain a legend explaining all symbols used and shall specify the scale of the drawing, which shall not be less than five (5) feet to the inch or more than twenty (20) feet to the inch;

(13) All roof control plan information, including drawings, shall be submitted on eight and one half (8.5) by eleven (11) inch paper, or paper folded to this size; and

(14) Any other information required by the commissioner.

Section 17. Roof Control Plan Approval Criteria. This section sets forth the criteria that shall be considered on a mine-by-mine basis in the formulation and approval of roof control plans and revisions.

(1) Roof bolts shall be installed on centers not exceeding five (5) feet lengthwise and crosswise, except as approved by the commissioner or his authorized representative.

(2) When tensioned roof bolts are used as a means of roof support, the torque or tension range shall be capable of supporting roof bolt loads of at least fifty (50) percent of either the yield point of the bolt or anchorage capacity of the strata, whichever is less.

(3) Any opening that is more than twenty (20) feet wide shall be supported by a combination of roof bolts and conventional supports.

(4) In any opening more than twenty (20) feet wide:

(a) Posts shall be installed to limit each roadway to sixteen (16) feet wide, where straight, and eighteen (18) feet wide, where curved; and

(b) A row of posts shall be set for each five (5) feet of space between the roadway posts and the ribs.

(5) An opening ~~Openings~~ shall not be more than thirty (30) feet wide.

(6) If installing roof support using mining machines with integral roof bolters:

(a) Before an intersection or pillar split is started, roof bolts shall be installed on at least five (5) foot centers where the work is performed;

(b) Where the roof is supported by only two (2) roof bolts crosswise, openings shall not be more than sixteen (16) feet wide.

(7) Pillar recovery.

(a) During development, any dimension of a pillar shall be at least twenty (20) feet;

(b) Pillar splits and lifts shall not be more than twenty (20) feet wide;

(c) A breaker post shall be installed on a center of not more than four (4) feet; ~~Breaker posts shall be installed on not more than four (4) foot centers;~~

(d) Roadside-radius (turn) posts, or equivalent support, shall be installed on not more than four (4) foot centers leading into each pillar split or lift;

(e) Before full pillar recovery is started in areas where roof bolts are used as the only means of roof support and openings are more than sixteen (16) feet wide, at least one (1) row of posts shall be installed to limit the roadway width to sixteen (16) feet. These posts shall be:

1. Extended from the entrance to the split through the intersection outby the pillar in which the split or lift is being made; and

2. Spaced on not more than five (5) foot centers.

(8) Openings that create an intersection shall be permanently supported or at least one row of temporary supports shall be installed on not more than five (5) foot centers across the opening before any other work or travel is permitted in the intersection.

(9) In a working section[s] where the mining height is below thirty (30) inches, an automated temporary roof support system shall be used to the extent practicable during the installation of roof bolts with roof bolting machines and continuous-mining machines with integral roof bolters.

(10) In a mine with a longwall mining system: ~~In mines with longwall mining systems;~~

(a) Systematic supplemental support shall be installed throughout:

1. The tailgate entry of the first longwall panel prior to any mining; and

2. In the proposed tailgate entry of each subsequent panel in advance of the frontal abutment stresses of the panel being mined.

(b) If ~~When~~ a ground failure prevents travel out of the section through the tailgate side of the longwall section, the roof control plan shall address:

1. Notification of miners that the travelway is blocked;

2. Reinstruction of miners regarding escapeways and escape procedures in the event of an emergency;

3. Reinstruction of miners on the availability and use of self-contained self-rescue devices;

4. Monitoring and evaluation of the air entering the longwall section;

5. Location and effectiveness of the two (2) way communication system[s]; and

6. A means of transportation from the section to the main line.

(c) The plan provisions addressed by paragraph (b) of this subsection shall remain in effect until a travelway is reestablished on the tailgate side of a longwall section.

(11) A roof control plan that does not conform to the criteria set out in this section may be approved by the commissioner or his authorized representative, if the plan provides effective control of the roof, face, and ribs. The commissioner or his authorized representative may require additional safety measures in a roof control plan. ~~Additional measures in plans may be required by the commissioner or his authorized representative. Roof control plans that do not conform to the applicable criteria set out in this section may be approved by the commissioner or his authorized representative, if those plans provide effective control of the roof, face, and ribs.~~

Section 18. Evaluation and Revision of Roof Control Plan. (1) A revision ~~Revisions~~ of the roof control plan shall be proposed by the licensee:

(a) If ~~When~~ conditions indicate that the plan is not suitable for controlling the roof, face, ribs, or coal or rock bursts; or

(b) If ~~When~~ accident and injury experience at the mine indicates the plan is inadequate; the accident and injury experience at each mine shall be reviewed at least every six (6) months.

(2) An ~~Each~~ unplanned roof fall, rib fall, and coal or rock burst that occurs in the active workings shall be plotted on a mine map if it:

(a) Is above the anchorage zone where roof bolts are used;

(b) Impairs ventilation;

(c) Impedes passage of persons;

(d) Causes miners to be withdrawn from the area affected; or

(e) Disrupts regular mining activities for more than one (1) hour.

(3) The mine map on which roof falls are plotted shall be available at the mine site for inspection by an authorized representative[s] of the commissioner and a representative[s] of miners at the mine.

(4) The roof control plan for each mine shall be reviewed every six (6) months by an authorized representative of the commissioner. This review shall take into consideration any falls of the roof, face and

ribs and the adequacy of the support systems used at the time.

Section 19. **Incorporation by Reference.** (1) "Standard Specification for Roof and Rock Bolts and Accessories", (1995 Edition), American Society for Testing and Materials (ASTM), Designation F 432-95.

(2) It may be inspected or copied at Kentucky Department of Mines and Minerals, Administration Building, 3572 Ironworks Pike, Lexington, Kentucky, 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) It may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103, (610) 832-9500.

Section 20. Upon the effective date of this administrative regulation, 805 KAR 5:020 shall be repealed.

LAURA M. DOUGLAS, Secretary

JOHN L. FRANKLIN, Commissioner, Chairman

APPROVED BY AGENCY: October 15, 1996

FILED WITH LRC: October 15, 1996 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
(As Amended)

805 KAR 7:080. Training, certification, and annual retraining of mine emergency technicians.

RELATES TO: KRS 351.127

STATUTORY AUTHORITY: KRS 351.070(13), 351.127(1), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.127(1)

requires that a certified emergency medical technician or mine emergency technician be employed at every coal mine whose employees are engaged in the extraction, production, or preparation of coal. This administrative regulation establishes standards by which mine emergency technicians shall be trained, certified, and retrained. ~~[Persons employed as mine emergency technicians shall be trained, certified, and retrained in accordance with standards established in this administrative regulation.]~~

Section 1. Definitions. The following definitions apply to this administrative regulation:

(1) "Current", as applied to training and its certification, means the present status of training, as certified by the agency which reviews or attests to it.

(2) "Emergency medical technician (EMT)" means a person certified by the Cabinet for Human Resources who is trained to provide immediate emergency medical care and intervention to stabilize a patient's condition at the scene of an emergency and en route to definitive medical care.

(3) "Mine emergency technician (MET)" means a person certified by the Department of Mines and Minerals who is trained to provide immediate emergency medical care to an injured person at the mine site.

Section 2. MET Certification Requirements. (1) Each applicant for certification as a MET shall:

(a) Hold a surface or underground miner's certification in the Commonwealth of Kentucky;

(b) Successfully complete the standard program of training and education established by this administrative regulation and a series of written and practical skills examinations prescribed by the department;

(c) Hold a current course completion card in adult foreign body airway obstruction and adult one (1) and two (2) rescuer CPR;

(d) Be eighteen (18) years of age or older; and

(e) Understand and be able to read, speak, and write the English language.

(2) A Kentucky certified miner who is an emergency medical technician with a current CPR course completion card may apply for certification as a mine emergency technician. ~~[Upon the effective date of this administrative regulation and at all times thereafter, a person certified as an emergency medical technician who is also a Kentucky certified miner and whose CPR course completion card is current may, upon application, be certified as a mine emergency technician.]~~

Section 3. MET Training Course Requirements. (1) ~~[Upon the effective date of this administrative regulation,]~~ The training course for certification as a MET shall include instruction in the materials set out in the BRADY Basic First Response text, 1st edition, chapters 1-23 and 25-29, ~~which material is incorporated herein by reference. Copies of the material incorporated by reference may be obtained from The BRADY Company, Simon & Schuster Education Group, One Lake Street, Upper Saddle River, New Jersey 07458, (800) 638-0220; it is also available for public inspection at the Department of Mines and Minerals, Administration Building, 3572 Iron Works Pike, Lexington, Kentucky, Monday through Friday, from 8 a.m. until 4:30 p.m.]~~

(2) The training course shall also:

(a) Be not less than forty (40) hours in duration;

(b) Be taught by an instructor certified by the department;

(c) Include equipment, texts, audio-visual and other materials approved by the department as adequate to train METs ~~[deemed appropriate by the department];~~

(d) Be limited to thirty (30) students per instructor; and

(e) Be conducted in a [an adequate] training facility approved by the department as adequate to train METs.

Section 4. MET Certification Examination. (1) At the time of taking the MET certification examination, the MET applicant shall provide verification on a Federal Form 5000-23 that he has successfully completed the standard program of MET training and education prescribed by the department.

(2) The Federal Form 5000-23 shall be signed by the MET applicant, be embossed with the MET instructor certification number and signed by the MET instructor who administered the MET course to the applicant.

(3) The MET certification examination, consisting of two (2) parts, shall be prescribed and administered by the department. ~~[shall be administered by the department, which shall prescribe the format and content of that examination, which shall consist of two (2) parts;]~~

(a) Written. ~~[4-]~~ An ~~[absolute]~~ overall grade of not less than eighty (80) percent shall be required to pass ~~[the written examination].~~

~~[2- If the applicant for certification fails to pass the certification examination, he shall be permitted one (1) opportunity to retake the written examination, which shall be taken within sixty (60) days of the initial examination date.~~

~~3- If the applicant for certification again fails to pass the written examination, he shall be required to retake the entire MET training course before being eligible for reexamination.]~~

(b) Practical. The practical examination shall consist of two (2) parts:

1. The first part shall consist of mandatory stations in which the applicant will be tested on one (1) or more required skills. The applicant shall demonstrate proficiency in all mandatory stations.

2. The second part shall consist of "wild card" stations in which one (1) or more skills may be tested. The applicant shall randomly draw the skills on which he shall be tested at the time of the examination. ~~[The applicant shall pass, by demonstrating~~

proficiency, the final practical examination, which shall be divided into required stations in which one (1) or more skills are tested. Certain stations shall be designated as mandatory. Other stations shall be designated as wild card stations in which more than one (1) skill may be tested. The applicant shall randomly draw the skills on which he is to be tested from the wild card stations at the time of the examination.]

(c) If the applicant for certification fails to pass the written or practical portion of the examination, he shall be permitted one (1) opportunity to retake the portion or portions failed. The reexamination shall be conducted within sixty (60) days of the initial examination date.

(d) If the applicant for certification fails to pass the written or practical portion after reexamination, he shall retake the entire MET training course before being eligible for subsequent examination.

[2. If he fails to pass all required stations, he shall be permitted one (1) opportunity to retake the required stations which he failed to pass; the retake shall be taken within sixty (60) days of the initial examination date.

3. If he again fails to pass the required stations, he shall be required to retake the entire MET training course before being eligible for reexamination.]

Section 5. Recertification Continuing Education Requirements. (1) During his period of certification, a MET shall earn at least eight (8) continuing education or [4] retraining hours, with not less than half being devoted to practical skills in a structured instructional setting.

(2) Continuing education and retraining courses for mine emergency technicians shall be taught by certified MET instructors.

(3) A MET shall present a current course completion card in adult foreign body airway obstruction and adult one (1) and two (2) rescuer CPR to the MET instructor at the time of his MET recertification. [maintain evidence of a current course completion card in adult foreign body airway obstruction and adult one (1) and two (2) rescuer CPR and demonstrate to the MET instructor at the time of his MET recertification training that his CPR course completion card is current.]

(4) An applicant for recertification shall receive credit for completion of continuing education/retraining hours in subjects required by the department's MET curriculum.

(5) Each subject or training course for which credit is claimed shall be countersigned by the MET instructor of the subject or course.

(6) The applicant for recertification shall submit evidence of successful completion of instruction in at least four (4) different subject areas of the approved MET curriculum, with a maximum of two (2) hours per subject area.

(7) The MET shall submit to a district office of the department, a record of his continuing education on a Mine Emergency Technician Recertification Form EF-16, ~~[a copy of which is attached,]~~ which shall be signed by the MET, be embossed with the MET instructor certification number and signed by the MET instructor who administered the continuing education claimed for purposes of recertification.

(8) The MET shall maintain evidence of his MET recertification, on Form EF-16, at the mine site.

Section 6. Expiration of Certification. (1) A MET certification shall expire one (1) year from the last day of the month in which the certification was issued unless the person holding the MET certification satisfies the recertification continuing education requirements set out in Section 5 of this administrative regulation.

(2) Upon the expiration of his certification, the holder shall not function in the capacity of a mine emergency technician. [Upon the certification expiration date, the holder of that certification may no longer function in the capacity of a mine emergency technician.]

Section 7. Renewal of Certification. **A former MET may renew his expired certification as follows:**

(1) If his certificate has expired within the past one (1) year he may renew by successfully completing eight (8) hours of MI training and reeducation classes.

(2) If his certificate has been expired for longer than one (1) year, he shall successfully complete the initial MET certification examination requirements set out in Section 3(3) of this administrative regulation. [(1) Within one (1) year from the certification expiration date, a person may renew his certification as a MET by successfully completing eight (8) hours of MET retraining and reeducation classes, whose content shall be established by the department.

(2) Beyond one (1) year from the certification expiration date, the holder of that certification shall be required to successfully complete the initial MET certification examination requirements set out in Section 3 of this administrative regulation.]

Section 8. Designation of a MET. (1) A person designated by the licensee to function as a MET in an underground coal mine shall:

(a) Hold an underground miner's certification in the Commonwealth of Kentucky;

(b) Hold a mine emergency technician certification from the department; and

(c) Maintain verification of his MET certification at the mine site.

(2) A person designated by the licensee to function as a MET at a surface coal mine shall:

(a) Hold a surface miner's certification in the Commonwealth of Kentucky;

(b) Hold a mine emergency technician certification from the department; and

(c) Maintain verification of his MET certification at the mine site.

(3) A certified MET instructor designated by the licensee to function as a mine emergency technician shall:

(a) Meet the requirements of subsections (1)(a) or (2)(a) of this section;

(b) Maintain verification of his MET certification at the mine site; and either

(c) Teach an eight (8) hour MET retraining class during his period of certification; or

(d) Meet the recertification continuing education requirements established in Section 5 of this administrative regulation.

~~[(4) Certified mine emergency technicians shall function within the scope of their training and expertise and shall not be held liable for any acts performed by them in their capacity as mine emergency technicians so long as such acts are reasonable in the situations within which they are performed.]~~

Section 9. MET Instructor Certification Requirements. MET instructors, **in addition to being certified as a MET,** shall:

(1) Hold a mine instructor certification issued by the department;

(2) Hold a current instructor card to teach adult foreign body airway obstruction and adult one (1) and two (2) rescuer CPR; and either

(3) ~~[Pass the MET certification examination administered by the department; or~~

~~(4)]~~ Be an EMT instructor who is also qualified in accordance with subsections (1) and (2) of this section.

Section 10. Responsibilities of the MET Instructor. ~~[(4)]~~ The MET instructor shall:

~~(1) [(a)]~~ Utilize equipment, texts, audio-visual and other materials deemed appropriate by the department;

~~(2) [(b)]~~ Notify the district office of the department prior to his commencement of MET classes;

~~(3) [(c)]~~ Verify on a Federal Form 5000-23 that the MET applicant has successfully completed the standard MET program of training and

education prescribed by the department; and

~~(4) [(d)]~~ Verify on a MET Recertification Form EF-16 that the MET has successfully completed each subject or training course for which credit is approved.

~~[(2) Certified MET instructors shall function within the scope of their training and expertise and shall not be held liable for any acts performed by them in their capacity as mine emergency technician instructors so long as such acts are reasonable in the situations within which they are performed.]~~

Section 11. Denial, Revocation, and Suspension of MET Certification. (1) The Mining Board may revoke, suspend, or probate the MET certification or MET instructor certification of a person who the board determines, based upon allegations substantiated by the department, has responded or acted inappropriately in his capacity as a mine emergency technician or MET instructor by failing to:

(a) Follow appropriate standards of care in the management of a patient;

(b) Administer treatment in a responsible manner in accordance with his level of certification;

(c) Maintain patient confidentiality;

(d) Timely respond to an emergency.[-

~~(a) Acts beyond the scope of his mine emergency technician or instructor training; or~~

~~(b) The board determines, based on allegations substantiated by the department, has responded or acted inappropriately in his capacity as a mine emergency technician or MET instructor.]~~

(2) All actions taken by the board regarding the revocation, suspension, or probation of a MET certification or MET instructor certification shall be so taken in accordance with KRS 352.390.

Section 12. Material Incorporated by Reference. (1) The following forms are incorporated by reference:

(a) Course completion card in adult foreign body airway obstruction and adult one (1) and two (2) rescuer CPR.

(b) BRADY Basic First Response Text, (1997), 1st edition, chapters 1-23 and 25-29.

(c) Federal Form 5000-23.

(d) Form EF-16.

(2) This material may be obtained from, or examined, or copied at the offices of the Kentucky Department of Mines and Minerals, 3572 Ironworks Pike, Lexington, Kentucky.

LAURA M. DOUGLAS, Secretary
JOHN L. FRANKLIN, Commissioner

APPROVED BY AGENCY: June 9, 1996

FILED WITH LRC: July 12, 1996 at 2 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(As Amended)

815 KAR 20:020. Parts or materials list.

RELATES TO: KRS 318.010, 318.015, 318.130, 318.150, 318.200 [Chapter 318]

STATUTORY AUTHORITY: KRS 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department, after review by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky. This administrative regulation established an "approved parts or materials list" containing the parts and materials

that have been approved for use in Kentucky. [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. These product changes were approved at the May 13, 1996 Plumbing Code Committee meeting.] [These product changes were approved at the February 12, 1996 Plumbing Code Committee 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" is [ae] defined by KRS 318.010(11).

(7) "Department" is [ae] defined by KRS 318.010(1).

(8) "Person" is [ae] defined by KRS 318.010(9).

(9) "PVC" means polyvinyl chloride pipe.

Section 2. Approved Parts or Materials List (APML). (1) A [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) A [Any] part or material shall not be used in a 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.]

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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 Waste-water Treatment Systems.

(e) IFO Sanitar AB Model-3160 and 3180 China Water Closet equipped with a Fluidmaster 4003A-F77 Ballcock.

(f) Cashesaver 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.

(g) Sta-Rite Pump Corporation, laundry tray system approved for residential and light commercial use.

(h) Electric Drain System as manufactured by Myers for light commercial and household usage.

(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 thermo-plastic rubber gasket.

(c) Deklite 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. Vitacclimate 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 Number, 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.

11. Chronomite Instant-Flow Tankless Water Heater without a temperature and pressure relief valve.

12. ~~[44-]~~ 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.

13. ~~[42-]~~ 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.

14. ~~[43-]~~ Ariston electric water heaters, model numbers P-15S and P-10S and shall be equipped with an approved temperature and pressure relief valve.

15. ~~[44-]~~ Vaillant Corporation gas fired point of use water heater.

16. ~~[46-]~~ Trinom Hot Man Tankless Water Heater as manufactured by Siemens.

17. ~~[46-]~~ Field Controls Company Power Venter - Models PVA and SWG for use in conjunction with gas and oil fired water heaters.

18. ~~[47-]~~ Acutemp Instantaneous Water Heater as manufactured

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by Keltech, Inc., Model #100/208; #100/240; #150/208; #150/240; #180/208; #180/240; #153/208; #153/240; #183/208; #183/240; #183/480 and #C183/480, all requiring an approved pressure and temperature relief valve.

(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)(a) ABS and PVC backwater valves, Models 3281, 3282, 3283 and 3284 for solvent cement joints only as manufactured by Canplas Industries.

(b) Flood-Gate Automatic Backwater Valve as manufactured by Bibby-Ste-Croix.

(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)(a) 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.

(b) Fernco Proflex Shielded Couplings: Series 3000 for service weight cast iron to plastic, steel or extra cast iron in sizes one and one-half (1 1/2) inch to four (4) inch, Series 3001 for cast iron, plastic or steel to copper in sizes one and one-half (1 1/2) inch to two (2) inch, Series 3003 for copper to copper in one and one-half (1 1/2) inch.

(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 twenty-four (24) inches for underground storm water drainage within a building.

(38) "Flowguard Gold" one (1) step CPVC cement for joining copper tube size CPVC piping systems through two (2) inches without the requirement of a cleaner or primer.

(39) E-Z Trap Adapter as manufactured by S & S Enterprises to be used as connection between chrome plated P trap and PVC waste line.

(40) Canplas Industries LTD Specialty DWV Fittings: Part #3628 ABS or PVC forty-five (45) degree Discharge Closet Flange, Part #2321 Appliance (dishwasher) Wye, Part #3650A Closet Flange Kit for Concrete Installations.

CHARLES A. COTTON, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: September 6, 1996

FILED WITH LRC: September 9, 1996 at 2 p.m.

PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction Division of Plumbing (As Amended)

815 KAR 20:191. Minimum fixture requirements.

RELATES TO: KRS 58.200, 318.130, 318.160 [Chapter 348]

STATUTORY AUTHORITY: KRS [43A.420.] 198B.040(10), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130

requires the department, after approval by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky. KRS 58.200 requires newly-constructed public buildings to be equipped with twice the number of restroom facilities for use by women as is provided for use by men. KRS 198B.040(10) requires the Kentucky Board of Housing, Buildings and Construction to promulgate administrative regulations for the safe installation and operation of plumbing fixtures. This administrative regulation establishes the minimum fixture requirements for buildings in Kentucky. [The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation incorporates many of the provisions which have been in effect for some time with regard to residential and public buildings. The department has revised the old administrative regulation to make it easier to interpret. This administrative regulation includes the requirements of the [Department for] Natural Resources and Environmental Protection Cabinet as well as the Cabinet for Health Services [Department for Human Resources] and the [Department of] Justice Cabinet. These inclusions simplify the plan process. This amendment is necessary to assure that women's restrooms have as many sanitary fixtures as men's restrooms in places of assembly as called for in Senate Bill 24 of the 1996 General Assembly.] [This amendment is necessary to increase the ratio of state prison inmates to plumbing fixtures while maintaining reasonable health and convenience considerations.]

Section 1. General Requirements. (1) In buildings accommodating males and females it shall be presumed that the occupants will be equally divided between males and females unless otherwise denoted.

(2) The occupancy load factor used to determine the total number of plumbing fixtures required in a building shall be that denoted in Chapter 10, Section 1008 of the 1994 [by Article 8, Section 806 of the 1988] edition of the Kentucky Building Code unless otherwise denoted.

(3) [Section 2.] All types of buildings shall be provided with toilet rooms on each level or floor; however, if [where] the department determines that separate facilities on each level or floor are unnecessary, toilet rooms on every other level or floor shall be sufficient.

(4) [Section 3.] Toilet rooms for males and females shall be clearly marked.

Section 2. [4.] Toilet Floor Construction Requirements. Floors in toilet rooms providing facilities for use by the general public or employees shall be constructed of nonabsorbent materials; however, wood floors shall not be prohibited if covered by other nonabsorbent materials. [This requirement is not intended to restrict the use of wood floors.] If [When] more than one (1) water closet and one (1) lavatory is installed, the [such a] toilet room shall have at least one (1) floor drain and one (1) accessible hose bibb.

Section 3. [5.] Facilities for Stages. [Theaters, Assembly Halls, Libraries, Museums and Art Galleries.] (1) A separate water closet and lavatory shall be provided for males and females in the stage area.

(2) A drinking fountain shall be provided in the stage and auditorium area [and a drinking fountain shall be provided on each floor for each 500 persons or fraction thereof].

Section 4. Theaters, Assembly Halls and Similar Occupancies. [(3)] Separate toilet rooms for males and females shall be provided as indicated in Sections 1, 2, and 3 [2] of this administrative regulation, and as follows:

(1) Water closets for males.

(a) One (1) water closet for each 100 males [or females or fraction thereof]; two (2) water closets for 101 to 200 males [or females or fraction thereof]; three (3) water closets for 201 to 400 males [or females or fraction thereof]; over 400 add one (1) water closet for each additional 500 males or fraction thereof [and one (1) for each additional 300 females].

(b) One (1) urinal for eleven (11) to 100 [200] males; two (2) urinals for 101 to 300 [201 to 400]; three (3) urinals for 301 [401] to 600; add one (1) urinal for each additional 300 males or fraction thereof.

(2) Water closets for females. One (1) water closet for each fifty (50) females; two (2) water closets for fifty-one (51) to 100 females; three (3) water closets for 101 to 150 females; four (4) water closets for 151 to 200 females; one (1) water closet for each additional 150 females or fraction thereof.

(3) Lavatories. [(c)] One (1) lavatory for up to 100 males or females; two (2) lavatories for 101 to 200, three (3) lavatories for 201 to 400; four (4) lavatories for 401 to 750; add one (1) lavatory for each additional 500 or less over 750.

(4) Sinks. [(d)] One (1) service sink or slop sink on each floor.

(5) Number of fixtures. [(e)] The number of fixtures shall be based upon the maximum seating capacity or fixed seats. If fixed seats are not provided, the basis for determining the capacity shall be one (1) person per each fifteen (15) square feet of area.

(6) Drinking fountain. A drinking fountain shall be provided on each floor for each 500 persons or fraction thereof.

Section 5. [(4) in] Libraries, Museums and Art Galleries. Separate toilet facilities for males and females shall be provided as indicated in Sections 1, 2, and 3 [2] of this administrative regulation, and as follows:

(1) [(a)] One (1) water closet and one (1) lavatory for each 100 females or fraction thereof.

(2) [(b)] One (1) water closet and one (1) lavatory for each 200 males or fraction thereof.

(3) [(c)] One (1) urinal for eleven (11) to 200 males; two (2) urinals for 201 to 400; 33 urinals for 401 to 600; add one (1) urinal for each additional 300 males or fraction thereof.

(4) [(d)] One (1) service sink or slop sink on each floor.

(5) [(e)] A drinking fountain shall be provided for each 500 persons or fraction thereof.

(6) [(f)] The above number of fixtures shall be based upon the actual number of persons that may [can] be accommodated.

(7) [(5)] Urinals may be substituted for water closets for males, not to exceed one-third (1/3) of the required total number of water closets but in all cases the minimum number of urinals shall be installed.

(8) [(6)] Water closets in public restrooms shall be of the elongated bowl type with a split open front seat.

Section 6. School Buildings (relates also to 702 KAR 4:170 [4:070 and 702 KAR 4:080]). (1) A drinking fountain shall be provided on each floor and wing of a building and an additional drinking fountain shall be provided for each seventy-five (75) pupils or fraction thereof. The fountains shall be equipped with a protective cowl and the orifice shall be one (1) inch above the overflow rim of the fountain.

(2) Elementary through secondary level school buildings shall be provided with the following:

(a) Water closets for males shall be installed in the following proportions:

1. One (1) water closet for up to twenty-five (25) pupils.

2. Two (2) water closets for twenty-six (26) to 100 pupils.

3. One (1) water closet for each 100 pupils or fraction thereof in excess of 100.

(b) Urinals for males shall be installed in the following proportions:

1. One (1) urinal for up to twenty-five (25) pupils.

2. Two (2) urinals for twenty-six (26) to fifty (50) pupils.

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3. Four (4) urinals for fifty-one (51) to 100 pupils.

4. Six (6) urinals for 101 to 200 pupils.

5. Eight (8) urinals for 201 to 300 pupils.

6. Ten (10) urinals for 301 to 400 pupils.

7. Twelve (12) urinals for 401 to 500 pupils.

8. One (1) urinal for each fifty (50) pupils or fraction thereof in excess of 500.

(c) Water closets for females shall be installed in the following proportions:

1. Two (2) water closets for up to twenty-five (25) pupils.

2. Three (3) water closets for twenty-six (26) to fifty (50) pupils.

3. Six (6) water closets for fifty-one (51) to 100 pupils.

4. Eight (8) water closets for 101 to 200 pupils.

5. Ten (10) water closets for 201 to 300 pupils.

6. Twelve (12) water closets for 301 to 400 pupils.

7. Fourteen (14) water closets for 401 to 500 pupils.

8. One (1) water closet for each forty (40) pupils or fraction thereof in excess of 500.

(d) Lavatories for male and female pupils shall be installed in the following proportions:

1. One (1) lavatory for each twenty-five (25) pupils or fraction thereof.

2. Two (2) lavatories for each fifty (50) pupils or fraction thereof.

3. Add one (1) lavatory for each fifty (50) pupils or fraction thereof over fifty (50).

4. Twenty-four (24) inches of sink or eighteen (18) inches of circular basin if [when] provided with water outlet for each space, shall be considered equivalent to one (1) lavatory.

(3) One (1) service sink or slop sink shall be installed on each floor of a building.

(4) If [When] detached relocatable classrooms are used, sanitary facilities shall [will] not be required, if [provided] it is within a distance not to exceed thirty-five (35) feet from the main structure and there are sufficient fixtures in the main structure to serve the entire capacity of the school, including the relocatable classrooms.

(5) Water closets for use in the above facilities shall be of the elongated bowl type with a split open front seat.

Section 7. Schools of Higher Education and Similar Educational Facilities. In schools of higher education and similar institutions there shall be installed:

(1) One (1) water closet for each fifty (50) males or one (1) water closet for each twenty-five (25) females or fraction thereof.

(2) One (1) lavatory for each fifty (50) males or females or fraction thereof.

(3) One (1) drinking fountain for each seventy-five (75) persons or fraction thereof.

(4) One (1) urinal shall be provided for each thirty (30) males or fraction thereof. One (1) water closet less than the number specified may be provided for each urinal installed except that the number of water closets in those [such] cases shall not be reduced to less than two-thirds (2/3) of the minimum specified.

(5) Water closets for use in the above facilities shall be of the elongated bowl type with a split open front seat.

Section 8. Public Garages and Service Stations. Separate toilet rooms with at least a water closet and lavatory for females and a water closet, lavatory and urinal for males shall be provided. Water closets shall be of the elongated bowl type with a split open front seat.

Section 9. Churches. Sanitary facilities shall be provided in churches as follows:

(1) One (1) drinking fountain for each 400 persons or fraction thereof.

(2) One (1) water closet for each 150 females or fraction thereof.

(3) One (1) water closet for each 300 males or fraction thereof.

(4) One (1) urinal for each 150 males or fraction thereof.

(5) One (1) lavatory for each 150 persons or fraction thereof.

Section 10. Transient Facilities (relates also to 902 KAR 10:010).

(1) Hotels and motels with private rooms shall have one (1) water closet, one (1) lavatory and one (1) bathtub or shower per room.

(2) In the public and service areas, there shall be:

(a) One (1) water closet for each twenty-five (25) males or fraction thereof.

(b) One (1) water closet for each fifteen (15) females or fraction thereof.

(c) One (1) lavatory for each twenty-five (25) males or females or fraction thereof.

(d) One (1) urinal for eleven (11) to 100 males then one (1) for each additional fifty (50) or fraction thereof.

(e) One (1) bathtub or shower, if needed, for each ten (10) males or females or fraction thereof.

(f) One (1) drinking fountain for each seventy-five (75) or fraction thereof on each floor.

(g) One (1) service sink or slop sink on each floor.

(3) In residential-type buildings, there shall be one (1) water closet, one (1) lavatory and one (1) bathtub or shower for each ten (10) males and each ten (10) females or fraction thereof.

(4) In rooming houses with private baths, they shall have one (1) water closet, one (1) lavatory and one (1) bathtub or shower per room.

(5) In rooming houses without private baths, there shall be:

(a) One (1) water closet for one (1) to ten (10) males and one (1) for each additional twenty-five (25) or fraction thereof.

(b) One (1) water closet for one (1) to eight (8) females and one (1) for each additional twenty (20) or fraction thereof.

(c) One (1) urinal for eleven (11) to 100 males, then one (1) for each additional fifty (50) or fraction thereof.

(d) One (1) lavatory for each ten (10) males or females or fraction thereof.

(e) One (1) bathtub or shower for each ten (10) males or females or fraction thereof.

Section 11. Dormitories: School, Labor or Institutional (relates also to 902 KAR 10:040). In dormitories, there shall be installed:

(1) One (1) water closet for up to ten (10) males or one (1) water closet for up to eight (8) females; add one (1) water closet for each additional twenty-five (25) males or fraction thereof and one (1) water closet for each additional twenty (20) females or fraction thereof.

(2)(a) One (1) urinal for each twenty-five (25) males or fraction thereof. Over 150 males add one (1) fixture for each additional fifty (50) males or fraction thereof.

(b) If [Where] urinals are provided for women, the same number shall be provided as for men.

(c) If [Where] urinals are provided, they may be substituted for water closets, not to exceed one-third (1/3) of the required total number of water closets.

(d) Trough urinals shall be figured on the basis of one (1) urinal for each twenty-four (24) inches of length.

(3)(a) One (1) lavatory for one (1) to twelve (12) persons. Add one (1) lavatory for each twenty (20) males and each fifteen (15) females.

(b) Separate dental lavatories shall [should] be provided in community toilet rooms at a [-A] ratio of one (1) dental lavatory to each fifty (50) persons.

(4) One (1) bathtub or shower for each eight (8) persons. Over 150 persons add one (1) fixture for each twenty (20) persons. For women's dormitories, there shall be installed additional bathtubs at the ratio of one (1) for each thirty (30) women.

(5) One (1) drinking fountain for each seventy-five (75) persons.

(6) One (1) laundry tray or clothes washer for each fifty (50) persons.

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- (7) One (1) service sink or slop sink for each 100 persons.

Section 12. Hospitals, Nursing Homes and Institutions (relates also to 902 KAR 20:031, 902 KAR 20:046, 902 KAR 20:056, 902 KAR 9:010). Sanitary facilities shall be provided on each floor level and shall conform to the following:

- (1) Hospitals.
 - (a) Wards.
 1. One (1) water closet for each ten (10) patients.
 2. One (1) lavatory for each ten (10) patients.
 3. One (1) tub or [A] shower for each fifteen (15) patients.
 4. One (1) drinking fountain for each 100 patients.
 - (b) Individual rooms: one (1) water closet, one (1) lavatory and one (1) tub or [A] shower.
 - (c) Waiting rooms: one (1) water closet and one (1) lavatory.
- (2) Nursing homes and institutions (other than penal).
 - (a) One (1) water closet for each twenty-five (25) males or fraction thereof.
 - (b) One (1) water closet for each twenty (20) females or fraction thereof.
 - (c) One (1) lavatory for each ten (10) persons or fraction thereof.
 - (d) One (1) urinal for each fifty (50) males.
 - (e) One (1) tub or shower for each fifteen (15) persons or fraction thereof.
 - (f) One (1) drinking fountain on each floor.
 - (g) One (1) service sink or slop sink on each floor.
- (3) Institutions, penal.
 - (a) Cell.
 1. One (1) prison type water closet.
 2. One (1) prison type lavatory.
 - (b) Day rooms and dormitories.
 1. One (1) water closet for each eight (8) female inmates or fraction thereof and one (1) water closet for each twelve (12) male inmates or fraction thereof.
 2. One (1) lavatory for each twelve (12) inmates or fraction thereof.
 3. One (1) shower for each fifteen (15) inmates or fraction thereof.
 4. One (1) urinal may be substituted for each water closet but in no instance shall the water closets be reduced to less than one-half (1/2) the number required.
 5. One (1) drinking fountain per floor.
 6. One (1) service sink or slop sink per floor.
 - (c) Toilet facilities for employees shall be located in separate rooms from those in which fixtures for the use of inmates or patients are located.
 - (d) One (1) drinking fountain on each floor.
 - (e) One (1) service sink or slop sink per floor.

Section 13. Workshops, Factories, Mercantile and Office Buildings. Separate toilet facilities shall be provided for males and females on each floor unless otherwise denoted.

(1) Workshops and factories: Sanitary facilities shall conform to the following:

- (a) One (1) water closet for each twenty-five (25) males or fraction thereof, up to 100.
- (b) One (1) lavatory for each twenty-five (25) males or fraction thereof, up to 100.
- (c) One (1) urinal for eleven (11) to fifty (50) employees.
- (d) Two (2) urinals for fifty-one (51) to 100 employees.
- (e) One (1) lavatory for each twenty-five (25) females or fraction thereof, up to 100.
- (f) One (1) water closet for each fifteen (15) females or fraction thereof up to 100.
- (g) When in excess of 100, there shall be an additional water closet for each thirty (30) males and each thirty (30) females or fraction thereof; one (1) lavatory for each additional fifty (50) males and females or fraction thereof; one (1) urinal for each 100 males or

fraction thereof.

(h) One (1) shower for each fifteen (15) persons exposed to skin contamination from irritating, infectious or poisonous materials.

(i) One (1) drinking fountain on each floor for each fifty (50) employees. In excess of 100 employees there shall be an additional drinking fountain on each floor for each additional seventy-five (75) persons.

(j) One (1) service sink or slop sink per floor.

(k) Individual sinks or wash troughs may be used in lieu of lavatories. Twenty-four (24) inches of sink or trough, if [~~when~~] provided with water, or eighteen (18) inches of circular basin shall be deemed the equivalent of one (1) lavatory.

(2) Mercantile.

(a) Sanitary facilities within each store shall be provided for employees and if [~~when~~] more than five (5) persons are employed, separate facilities for each sex shall be provided. EXCEPTION: For stores containing no more than 3,000 square feet of total gross floor area, employee facilities **shall not be required if adequate interior facilities** are provided within a centralized toilet room area or areas having a travel distance of no more than 500 feet.

(b) Sanitary facilities shall be provided for customers when the building contains 5,000 square feet or more. In malls and shopping centers, the required facilities, based on one (1) person per 100 square feet of total area, may be installed in individual stores or in a central toilet room area or areas, if the distance from the main entrance of a [~~any~~] store does not exceed 500 feet and if accessible to physically disabled persons.

(c) Sanitary facilities shall be provided as stated in this section and shall conform as follows:

1. One (1) water closet for one (1) to 100 persons.
 2. Two (2) water closets for 101 to 200 persons.
 3. Three (3) water closets for 201 to 400 persons.
 4. One (1) water closet for each 500 males, or 300 females, in excess of 400.
 5. One (1) urinal for one (1) to 200 males.
 6. Two (2) urinals for 201 to 400 males.
 7. Three (3) urinals for 401 to 600 males.
 8. One (1) urinal for each 300 males, or fraction thereof, over 600.
 9. One (1) lavatory for one (1) to 200 persons.
 10. Two (2) lavatories for 201 to 400 persons.
 11. Three (3) lavatories for 401 to 700 persons.
 12. One (1) lavatory for each 500 persons, or fraction thereof, in excess of 700.
 13. One (1) drinking fountain on each floor for each 500 persons or fraction thereof.
 14. One (1) service sink or slop sink per floor.
- (3) Office buildings.
- (a) Sanitary facilities within office buildings shall be provided for employees and if [~~when~~] more than five (5) persons are employed, separate facilities for each sex shall be provided. EXCEPTION: For office buildings containing no more than 3,000 square feet of total gross floor area, employee facilities **shall not be** [~~are not~~] required if adequate interior facilities are provided within a centralized toilet room area or areas having a travel distance of no more than 500 feet.
- (b) Sanitary facilities shall be provided for customers when the office building or space contains 5,000 square feet or more. In office buildings, the required facilities, based on one (1) person per 100 square feet of total area, may be installed within the individual **offices** [~~shops~~], or in a central toilet room area or areas if the distance from the main entrance of an [~~any~~] office does not exceed 500 feet and if accessible to physically disabled persons.
- (c) Sanitary facilities shall be provided as stated in this section and shall conform as follows:
1. One (1) water closet for one (1) to fifteen (15) persons.
 2. Two (2) water closets for sixteen (16) to thirty-five (35) persons.
 3. Three (3) water closets for thirty-six (36) to fifty-five (55)

persons.

4. Four (4) water closets for fifty-six (56) to eighty (80) persons.
5. Five (5) water closets for eighty-one (81) to 110 persons.
6. Six (6) water closets for 111 to 150 persons.
7. One (1) water closet for each forty (40) additional persons.
8. One (1) lavatory for one (1) to fifteen (15) persons.
9. Two (2) lavatories for sixteen (16) to thirty-five (35) persons.
10. Three (3) lavatories for thirty-six (36) to sixty (60) persons.
11. Four (4) lavatories for sixty-one (61) to ninety (90) persons.
12. Five (5) lavatories for ninety-one (91) to 125 persons.
13. One (1) lavatory for each forty-five (45) additional persons.
14. ~~If [Wherever]~~ urinals are provided, one (1) water closet less than the number specified may be provided for each urinal installed except that the number of water closets in those [such] cases shall not be reduced to less than seventy (70) percent of the minimum specified.
15. One (1) drinking fountain for each seventy-five (75) persons or fraction thereof.

Section 14. Swimming Pool Bathhouses (relates also to 902 KAR 10:120 ~~[401 KAR 6:030]~~). (1) Bathhouses for public swimming pools shall be divided into two (2) parts separated by a tight partition, each designated for "Males" or "Men" and the other "Females" or "Women."

(2) Sanitary facilities shall be provided in each bathhouse to serve the anticipated bather load~~ing~~, as defined in 902 KAR 10:120 ~~[401 KAR 6:030, Section 7(6)]~~, and shall conform to the following:

(a) For swimming pools in which the total bather capacity is 200 persons or less:

1. One (1) water closet for each seventy-five (75) males or fraction thereof.
2. ~~[(b)]~~ One (1) water closet for each fifty (50) females or fraction thereof.
3. ~~[(c)]~~ One (1) urinal for each seventy-five (75) males or fraction thereof.
4. ~~[(d)]~~ One (1) lavatory for each 100 persons or fraction thereof.
5. ~~[(e)]~~ One (1) shower per each fifty (50) persons or fraction thereof.
6. ~~[(f)]~~ One (1) drinking fountain per each 200 persons or fraction thereof.

(b) For toilet facilities in which the total bather capacity exceeds 200 persons, the following minimum fixtures shall be provided:

1. Five (5) water closets for 201 to 400 females; add one (1) for each additional 250 females.
2. Three (3) water closets for 201 to 400 males; add one (1) water closet for each additional 500 males.
3. Three (3) urinals for 201 to 400 males; add one (1) urinal for each additional 500 males or fraction thereof.

(c) One (1) lavatory for up to 150 males or females; two (2) lavatories for 151 to 400 males or females; three (3) lavatories for 401 to 750 males or females; add one (1) lavatory for each additional 750 males or females over 750.

(d) One (1) shower per each fifty (50) persons or fraction thereof up to 150; after that, one (1) shower per each 500 persons.

(e) One (1) drinking fountain per each 500 persons or fraction thereof.

(3) Fixture schedules shall be increased for pools at schools or similar locations where bather loads may reach peaks due to schedules of use. Pools used by groups or classes on regular time schedules of:

(a) One (1) hour or less shall have one (1) shower for each six (6) swimmers; and

(b) ~~[(a)]~~ One (1) to two (2) hours shall have one (1) shower for each ten (10) swimmers [if the period is two (2) hours].

(4) Satisfactorily designed and located shower facilities, including warm water and soap, shall be provided for each sex. Showers shall be supplied with water at a temperature of no less than ninety (90) degrees Fahrenheit, and at a flow rate of at least three (3) gallons per

minute. Thermostatic, tempering or mixing valves shall be installed to prevent scalding of the bathers.

(5) The requirement relating to bathhouse toilet room and shower facilities may be waived if the [when such] facilities are conveniently available to pool patrons within 150 feet from the pool.

Section 15. Park Service Buildings or Bathhouses (relates to 902 KAR 15:020). (1) Except for self-contained recreational vehicle parks, each park shall provide one (1) or more central service buildings containing the necessary toilet and other plumbing fixtures specified.

(2) Except for self-contained recreational vehicle parks, sanitary facilities shall be provided as follows:

(a) One (1) to fifteen (15) vehicle spaces.

1. Males. One (1) water closet, one (1) urinal, one (1) lavatory and one (1) shower.

2. Females. One (1) water closet, one (1) lavatory and one (1) shower.

(b) Sixteen (16) to thirty (30) vehicle spaces.

1. Males. One (1) water closet, one (1) urinal, two (2) lavatories and two (2) showers.

2. Females. Two (2) water closets, two (2) lavatories and two (2) showers.

(c) Thirty-one (31) to forty-five (45) vehicle spaces.

1. Males. Two (2) water closets, one (1) urinal, three (3) lavatories and three (3) showers.

2. Females. Two (2) water closets, three (3) lavatories and three (3) showers.

(d) Forty-six (46) to sixty (60) vehicle spaces.

1. Males. Two (2) water closets, two (2) urinals, three (3) lavatories and three (3) showers.

2. Females. Three (3) water closets, three (3) lavatories and three (3) showers.

(e) Sixty-one (61) to eighty (80) vehicle spaces.

1. Males. Three (3) water closets, two (2) urinals, four (4) lavatories and four (4) showers.

2. Females. Four (4) water closets, four (4) lavatories and four (4) showers.

(f) Eighty-one (81) to 100 vehicle spaces.

1. Males. Four (4) water closets, two (2) urinals, five (5) lavatories and five (5) showers.

2. Females. Five (5) water closets, five (5) lavatories and five (5) showers.

(g) If [When] over 100 vehicle spaces are provided there shall be one (1) additional water closet and one (1) additional lavatory for each sex per additional thirty (30) spaces or fraction thereof; one (1) additional shower for each sex per additional forty (40) vehicle spaces or fraction thereof; and one (1) additional urinal for males per additional 100 vehicle spaces.

Section 16. Residential and Day Camp Sites (relates to 902 KAR 10:040). (1) Each residential and day camp site shall be provided with sanitary facilities for each sex as specified.

(2) Sanitary facilities shall be provided as listed below, ~~but [except, however,]~~ day camps shall not be required to provide shower facilities.

(a) One (1) to eighteen (18) persons served.

1. Males. One (1) water closet, one (1) urinal, one (1) lavatory and one (1) shower.

2. Females. Two (2) water closets, one (1) lavatory and one (1) shower.

(b) Nineteen (19) to thirty-three (33) persons served.

1. Males. Two (2) water closets, one (1) urinal, two (2) lavatories and two (2) showers.

2. Females. Two (2) water closets, two lavatories and two showers.

(c) Thirty-four (34) to forty-eight (48) persons served.

1. Males. Two (2) water closets, two (2) urinals, two (2) lavatories

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and three (3) showers.

2. Females. Three (3) water closets, two (2) lavatories and three (3) showers.

(d) Forty-nine (49) to sixty-three (63) persons served.

1. Males. Three (3) water closets, two (2) urinals, three (3) lavatories and four (4) showers.

2. Females. Four (4) water closets, three (3) lavatories and four (4) showers.

(e) Sixty-four (64) to seventy-nine (79) persons served.

1. Males. Three (3) water closets, three (3) urinals, three (3) lavatories and five (5) showers.

2. Females. Five (5) water closets, three (3) lavatories and five (5) showers.

(f) Eighty (80) to ninety-five (95) persons served.

1. Males. Four (4) water closets, three (3) urinals, four (4) lavatories and six (6) showers.

2. Females. Six (6) water closets, four (4) lavatories, and six (6) showers.

(g) If ~~When~~ over ninety-five (95) persons are served, there shall be provided: One (1) additional water closet and one (1) additional lavatory for each twenty-five (25) persons or fraction thereof served; one (1) additional shower for each twenty (20) persons, or fraction thereof, served; one (1) urinal per fifty (50) additional males or fraction thereof.

(h) Water closets may be substituted for urinals if ~~when~~ facilities are to ~~may~~ be used by both sexes.

Section 17. Retail Food Stores and Restaurants. Sanitary facilities shall be provided for employees. (relates to 902 KAR 10:020 and 902 KAR 45:005).

(1) Food stores.

(a) If more than ~~When in excess of~~ five (5) persons of different sex are employed, separate facilities shall be provided for the employees.

(b) Sanitary facilities shall be provided for customers if ~~when~~ the building contains 5,000 square feet or more. In malls and shopping centers, the required facilities, based on one (1) person per fifty (50) square feet, may be installed in individual stores or in a central toilet room area or areas, if the distance from the main entrance of a ~~any~~ store does not exceed 500 feet.

(c) 1. One (1) water closet for one (1) to 100 persons.

2. Two (2) water closets for 101 to 200 persons.

3. Three (3) water closets for 201 to 400 persons.

4. One (1) water closet for each 500 males or 300 females in excess of 400.

5. One (1) urinal for eleven (11) to 200 males.

6. Two (2) urinals for 201 to 400 males.

7. Three (3) urinals for 401 to 600 males.

8. One (1) urinal for each 300 males or fraction thereof, over 600.

9. One (1) lavatory for one (1) to 200 persons.

10. Two (2) lavatories for 201 to 400 persons.

11. Three (3) lavatories for 401 to 700 persons.

12. One (1) lavatory for each 500 persons or fraction thereof in excess of 700.

13. One (1) drinking fountain on each floor for each 500 persons or fraction thereof.

14. One (1) service sink, utility sink or curbed mop basin per floor as required.

(2) Restaurants.

(a) If more than ~~When in excess of~~ five (5) persons of different sex are employed, separate facilities shall be provided for the employees.

(b) In new establishments or establishments that are extensively altered or changed from another type occupancy to a restaurant, toilet facilities for each sex shall be provided and readily accessible for the use of both patrons and employees. ~~It is provided that~~ Carryout type food service operations shall be exempt~~ed~~ from providing toilet

facilities for the use of their patrons.

(c) 1. Two (2) water closets for one (1) to 100 persons.

2. Three (3) water closets for 101 to 200 persons.

3. Four (4) water closets for 201 to 300 persons.

4. One (1) water closet for each additional 200 persons or fraction thereof over 300.

(d) 1. One (1) urinal for eleven (11) to 200 males.

2. One (1) urinal for each additional 150 males or fraction thereof over 150.

(e) 1. One (1) lavatory for one (1) to 200 persons.

2. Two (2) lavatories for 201 to 400 persons.

3. Three (3) lavatories for 401 to 600 persons.

4. One (1) lavatory for each additional 200 persons or fraction thereof over 600.

(f) 1. One (1) drinking fountain for one (1) to 100 persons.

2. Two (2) drinking fountains for 101 to 500 persons or fraction thereof.

(g) If ~~When~~ food is consumed indoors on the premises, water stations may be substituted for drinking fountains.

(h) One (1) service sink, utility sink or curbed mop basin on each floor as required.

(i) Lavatories for hand washing shall be provided in the kitchen area, readily accessible to the employees. ~~However,~~ If the service or utility sink is placed in a location readily accessible to the employees as determined by the Cabinet for Human Resources, it may substitute for the lavatory.

Section 18. Temporary Facilities for Construction Projects. Separate sanitary fixtures shall be provided as scheduled below for both males and females:

(1) One (1) water closet per thirty (30) males or fraction thereof.

(2) One (1) urinal per thirty (30) males or fraction thereof.

(3) One (1) lavatory per thirty (30) males or fraction thereof.

(4) One (1) water closet per twenty (20) females or fraction thereof.

(5) One (1) lavatory per twenty (20) females or fraction thereof.

(6) One (1) drinking fountain per 100 persons or fraction thereof.

~~[Section 19. The fixture requirements of this administrative regulation are also compiled in table form which is available from the Division of Plumbing, Department of Housing, Buildings and Construction, The 127 Building, Frankfort, Kentucky 40601.]~~

CHARLES A. COTTON, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: September 6, 1996

FILED WITH LRC: September 9, 1996 at 2 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Office of State Fire Marshal
(As Amended)

815 KAR 25:010. Manufactured homes.

RELATES TO: KRS 227.550 through 227.660, 227.990, 42 USC 5401

STATUTORY AUTHORITY: KRS 227.570, 227.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.570 and 227.590 requires the Manufactured ~~Mobile~~ Home Certification and Licensure Board to establish, and the Office of State Fire Marshal ~~the Office~~ to enforce, ~~rules and~~ administrative regulations governing the standards for manufactured housing; and the office of the State Fire Marshal to license manufactured home dealers pursuant to KRS 227.610 and to issue certificates of acceptability pursuant to KRS 227.580. This administrative regulation is necessary

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to establish standards for the design, manufacture, installation and sale of new and used manufactured homes, ~~which are manufactured, sold or leased for use within or outside of the Commonwealth by dealers and manufacturers, or manufactured homes constructed in facilities located within or outside the Commonwealth.~~ This administrative regulation is consistent with Title 6 of the Federal Housing and Community Development Act of 1974 and is intended to assure safety for owners and occupiers of new and used manufactured homes sold by dealers. This amendment is necessary to bring this administrative regulation into conformity with House Bill 477 enacted by the 1996 Kentucky General Assembly and to otherwise assure that the proper seals and labels are on each home sold. [specify tie-down requirements given to the authority having jurisdiction under referenced standards.]

Section 1. Definitions. In addition to the following definitions, the definitions of the NFPA 501 (B) incorporated by reference in Section 4(4) of this administrative regulation and the HUD Act shall apply:

(1) "Act" means the Manufactured Home and Recreational Vehicle Act, KRS 227.550 to 227.660.

(2) "Agency testing" means, that for purposes of approving the use of ancillary equipment and apparatus in association with the installation of a manufactured home, an independent organization which is:

(a) Primarily interested in testing and evaluating equipment and installations;

(b) Qualified and equipped for, or observe experimental testing of standards;

(c) Not under the jurisdiction or control of any manufacturer or supplier of any industry;

(d) Makes available a published report in which specific information is included stating that the equipment and installations listed or labeled have been tested and found safe for use in a specific manner; and

(e) Approved by the board.

(3) "Alteration or conversion" means the replacement, addition, modification or removal of equipment or installations which may affect the body and frame design and construction, as well as the plumbing, heat-producing, cooling, fuel burning or electrical systems and smoke detectors. It shall include, but not be limited to:

(a) The addition or deletion of windows, doors or partitions;

(b) The addition of an electrical circuit to accommodate a washer or dryer;

(c) The addition of a central air condition system when the unit was not factory installed;

(d) The conversion of a heating, cooling, fuel burning system from one (1) fuel to another, such as electric to gas or gas to electric or oil;

(e) The use of improperly listed materials for the repair of a unit or the installation of an unlisted heating, cooling or fuel burning appliance;

(f) The replacement of equipment in kind, i.e., gas furnace with gas furnace or the replacement or changing of furniture or appliances to accommodate the consumer or other cosmetic changes shall not constitute an alteration or conversion.

(4) "ANSI" means the American National Standards Institute.

(5) "B seal" as defined by KRS 227.550(3) is for application on used manufactured and mobile homes. This definition includes two (2) types of "B" seals.

(a) A "B1 seal" represents that the unit has been inspected and found to be in compliance with applicable standards.

(b) A "B2 seal" represents that the unit has been inspected and found not to be in compliance with applicable codes; that it is a salvage only unit.

(6) "Board" means the Manufactured Home Certification and Licensure Board defined in KRS 227.550(1).

(7) "Certificate of acceptability" means the certificate provided to the manufacturer signifying the manufacturer's ability to manufacture,

import or sell manufactured housing within the state to licensed Kentucky dealers.

(8) "Certified inspector" means a person who is not a licensed dealer but who has taken the training and passed the examination approved by the State Fire Marshal to qualify the person to make inspections of manufactured and mobile homes and apply appropriate "B" seals upon request of the owner. This definition shall also include any former employee of the office who shall be issued a certificate based upon experience as a manufactured housing inspector for the office upon approval of their credentials by the board. Completion of the educational courses approved by the board shall also be acceptable in lieu of the training given by the office.

(9) "Certified dealer" means a licensed dealer who has certified to the office that he maintains the capability to perform minor maintenance of plumbing, heating, cooling, fuel burning systems, and electrical systems of manufactured homes as well as inspections used manufactured and mobile homes under Section 4(1) through (10) of this administrative regulation and repairs them, if necessary, before placing a "B" seal on them. Certification to the office shall be made on Form HBCMH #29, August 1996, incorporated by reference in Section 4(8) of this administrative regulation.

(10) "Certified installer" means a person certified by the office pursuant to 815 KAR 25:030 and Section 11 of this administrative regulation as qualified to install and inspect the installation of manufactured and mobile homes.

(11) "Dealer" as defined by KRS 227.550(4).

(12) "Employee" means an individual who is engaged on a regular salaried basis by the company and is required to be directed, supervised or otherwise controlled under the authority of the company. The term "employee" or "in the employ" shall not mean an independent contractor or a person engaged on a contract basis by the company who is not directed, supervised or otherwise controlled under the authority of the company.

(13) "Established place of business" as defined by KRS 227.550(5).

(14) "Hard surfaced lot" means an area open to the public during business hours with a surface of concrete, asphalt/macadam, compacted gravel or stone, or other material of similar characteristics.

(15) "HBCMH" means the forms which are necessary to complete application for licensure as a manufacturer or dealer of manufactured homes.

(16) "HUD Act or federal act" as defined by KRS 227.550(6).

(17) "HUD label" means the label affixed to a new manufactured home by the manufacturer after it has been approved by a third party inspector as required under the HUD Act.

(18) "Installation" or "install" means the work performed and operations involved in the placement of a manufactured home on a foundation system, including anchoring devices together with any accessories and appurtenances specified in the sales contract; and, unless exempted by the contract, the connection of utilities.

(19) "Manufacturer" as defined by KRS 227.550(9).

(20) "Manufactured housing" as defined by KRS 227.550(8).

(21) "Manufactured home" as defined by KRS 227.550(7). Homes or recreational vehicles known as "park trailers" are not included in this definition.

(22) "Mobile home" as defined by KRS 227.550(9).

(23) "NFPA" means National Fire Protection Association pamphlets published by and available from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(24) "Offer for sale" means to display, exhibit or otherwise advertise a manufactured home. It also means negotiating the purchase and sale or exchange of manufactured homes for a fee, commission, compensation, or other valuable consideration.

(25) "Office" as defined by KRS 227.550(11).

(26) "Person" means a person, partnership, corporation or other legal entity.

(27) "Red tag" means a written notice which is applied to a

manufactured home or mobile home by a representative of the State Fire Marshal's Office in accordance with Section 12 of this administrative regulation signifying that it shall not be sold until corrections are made or appropriate seal applied.

(28) "Registration" means the transfer of title or any other official recording of change of ownership.

(29) "Salvage only unit" means a used manufactured or mobile home which is not approved for human habitation.

(30) "Suitable sign" means a sign with the dealership name and type of dealership in letters of a minimum height of six (6) inches and minimum width of one and one-half (1 ½) inches.

(31) "Used manufactured home" means any manufactured or mobile home offered for sale or sold after the original purchase. Used manufactured homes are not governed by the HUD Act.

Section 2. Administration and Enforcement. (1) An officer, agent, or employee of the State Fire Marshal's Office shall enter each dealer's place of business in order to inspect manufactured homes for which the office has issued a seal of approval, or to inspect the manufactured home's equipment and its installations to insure compliance with KRS 227.550-660, the HUD Act and this administrative regulation.

(2) Upon complaint and request by the owner or occupant, a privately owned manufactured home requiring a seal may be entered to determine compliance with this administrative regulation.

(3) If it becomes necessary to determine compliance, the inspector may require that a portion of the manufactured home be removed or exposed in order that a compliance inspection can be made.

(4) Upon request of any owner or occupant of a manufactured home, a certified dealer or inspector may make inspections for purposes of applying "B seals" and collect the fee for that service described in Section 4(10) of this administrative regulation. Prior to inspection, the person making the inspection shall notify the owner or occupant what the fee shall be.

Section 3. Exemptions from Licensure as a Dealer. (1) This administrative regulation shall not apply to individual sales of manufactured homes by the owner of the home.

(2) If a person sells or offers for sale more than two (2) homes in one (1) year, a license shall be required pursuant to KRS 227.620.

(3) Manufactured homes brought into this state for exhibition use only, in accordance with Section 9(4) of this administrative regulation, and which shall not be sold in this state, shall be exempt from the licensing and seal requirements of this administrative regulation if inspections reveal no condition hazardous to health or safety.

Section 4. Standards for Inspection of Used Manufactured Homes in Manufacturers' or Dealers' Possession. (1) All manufactured and mobile homes taken in trade or purchased by the dealer shall be reinspected and certified as to the status of compliance with requirements of subsections (4) and (5) of this section.

(a) Any existing "Class B seal" shall be removed upon trading or purchase and, after inspection, a new seal shall be affixed to the unit or a new seal may be affixed over the existing seal, prior to offering for sale.

(b) Each "B seal" shall state on its face that the home is in compliance with applicable standards or that it is not in compliance with applicable standards and is for salvage only.

(c) In addition to the requirement that a "B seal" be affixed to each used unit, a "B2 seal" unit shall not be resold unless, prior to signing the purchase agreement, written notice is given to the purchaser that the unit is a "salvage only unit", and the dealer shall specify the items of noncompliance with subsection (5)(a) through (g) of this section. The dealer shall use "Form HBCMH #28, August, 1996", which is hereby incorporated by reference, to the Office of the State Fire Marshal. Copies of Form HBCMH #28 are available for

inspection and copying from the Department of Housing, Buildings and Construction, Manufactured Housing Section, 1047 US 127 South, Suite 1, Frankfort, Kentucky 40601, between 8 a.m. and 4:30 p.m., Monday through Friday.

(2) If a new manufactured home purchased under the provision of the HUD Act is resold, it shall become a used manufactured home and shall be subject to the provisions of this section.

(3) Licensed dealers may sell units to other licensed dealers without affixing seals.

(4) The following standards are hereby incorporated by reference and are applicable only to the units manufactured during the dates cited:

(a) NFPA 501 (B), 1977 edition, for all homes manufactured prior to 1977;

(b) Manufactured Home Construction and Safety Standards, October, 1984, for all homes constructed between 1977 [4097] and April, 1994;

(c) Manufactured Home Construction and Safety Standards, April, 1994, for all homes constructed since April, 1994; and

(d) A copy of each Standard is available for public inspection and copying at the Department of Housing, Buildings and Construction, Manufactured Housing Section, The 127 Building, 1047 US 127 South, Suite 1, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

1. The NFPA Standard is published by and copies are also available from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101.

2. The standards referenced in subsection 4(b)-(c) of this section are published by and also available from the United States Department of Housing and Urban Development, 451 Seventh Street SW, Washington, D.C., 20410.

(5) These standards shall be used by the certified dealer or certified inspector to determine and certify compliance or lack thereof of the following items:

(a) The safe and adequate working condition of the electric, heating, cooling, fuel burning and plumbing systems; and

(b) The door, window, and general structural integrity of the unit; and

(c) The sealing of all exterior holes to prevent the entrance of rodents, and repair[ed] if necessary; and

(d) The existence of adequate and operable smoke detection equipment; and

(e) The existence of storm windows; and

(f) The existence of smoke detectors; and

(g) The existence of two (2) exits.

(6) All manufactured housing shall be installed by a certified installer in accordance with the manufacturer's instructions or ANSI A225.1/NFPA 501A, Manufactured Home Installations, 1982 Edition, hereby incorporated by reference; and the installation shall include the tying down and anchoring a minimum of four (4) corners of the home.

(a) Copies of ANSI A225.1/NFPA 501A are available from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101.

(b) This material is available for public inspection and copying at the Department of Housing, Buildings and Construction, Manufactured Housing Section, The 127 Building, 1047 US 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

(7) All used manufactured and mobile homes purchased outside the Commonwealth of Kentucky, regardless of the type seal or label affixed, shall be inspected by a certified inspector, certified dealer or the office and a "B seal" indicating its compliance or noncompliance with applicable standards affixed to the home prior to its registration. This inspection shall consist of the following:

(a) Inspection of the plumbing and waste systems, to determine operability and absence of leaks.

(b) Inspection of the heating, cooling or fuel burning system to

determine adequacy of system.

(c) Inspection of the electrical system, including the main circuit box and all outlets/switches, to detect any damaged coverings, lost screws, or improper installations.

(d) Inspection for the existence of adequate and operable smoke detection equipment.

(e) Inspection of the door, window and general structural integrity of the unit.

(f) Inspection for the existence of two (2) exits.

(g) Inspection for storm windows; except that this subsection shall not apply to mobile homes.

(8) Any licensed dealers and other qualified persons desiring to perform the "B seal" inspection and certification service, shall make application to the Office of the State Fire Marshal for appropriate certification as either a certified dealer or a certified inspector on "Form HBCMH # 29, August, 1996", hereby incorporated by reference and available for inspection and copying from the Department of Housing, Buildings and Construction, Manufactured Housing Section, 1047 US 127 South, Suite 1, Frankfort, Kentucky 40601, between 8 a.m. and 4:30 p.m., Monday through Friday.

(a) The office shall maintain a list of all certified dealers and certified inspectors.

(b) The board may revoke or suspend the certification of any certified inspector, after a hearing conducted in accordance with KRS Chapter 13B.

(9) Any unit found to be in noncompliance with applicable requirements of subsection (5) of this section, shall be corrected prior to the dealer certifying the unit or offering the unit for sale unless the unit has been issued a "B2 seal".

(10) The fee for the inspection of manufactured homes shall be thirty-five (35) dollars, twenty-five (25) cents per mile measured from the dealer lot or place of business of the inspector and a twenty-five (25) dollar seal fee when performed by a certified Kentucky dealer or inspector. Inspections performed by the office shall be a thirty-five (35) dollar inspection fee and a twenty-five (25) dollar seal fee.

Section 5. Applicability and Interpretation of Code and Regulation Provisions. Questions by any interested person regarding the applicability or interpretation of any provisions of the HUD Act, the code or administrative regulation adopted shall be submitted to the office in writing. It is the policy of the office that with respect to questions regarding NFPA 501 (B), that the questions shall, whenever feasible, first be submitted to the NFPA for their recommendation; however, the office shall answer these questions and render the official interpretations, and the decision of the office shall be in writing.

Section 6. Certificate of Acceptability. (1) A manufacturer shall not manufacture, import, or sell any manufactured home in this state unless he has procured a certificate of acceptability from the board. Compliance shall be enforced through KRS 227.992.

(2) Requirements for issuance.

(a) The manufacturer shall submit and the office shall approve in-plant quality control systems.

(b) A \$500 fee shall accompany the Application "Form HBCMH #1, August, 1996", hereby incorporated by reference, to the Department. Copies of Form HBCMH #1 are available for inspection and copying from Department of Housing, Buildings and Construction, Manufactured Housing Section, 1047 US 127 South, Suite 1, Frankfort, Kentucky 40601, between 8 a.m. and 4:30 p.m., Monday through Friday. The fee shall be paid by check or money order and shall be made payable to Kentucky State Treasurer.

(c) The manufacturer shall furnish and maintain with the office a certificate of insurance from a Kentucky authorized insurance company for general liability insurance including product liability and completed operations in the minimum amount of \$300,000 bodily injury or death for each person, \$400,000 bodily injury or death for

each accident, and \$100,000 property damage.

(3) Any new manufactured home or other type of building manufactured in-plant which does not carry a HUD label, shall comply with 815 KAR 7:100, the Kentucky Building Code, and shall be subject to the jurisdiction of the Kentucky Department of Housing, Buildings and Construction.

(4) A manufacturer with a certificate of acceptability shall not modify in any way its manufacturing specifications without prior written approval of the office.

(5) If the manufacturer is also a dealer, he shall also comply with dealer licensing provisions.

(6) If the applicant does not comply with this administrative regulation, the applicant shall be so notified in writing by the office within ten (10) working days of the date notified. If the applicant fails to submit a corrected application in accordance with the information supplied on the application correction notice, the application shall be deemed abandoned and twenty (20) percent of the fees due shall be forfeited to the office. Any additional submission shall be processed as a new application.

(7) Manufacturers shall notify the office, in writing, within thirty (30) days of any of the following occurrences:

(a) The corporate name is changed;

(b) The main address of the company is changed;

(c) There is a change in twenty-five (25) percent or more of the ownership interest of the company within a twelve (12) month period;

(d) The location of any manufacturing facility is changed;

(e) A new manufacturing facility is established; or

(f) There are changes in the principal officers of the firm.

(8) Any information relating to building systems or in-plant quality control systems which the manufacturer considers proprietary, shall be so designated at the time of plans submission, and shall be so held by the office, and by the inspection, evaluation, and local enforcement agencies unless the board determines in each case that disclosure is necessary to carry out the purposes of the Act.

(9) Under proceedings for the suspension of a certificate of acceptability for any of the violations enumerated in the Act, the holder of a certificate of acceptability may have the alternative, subject to the approval of the board, to pay, in lieu of part or all of the days of any suspension, the sum of fifty (50) dollars per day.

Section 7. Serial Numbers, Model Numbers, Date Manufactured.

A clearly designated serial number, model number, and date manufactured shall be stamped into the manufactured home tongue, or front cross member of the frame at the lower left hand side (while facing the unit). If there is no tongue or cross member, a data plate with this information shall be affixed on the outside in a conspicuous place.

Section 8. Dealer License. (1) A dealer of manufactured housing shall not engage in business in this state without holding a valid license issued by the office for each location at which the dealer seeks to engage in business.

(2) Application shall be made to the office prior to engaging in the business and the application shall be made on "Form HBCMH #2 (a) through (j), August, 1996", hereby incorporated by reference. Copies of the application form are available for inspection and copying from the Department of Housing, Buildings and Construction, Manufactured Housing Section, 1047 US 127 South, Suite 1, Frankfort, Kentucky 40601, between 8 a.m. and 4:30 p.m., Monday through Friday.

(a) A copy of a valid Kentucky sales tax certificate shall accompany the application; and

(b) The applicant shall also comply with zoning and other requirements of the local government necessary for a business to legally operate; and compliance shall be a condition of licensure.

(3) All licenses, unless renewed, revoked or suspended, shall expire on December 31 of the calendar year for which they are granted.

(4) The license fee shall be \$200. The fee shall be paid by check or money order, attached to application form HBCMH #2, incorporated by reference in subsection (2) of this section, and made payable to the Kentucky State Treasurer.

(5) The dealer shall furnish and maintain with the office a certificate of insurance to certify proof of general liability insurance in the minimum amount of \$200,000 for bodily injury or death for each person, \$300,000 bodily injury or death for each accident and \$100,000 for damage to property.

(6) The dealer shall notify the office of changes in the application information within thirty (30) days for the following occurrences:

(a) Dealership name is changed;

(b) Established place of business is changed (move to a different county requires a new license);

(c) There is a change in twenty-five (25) percent or more of the ownership interest of the dealership within a twelve (12) month period;

(d) There are changes in the principal officers of the firm; or

(7) Out-of-state dealers with valid Kentucky licenses: Exception:

An applicant whose place of business is in another state and who possesses a valid dealers license in another state shall be licensed upon application and approval by the office in accordance with this administrative regulation. These out-of-state dealers shall provide Kentucky seals for manufactured housing units actually sold for delivery into Kentucky.

(8) If a person who sells manufactured homes does not take possession or ownership of the manufactured homes and offers for sale used manufactured homes only as a negotiator or broker for a fee, commission, compensation or other valuable consideration, the person shall apply for and be issued a license as a dealer for that limited brokering function pursuant to this administrative regulation, as follows:

(a) A hard surfaced lot for display and repair shall not be necessary; and

(b) Each unit shall be inspected by a certified inspector or dealer and the applicable "B seal" shall be affixed to the unit prior to sale.

(c) The licensed broker/dealer shall not take possession of any home prior to its sale and shall not engage in brokering repossessed homes unless he has the required established place of business as required by this administrative regulation.

(9) After the effective date of this administrative regulation, but not before January 1, 1997, each new applicant and each licensed dealer applying for an additional location, or a designated employee, shall successfully complete the educational training and departmental testing program and become a Kentucky certified installer.

(10) Effective January 1, 1998, each company shall maintain in its employ at least one (1) person who has successfully completed the approved educational courses dealing with the installation of manufactured homes.

Section 9. Temporary License. (1) A person, other than one (1) duly licensed in Kentucky pursuant to Section 8 of this administrative regulation, shall not show or offer manufactured homes or mobile homes within the Commonwealth of Kentucky; except that, for the express purpose of retailing the units to the general public at a specified location, the person or company may purchase from the Office of the State Fire Marshal a temporary license. The temporary license shall not exceed fifteen (15) days duration and the license fee shall be \$100 for each authorized event. The applicant for the license shall notify the department at least thirty (30) days in advance of any event at which he plans to exhibit manufactured housing for sale giving the name, location and time of the proposed event.

(2) Applicants shall meet the following requirements before a temporary license shall be granted:

(a) Be a duly licensed dealer in a state other than Kentucky;

(b) Furnish to the office a certificate of insurance to certify that the dealership has general liability insurance in the minimum amount of \$200,000 bodily injury or death for each person, \$300,000 bodily

injury or death for each accident, and \$100,000 for damage to property;

(c) Possess a valid Kentucky Sales Tax Certificate;

(d) Provide all other information required by on Application "Form HBCMH #2" incorporated by reference in Section 8(2) of this administrative regulation;

(e) The state in which the applicant is licensed shall have reciprocal provisions for temporary licensing of Kentucky dealers.

(3) Temporary licenses shall be prominently displayed at the location where the applicant is transacting business.

(4) Temporary licenses shall not be required for those dealers attending a manufactured home show within the Commonwealth of Kentucky if they do not sell or offer for sale to the general public new or used manufactured homes, and if the dealer has notified the department, in writing, at least thirty (30) days in advance of any event at which he plans to exhibit manufactured homes, giving the name, location and time of the proposed event.

Section 10. Seals. (1) A manufacturer who has received a certificate of acceptability from the office shall not sell or offer for sale to Kentucky dealers in this state manufactured housing units.

(2) A dealer who has received a license from the office shall not sell or offer for sale a manufactured or mobile home except as permitted between licensed dealers, pursuant to Section 4(3) of this administrative regulation unless it has either a HUD label or a "B seal". A dealer who has acquired a used manufactured home without a seal, shall apply to the office for a Class "B1" seal by submitting an affidavit certifying either that all electrical, heating, cooling, fuel burning systems and plumbing equipment has been checked, and if necessary, repaired, and the unit now complies with the applicable standards; or, the dealer shall apply for Class "B2" seals indicating that the unit is not in compliance with applicable standards and is to be sold for "salvage only" with a detailed list of conditions that are not in compliance with the applicable requirements for electrical, heating, cooling, storm windows and doors, fuel burning systems, smoke detection, plumbing equipment and exits required for a Class "B1" compliance seal.

(3) Application for seals.

(a) Applications for both types of "B seals" shall be filed on "Form HBCMH #30, August, 1996", hereby incorporated by reference, and available for inspection and copying from the Department of Housing, Buildings and Construction, 1047 US 127 South, Suite 1, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. until 4:30 p.m.

(b) The application shall be accompanied by the seal fee of twenty-five (25) dollars for each "B seal".

(4) Affixing seals.

(a) A dealer or certified inspector shall affix a "B1 seal" upon submitting to the Office a Unit Inspection on "Form HBCMH #40, August, 1996", hereby incorporated by reference, certifying either that all electrical, heating, cooling, fuel burning systems, smoke detection, plumbing equipment and exits, have been checked, repaired if necessary, and is now in safe working condition meeting applicable standards. Copies of the Unit Inspection Form HBCMH #40 are available for inspection and copying from the Department of Housing, Buildings and Construction, Manufactured Housing Section, 1047 US 127 South, Suite 1, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. until 4:30 p.m.

(b) If a unit does not qualify for a "B1 seal" because it is found not in compliance with applicable codes as required by this administrative regulation, the dealer or certified inspector shall submit a Unit Inspection "Form HBCMH #40", incorporated by reference in subsection (4)(a) of this section, and affix a "B2 seal" to the unit.

(c) If a dealer has applied a "B2 seal" to a unit but later repairs the unit so that it becomes entitled to a "B1 seal", the dealer may purchase a replacement seal for a fee of two (2) dollars.

(6) Dealers shall maintain a record of all units sold, new and used, to include serial numbers, "B seal" numbers ("B1" and "B2")

date manufactured (if known), make, and the name and address of the purchaser. This report shall be on "Form HBCMH #23, August, 1996", hereby incorporated by reference, available for inspection or copying from the Department of Housing, Buildings and Construction, Manufactured Housing Section, 1047 US 127 South, Suite 1, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m. Report Form HBCMH #23 shall be made available to the field inspector on a monthly basis.

(7) Alterations.

(a) A dealer shall not make any alterations to any new manufactured home without the express written permission of the manufacturer; except that in the case of used manufactured or mobile homes, alteration and conversion shall be in compliance with Section 4(4) of this administrative regulation and the applicable codes adopted herein.

(b) A licensed dealer is authorized to alter or convert equipment and otherwise make repairs associated with the sale of a used manufactured or mobile home.

(8) Placement of seals.

(a) Each seal shall be assigned and affixed to a specific manufactured or mobile home. Assigned seals shall not be transferable unless assigned between dealers and shall be void when not affixed as assigned. All unused seals shall be returned to the office. The seal shall remain the property of the office and may be seized by the office in the event of violation of the Act or administrative regulations.

(b) The seal shall be securely affixed on the door on the handle side at approximately handle height.

(c) Other seals, stamps, covers or other markings shall not be placed within two (2) inches of the seal.

(9) Lost or damaged seals.

(a) If a seal becomes lost or damaged, the office shall be notified immediately, in writing, by the owner. The owner shall specify the manufacturer, the manufactured home serial number, and if possible, the seal number.

(b) All damaged seals shall be promptly returned. Damaged and lost seals shall be replaced by the office with a replacement seal upon payment of the replacement seal fee of two (2) dollars.

(10) A dealer shall not display, sell or offer for sale a new manufactured home unless a HUD label is affixed; or, if it is a used manufactured home, that a "B seal" shall be affixed.

Section 11. Examination for Installation of Manufactured Homes. The office shall administer an examination designed to determine qualifications based on NFPA 501A and other applicable standards set forth in Section 4(4) of this administrative regulation. Any dealer or other person who successfully completes the educational program and the additional examination given by the office shall be deemed qualified to install manufactured homes. The dealer shall be responsible for the proper installation of the manufactured home as required by the standards adopted by the board.

Section 12. Red Tagging. If a manufactured home is found to be in violation of this administrative regulation, the office shall attach to the home a notice of noncompliance known as a "red tag" and furnish the dealer a copy of same. The "red tag" shall not be removed until corrections have been made and the office has approved the removal.

Section 13. A dealer shall not sell or offer for sale any manufactured home upon which he cannot present a marketable title to the purchaser. The title shall be provided as soon as possible; and, upon complaint of the purchaser, the dealer shall demonstrate to the office good cause for delay. Compliance with this subsection shall be a condition of continued licensure.

[Section 1. Definitions. In addition to the following definitions, the definitions of National Fire Protection Association Pamphlet Number

501(B) listed in Section 4(3) of this administrative regulation and the HUD Act shall apply:

(1) "Act" means the Mobile Home and Recreational Vehicle Act, KRS 227.550 to 227.660.

(2) "Agency, testing" means an independent organization which is:

(a) Primarily interested in testing and evaluating equipment and installations;

(b) Qualified and equipped for, or to observe experimental testing to approved standards;

(c) Not under the jurisdiction or control of any manufacturer or supplier of any industry;

(d) Makes available a published report in which specific information is included stating that the equipment and installations listed or labeled have been tested and found safe for use in a specific manner; and

(e) Approved by the board.

(3) "Alteration or conversion" means the replacement, addition, modification or removal of any equipment or installations which may affect the body and frame design and construction, plumbing, heat-producing, cooling, fuel burning systems or electrical systems or smoke detectors or their function. It shall include, but not be limited to, the addition or deletion of windows, doors, or partitions; the addition of an electrical circuit to accommodate a washer or dryer; the addition of a central air condition system when the unit was not factory installed; the conversion of a heating, cooling, fuel burning system from one (1) fuel to another such as electrical to gas or gas to electric or oil; the use of improperly listed materials for the repair of a unit or the installation of an unlisted heating, cooling or fuel-burning appliance. However, the replacement of equipment in kind, i.e., gas furnace with gas furnace or the replacement or changing of furniture to accommodate the consumer or other cosmetic changes shall not constitute an alteration or conversion.

(4) "ANSI" means the American National Standards Institute.

(5) "Board" means the Mobile Home Certification and Licensure Board defined in KRS 227.550(1).

(6) "Certificate of acceptability" means the certificate provided to the manufacturer signifying the manufacturer's ability to manufacture, import or sell manufactured housing within the state to licensed Kentucky dealers.

(7) "Certified Kentucky dealer" means a dealer who is approved by the State Fire Marshal to inspect used manufactured homes before registration or title in Kentucky, and repair them, if necessary, under NFPA 501(B) before placing a "B" seal upon them.

(8) "Class "A" seal" as defined by KRS 227.550(2) is for application on new manufactured homes not covered by the HUD Act.

(9) "Class "B" seal" as defined by KRS 227.550(3) is for application on used manufactured homes.

(10) "Dealer" as defined by KRS 227.550(4).

(11) "Established place of business" as defined by KRS 227.550(5).

(12) "Hard surfaced lot" means an area open to the public during business hours with a surface of concrete, asphalt/macadam, compacted gravel or stone, or other material of similar characteristics.

(13) "HUD Act" or "federal act" as defined by KRS 227.550(6).

(14) "Installation" means the work performed and operations involved in the placement of a manufactured home on a foundation system, including anchoring devices together with any accessories and appurtenances specified in the sales contract; and, unless exempted by the contract, the connection of utilities.

(15) "Manufacturer" as defined by KRS 227.550(8).

(16) "Manufactured housing" as defined by KRS 227.550(7).

(17) "Manufactured home" as defined by KRS 227.550(9). Homes or recreational vehicles known as "park trailers" under the HUD Act are regulated by 815 KAR 25:020.

(18) "NFPA" means National Fire Protection Association pamphlets published by and available from the National Fire Protection

Association, Batterymarch Park, Quincy, Massachusetts 02260.

(19) "Offer for sale" means to display, exhibit or otherwise advertise a manufactured home. It also means negotiating the purchase and sale or exchange of manufactured homes for a fee, commission, compensation, or other valuable consideration.

(20) "Person" means a person, partnership, corporation or other legal entity.

(21) "Red tag" means a written notice which is applied to a manufactured home by a representative of the State Fire Marshal's Office in accordance with Section 10 of this administrative regulation signifying that the manufactured home is not in compliance with applicable laws.

(22) "Registration" means the transfer of title or any other official recording of change of ownership.

(23) "Salvage unit" means any used manufactured home which is identified by the State Fire Marshal and the dealer, or by title, to not be subject to "B" seal requirements because it is not to be sold or used for habitable purposes.

(24) "Suitable sign" means a sign with the dealership name and type of dealership in letters of a minimum height of six (6) inches and minimum width of one and one half (1 1/2) inches.

(25) "Used manufactured home" means any manufactured home unit which shall be offered for sale after the original purchase. Used manufactured homes are not covered by the HUD Act.

Section 2. Administration and Enforcement. (1) An officer, agent, or employee of the State Fire Marshal's office shall enter each dealer's place of business in order to inspect manufactured homes for which the office has issued a seal of approval, or to inspect the manufactured home's equipment and its installations to insure compliance with the Act, the HUD Act and this administrative regulation.

(2) Upon complaint and request by the owner or occupant, a privately owned manufactured home requiring a seal may be entered to determine compliance with this administrative regulation.

(3) When it becomes necessary to determine compliance, the inspector may require that a portion of the manufactured homes shall be removed or exposed in order that a compliance inspection can be made.

Section 3. Exemptions from Licensure as a Dealer. (1) This administrative regulation shall not apply to individual sales of manufactured homes by the owner of the home.

(2) If a person sells more than two (2) homes in one (1) year, a license shall be required pursuant to KRS 227.620.

(3) Manufactured housing brought into this state for exhibition use only, in accordance with Section 9(4) of this administrative regulation, and which shall not be sold in this state, shall be exempt from the requirements of this administrative regulation if inspections reveal no condition hazardous to health or safety.

Section 4. Standards for Manufactured Homes in Manufacturers' or Dealers' Possession. (1) The office shall enforce standards and requirements for the installation of plumbing, heating, cooling, fuel burning systems, electrical systems and smoke detectors in manufactured housing not covered by the HUD Act, as it determines are reasonably necessary to protect the health and safety of the occupants and the public.

(2) The office shall also enforce the standards and requirements for the body and frame design, construction and installation of manufactured housing.

(3) All new manufactured homes not covered by the HUD Act, manufactured for sale within the Commonwealth of Kentucky, shall be constructed in accordance with NFPA 501(B), 1977 edition, hereby incorporated by reference. Copies of this publication are available from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02260-9101. This material is available for

public inspection at the Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

(4) NFPA 501(B), which is incorporated by reference in subsection (3) of this section, shall be the standard for used manufacture homes, and it shall be used by the dealer upon inspection in accordance with subsection (7) of this section to determine and certify:

(a) The safe and adequate working condition of the electric, heating, cooling, fuel burning and plumbing systems; and

(b) The door, window, and general structural integrity of the unit; and

(c) The sealing of all exterior holes to prevent the entrance of rodents, and repaired if necessary; and

(d) The existence of adequate and operable smoke detection equipment; and

(e) The existence of storm windows.

(5) Used manufactured homes.

(a) All manufactured homes taken in trade by the dealer shall be reinspected and certified that they are in compliance with requirements of subsection (4) of this section. The existing Class "A" or Class "B" seal shall be removed and a new seal affixed to the unit or a new seal may be affixed over the existing seal or label.

(b) If a new manufactured home purchased under the provision of the HUD Act is resold, it shall become a used manufactured home and shall be subject to the provisions of this section.

(c) Class "A" and "B" seals shall not be required if the dealer submits to the office an affidavit that the unit is a salvage unit.

(d) A salvage unit shall not be sold until it has been authorized, in writing, by the office to be labeled "salvage only" and the label has been affixed to the unit by the dealer.

(e) Upon prior approval of the office, one (1) licensed dealer may sell units to another licensed dealer without applying seals.

(6) All manufactured housing shall be installed in accordance with manufacturer's instructions or ANSI A225.1/NFPA 501A, Manufactured Home Installations, 1982 Edition, hereby incorporated by reference. Copies of this publication are available from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02260-9101. This material is available for public inspection and copying at the Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday. The installation shall include that the unit or units shall be tied down and anchored at least at each of the four (4) corners of the home.

(7) All new manufactured homes purchased outside the Commonwealth of Kentucky not bearing a Class "A" seal of approval or a HUD label and all used manufactured homes purchased outside the Commonwealth of Kentucky, regardless of the type seal or label affixed, shall be inspected by a certified Kentucky dealer or the office and a Class "B" seal of approval affixed prior to registration of the home. This inspection shall consist of the following:

(a) Inspection of the plumbing and waste systems, to determine operability and absence of leaks.

(b) Inspection of the heating, cooling or fuel burning system to determine adequacy of system.

(c) Inspection of the electrical system, including the main circuit box and all outlets/switches, to detect any damaged coverings, lost screws, or improper installations.

(d) Inspection for the existence of adequate and operable smoke detection equipment.

(e) Inspection for storm windows. EXCEPTION: This paragraph and paragraph (4)(c) of this subsection shall not apply to manufactured homes built prior to the HUD Act.

(8) A licensed Kentucky manufactured home dealer that maintains the capability to perform minor maintenance of plumbing, heating, cooling, fuel burning systems, and electrical systems of manufactured homes shall be permitted to inspect and certify those manufactured

homes purchased in another state for use within the Commonwealth of Kentucky. A dealer desiring to perform this service, shall make application to the Office of the State Fire Marshal for appropriate certification as a certified Kentucky dealer. The office shall maintain a list of all certified manufactured housing dealers.

(9) Any unit found to be in noncompliance with the requirements of Section 4(5) or (7) of this administrative regulation, shall be corrected prior to the dealer certifying the unit or offering the unit for sale unless the unit has been issued a salvage label in accordance with this administrative regulation. All units requiring repairs or correction prior to unit certification, shall be reported to the office specifying the repairs required to correct the deficiencies. Appropriate reporting forms shall be made available to qualified dealers performing inspection.

(10) The fee for the inspection of manufactured homes shall be twenty (20) dollars per hour plus twenty-two (22) cents per mile and a twenty-five (25) dollar seal fee when performed by a certified Kentucky dealer. Inspections performed by the office shall be thirty-five (35) dollars inspection fee and twenty-five (25) dollars seal fee.

Section 5. Applicability and Interpretation of Code and Regulation Provisions. Questions regarding the applicability or interpretation of any provisions of the HUD Act, the code or administrative regulation adopted shall be submitted to the office, in writing, by any interested person. It is the policy of the office that with respect to questions regarding NFPA 501(B), that the questions shall, whenever feasible, first be submitted to the NFPA for their recommendation; however, the office shall answer these questions and render the official interpretations and the decision of the office shall be in writing.

Section 6. Certificate of Acceptability. (1) A manufacturer shall not manufacture, import, or sell any manufactured housing in this state unless he has procured a certificate of acceptability from the board. Compliance shall be enforced through KRS 227.902. Manufactured housing not covered by the HUD Act, manufactured in this state and designed for delivery to and for sale in a state that has a code that is inconsistent with NFPA 501(B) shall not comply with this provision.

(2) Requirements for issuance.

(a) The manufacturer shall submit and the office shall approve in-plant quality control systems.

(b) A \$500 fee shall accompany the application. The fee shall be paid by check or money order and shall be made payable to Kentucky State Treasurer.

(c) The manufacturer shall furnish and maintain with the office a certificate of insurance from a Kentucky authorized insurance company for general liability insurance to include lot and completed operations insurance in the minimum amount of \$300,000 bodily injury or death for each person, \$400,000 bodily injury or death for each accident, and \$100,000 property damage.

(3) Quality control measures shall be provided for all manufactured housing not covered by the HUD Act (i.e., all office and used units). To obtain in-plant quality control approval, a manufacturer shall submit a system for in-plant control pursuant to paragraph (b) of this subsection and submit to inspection by the office for field certification of satisfactory quality control. Applications for approval of in-plant quality control systems shall contain the following:

(a) A certified copy of the plans and specifications of a model or model group for body and frame design, construction, electrical, heating, cooling, fuel burning systems and plumbing systems. All plans shall be submitted on sheets, the minimum possible size of which is eight and one half (8 1/2) inches by eleven (11) inches and the maximum possible size of which is twenty-four (24) inches by thirty (30) inches. The manufacturer shall certify that the systems comply with NFPA 501(B).

(b) Also, a copy of the procedure which directs the manufacturer to construct manufactured housing in accordance with the plans, specifying:

1. Scope and purpose.

2. Receiving and inspection procedure for basic materials.

3. Material storage and stock rotation procedure.

4. Types and frequency of product inspection

5. Sample of inspection control form used.

6. Responsibility for quality control programs, indicating personnel, their assignments, experience and qualifications.

7. Test equipment.

8. Control of drawings and material specifications.

9. Test procedures.

(4) A unit certification format certifying compliance with the Act and this administrative regulation shall be submitted to the office no later than the end of the first week of each month for those units manufactured under the state code and not bearing a HUD label, i.e., mobile offices, add-a-rooms, duplex units, etc. The unit certification format shall contain the information in the format as outlined in Section 13 of this administrative regulation.

(5) A manufacturer to which a certificate of acceptability has been issued shall not modify in any way its manufacturing specifications without prior written approval of the office.

(6) If the manufacturer is also a dealer, he shall also comply with dealer licensing provisions.

(7) If the applicant does not comply with this administrative regulation, the applicant shall be so notified in writing by the office within ten (10) working days of the date received. If the applicant fails to submit a corrected application in accordance with the information supplied on the application correction notice, the application shall be deemed abandoned and twenty (20) percent of fees due shall be forfeited to the office. Any additional submission shall be processed as a new application.

(8) Manufacturers shall notify the office, in writing, within thirty (30) days of any of the following occurrences:

(a) The corporate name is changed;

(b) The main address of the company is changed;

(c) There is a change in twenty-five (25) percent or more of the ownership interest of the company within a twelve (12) month period;

(d) The location of any manufacturing facility is changed;

(e) A new manufacturing facility is established; or

(f) There are changes in the principal officers of the firm.

(9) Any information relating to building systems or in-plant quality control systems which the manufacturer considers proprietary, shall be so designated at the time of plans submission, and shall be so held by the office, and by the inspection, evaluation, and local enforcement agencies unless the board determines in each case that disclosure is necessary to carry out the purposes of the Act.

(10) If the office determines that the standards for manufactured housing units are at least equal to NFPA 501(B) because they comply with the Kentucky Building Code, it may issue a certificate of acceptability for the manufactured homes.

(11) Under proceedings for the suspension of a certificate of acceptability for any of the violations enumerated in the Act, the holder of a certificate of acceptability may have the alternative, subject to the approval of the board, to pay in lieu of part or all of the days of any suspension the sum of fifty (50) dollars per day.

Section 7. Serial Numbers, Model Numbers, Date Manufactured. A clearly designated serial number, model number, and date manufactured shall be stamped into the manufactured home tongue, or front cross member of the frame at the lower left hand side (while facing the unit), and if there is no tongue or cross member, then a data plate with this information shall be affixed on the outside in a conspicuous place.

Section 8. Dealer License. (1) A dealer of manufactured housing shall not engage in business in this state without a license issued by the office upon application.

(2) Application shall contain the following information:

- (a) Name and address of the chief managing officer;
- (b) Location of each and every established place of business;
- (c) Social security number and date of birth of chief managing officer;
- (d) Affidavit certifying compliance with the Act and this administrative regulation;
- (e) Names of officers, if dealership in corporate form;
- (f) Names of partners, if dealership in partnership form;
- (g) A copy of a valid Kentucky sales tax certificate;
- (h) Any other information the office deems commensurate with safeguarding of the public interest in the locality of the proposed business;

(3) All licenses shall be granted or refused within thirty (30) days after application, and shall expire, unless revoked or suspended, on December 31 of the calendar year for which they are granted.

(4) The license fee shall be \$200. The fee shall be paid by check or money order and shall be made payable to the Kentucky State Treasurer.

(5) The dealer shall furnish and maintain with the office a certificate of insurance to certify proof of liability insurance in the minimum amount of \$200,000 bodily injury or death for each person, \$300,000 bodily injury or death for each accident, and \$100,000 property damage.

(6) Dealers shall maintain a record of all units sold, new and used, to include serial numbers, Kentucky seal numbers ("A" or "B"), date manufactured, make, and the name and address of the purchaser. This report shall be in the format depicted in Section 14 of this administrative regulation. The report shall be made available to the field inspector on a monthly basis.

(7) Alterations.

(a) A dealer shall not have the authority to make any alterations to any manufactured home manufactured under the HUD Act or NFPA 501(B) without the express permission of the manufacturer; except that in the case of used manufactured homes, permission may be obtained from the State Fire Marshal's Office in accordance with this administrative regulation.

(b) A dealer altering a manufactured home, shall be guilty of a federal violation and shall be subject to the penalties provided in KRS 227.000.

(8) Notification of a change in the application information shall be made within thirty (30) days of any of the following occurrences:

- (a) Dealership name is changed;
- (b) Established place of business is changed (move to a different county requires a new license);
- (c) There is a change in twenty-five (25) percent or more of the ownership interest of the dealership within a twelve (12) month period; or
- (d) There are changes in the principal officers of the firm.

(9) Out of state dealers with valid Kentucky licenses. Exception: an applicant whose place of business is in another state and who possesses a valid dealers license in another state shall be licensed upon application and approval by the office in accordance with this administrative regulation. These out of state dealers shall provide Kentucky seals for manufactured housing units actually sold for delivery into Kentucky.

(10) If a person who sells manufactured homes does not take possession or ownership of the manufactured homes and offers for sale used manufactured homes only as a negotiator or broker for a fee, commission, compensation or other valuable consideration, the person shall apply for and be issued a license as a dealer for that limited function pursuant to this administrative regulation with the following conditions:

- (a) His established place of business may be his business address and the dealer shall not be required to have a hard surfaced lot for display and repair; and
- (b) The unit shall be inspected by the office or a certified Kentucky dealer and the "B" seal of approval or salvage label shall be

affixed to the unit prior to offering it for sale.

Section 9. Temporary License. (1) A person, other than one duly licensed in Kentucky pursuant to Section 8 of this administrative regulation, shall not show or offer manufactured housing within the Commonwealth of Kentucky; except that, for the express purpose of retailing the units to the general public at a specified location, the person or company may purchase from the Office of the State Fire Marshal a temporary license. The temporary license shall not exceed fifteen (15) days duration and the license fee shall be \$100 for each authorized event. The applicant for the license shall notify the department at least thirty (30) days in advance of any event at which he plans to exhibit manufactured housing for sale giving the name, location and time of the proposed event.

(2) Applicant shall meet the following requirements before a temporary license shall be granted:

- (a) Be a duly licensed dealer in a state other than Kentucky;
- (b) Furnish to the office a certificate of insurance to certify that the dealership has proper liability insurance in the minimum amount of \$200,000 bodily injury or death for each person, \$300,000 bodily injury or death for each accident, and \$100,000 property damage;
- (c) Provide satisfactory assurance to the office by way of a physical inspection by an authorized representative of this office that each new unit not covered by the federal Act the dealer intends to display, show or offer for sale, bears a Kentucky Class "A" seal of approval. Used manufactured housing units shall not be permitted to be shown or offered for sale within the Commonwealth of Kentucky by nonresident dealers at any time;
- (d) Possess a valid Kentucky Sales Tax Certificate;
- (e) Provide all other information required by the office;
- (f) The state in which the applicant is licensed shall have reciprocal provisions for temporary licensing of Kentucky dealers.

(3) Temporary licenses shall be prominently displayed at the location where the applicant is transacting business.

(4) Temporary licenses shall not be required for those dealers attending a manufactured home show within the Commonwealth of Kentucky if they do not sell or offer for sale to the general public new or used manufactured homes, and if the dealer has notified the department, in writing, at least thirty (30) days in advance of any event at which he plans to exhibit manufactured homes, giving the name, location and time of the proposed event.

Section 10. Seals. (1) A manufacturer who has received a certificate of acceptability from the office shall not sell or offer for sale to Kentucky dealers in this state manufactured housing units not covered by the HUD Act, unless they bear a Class "A" seal of approval issued by and purchased from the office. This provision shall not apply to vehicles sold or offered for sale for shipment out of state.

(2) A dealer who has received a license from the office shall not sell or offer for sale a manufactured home except as permitted between licensed dealers, pursuant to Section 4(5) of this administrative regulation, unless it has either a HUD seal, an "A" seal, a "B" seal or a salvage label. A dealer who has acquired a used manufactured home without a seal, shall apply to the office for a Class "B" seal by submitting an affidavit certifying either that all electrical, heating, cooling, fuel burning systems and plumbing equipment has been checked, and if necessary, repaired, and is now in safe working condition, or that the unit meets the applicable code.

(a) Acquisition of seal.

1. Any manufacturer, except one altering a new manufactured home not covered by the HUD Act bearing a seal, shall qualify for acquisition of a Class "A" seal by obtaining a certificate of acceptability pursuant to KRS 227.580 and Section 6 of this administrative regulation.

2. Any dealer, except one altering a manufactured home bearing a seal, shall qualify for acquisition of a Class "B" seal by giving an affidavit certifying either that all electrical, heating, cooling, fuel

burning systems and plumbing equipment has been checked, if necessary, repaired, and is now in safe working condition or that the unit meets the applicable code.

(b) Application for seals.

1. A person who has met the applicable requirements of Section 6 or 8 of this administrative regulation shall apply for seals in the form prescribed by the office. The application shall be accompanied by the seal fee of twenty-five (25) dollars for each Class "A" seal or twenty-five (25) dollars for each Class "B" seal.

2. If the applicant has qualified to apply for seals pursuant to the in-plant quality control approval method, the seal application shall include the certificate of acceptability number.

(c) Alteration or conversion of a unit bearing a seal.

1. Any alteration of the construction, plumbing, heat producing, cooling, fuel burning systems equipment, electrical equipment installations or fire safety in a manufactured home not covered by the HUD Act, which bears a seal, shall void the approval and the seal shall be returned to the office.

2. The following shall not constitute an alteration or conversion for these manufactured homes not covered by the HUD Act:

- a. Repairs with approved component parts.
- b. Conversion of listed fuel burning appliances in accordance with the terms of their listing.
- c. Adjustment and maintenance of equipment.
- d. Replacement of equipment in kind.
- e. Any change that does not affect those areas covered by NFPA 501(B) or the HUD Act.

3. A dealer proposing an alteration to a manufactured home not covered by the HUD Act bearing a seal, shall make application to the office. The application shall include:

- a. Make and model of manufactured home.
- b. Serial number.
- c. State seal number.
- d. A complete description of the work to be performed together with plans and specifications, if required.
- e. Location of the manufactured home where work is to be performed.
- f. Name and address of the owner of the manufactured home.

4. Upon completion of the alteration, the applicant shall request the office to make an inspection.

5. The applicant may purchase a replacement seal, based on inspection of the alteration for a fee of two (2) dollars.

(d) Denial and repossession of seals. If inspection reveals that a manufacturer is constructing manufactured housing not covered by the HUD Act (such as office units) according to NFPA 501(B); or, if inspection reveals that any dealer failed to repair a used manufactured home under the standards and procedures set forth in this administrative regulation and KRS 227.550 to 227.660 or failed to comply with any other provision for placement of seals and labels; and the dealer or manufacturer, after having been served with a notice setting forth in what respect the provisions of these administrative regulations and the code have been violated, continues to manufacture, sell or offer for sale manufactured homes in violation of these administrative regulations and the code, applications for new seals shall be denied and the seals previously issued and unused shall be confiscated and credit given. Upon satisfactory proof of compliance, the manufacturer or dealer shall resubmit an application for seal.

(e) Seal removal. If a manufactured home not covered by the HUD Act is found to be in violation of these administrative regulations, the office shall attach to the vehicle a notice of noncompliance or a "red tag" and furnish the manufacturer or dealer a copy of same. The office, dealer or manufacturer shall not remove the noncompliance "red tag" until corrections have been made, and the owner or his agent has requested an inspection in writing to the office and given an affidavit certifying compliance. Removal of any "red tag" shall result in repossession of all seals held by the dealer or manufacturer until the facility is once again in full compliance with the Act and this

administrative regulation.

(f) Placement of seals.

1. Each seal shall be assigned and affixed to a specific manufactured home not covered by the HUD Act. Assigned seals shall not be transferable unless assigned between dealers and shall be void when not affixed as assigned, and all seals shall be returned to or may be confiscated by the office. The seal shall remain the property of the office and may be seized by the office in the event of violation of the Act or administrative regulations.

2. The seal shall be securely affixed by the door on the handle side at approximately handle height.

3. Other seals, stamps, covers, or other markings shall not be placed within two (2) inches of the seal.

(g) Lost or damaged seals.

1. When a seal becomes lost or damaged, the office shall be notified immediately in writing by the owner. The owner shall specify the manufacturer, the manufactured home serial number, and when possible, the seal number.

2. All damaged seals shall be promptly returned. Damaged and lost seals shall be replaced by the office with a replacement seal upon payment of the replacement seal fee of two (2) dollars.

3. A dealer shall not display, sell or offer for sale a manufactured home not covered by the HUD Act unless an "A" or "B" seal or salvage label is affixed.

Section 11. Examination for Installation of Manufactured Homes. The office shall administer an examination designed to determine qualifications based on NFPA 501A and other applicable standards adopted by administrative regulation by the board. Any dealer or other person who successfully completes the examination shall be deemed qualified to install manufactured homes. The dealer shall be responsible for the proper installation of the manufactured home as required by the standards adopted by the board.

Section 12. A dealer shall not sell or offer for sale any manufactured home upon which he cannot present a marketable title to the purchaser.

Section 13. Manufactured Home Unit Certification Format.

MANUFACTURED HOME
UNIT CERTIFICATION FORMAT

Name of Manufacturer _____

Mailing Address _____ County _____

City _____ State _____ Zip Code _____

I hereby certify that the manufactured homes as described hereon have been constructed in compliance with NFPA 501-B.

KY _____ Date _____

No. _____ Serial # _____ Seal # _____ Mfg. _____ Model _____ Size _____ Dealer _____

1 _____
2 _____
3 _____
4 _____
5 _____

This form shall be used in reporting units to the Office of the State Fire Marshal. The form shall be completed in duplicate with the original to be sent to the Office of the State Fire Marshal, and the copy retained by the manufacturer. This form shall be mailed to the State Fire Marshal when the last entry has been filled or not later than the first week of each month.

ADMINISTRATIVE REGISTER - 2518

BY _____
 Date Person Authorized to Certify These Units _____

Section 14. Dealer Certification Format.

DEALER CERTIFICATION FORMAT

 Name of Dealer

 Mailing Address County

 City State Zip Code

I hereby certify that the used units described hereon have been inspected and are in compliance with the standards as required by KRS 227.650 through KRS 227.660 and administrative regulations thereto and that the new manufactured homes described hereon have the appropriate HUD label.

 HUD

 LABEL #/

 KY Date Purchaser
 No. Serial # Seal # Mfg. Make & Address

This form shall be used in reporting units to the field inspector.

BY _____
 Date Person Authorized to Certify These Units _____

DAVE L. MANLEY, Chairman
 LAURA M. DOUGLAS Secretary

APPROVED BY AGENCY: September 6, 1996
 FILED WITH LRC: September 12, 1996 at 4 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Office of State Fire Marshal
(As Amended)

815 KAR 30:060. Certification of underground petroleum storage tank contractors.

RELATES TO: KRS 224.60-105, 224.60-135

STATUTORY AUTHORITY: KRS 224.60-135, 227.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-135 requires the State Fire Marshal to promulgate administrative regulations requiring any person or organization who installs, repairs, closes or removes an underground petroleum storage tank for an owner or operator to demonstrate financial capability, including maintenance of pollution liability insurance and technical competency and proficiency. This administrative regulation establishes [is necessary to set] the minimum requirements for determining technical competency and proficiency of companies who are responsible for the installation of these systems by qualifying individuals and to determine financial capability through proof of insurance. [This amendment is necessary to create a new category of contractor whose limited function is lining underground petroleum storage tanks and therefore make corresponding amendments to allow testing and licensure of this limited function, and to incorporate by reference the application for underground tank contractor certification.] [This amendment is necessary to clarify that a certified contractor is to be present on site for the

installation of piping as well as at the time of final inspection.]

Section 1. Definitions. (1) "Certified contractor" means an [any] individual or organization certified by the State Fire Marshal as qualified to engage in the business of installing, repairing, removing, closing, and supervising of other employees in the installation, performance of repairs on site for closure or removal of UPST systems. A person or organization may be qualified pursuant to this administrative regulation to engage in the limited business of removal and closure, or lining [only], but the certification shall be limited to removal and closure, or tank lining [and removal,] [only].

(2) "Close or closure" means permanently taking an underground storage tank out of service without removing it from the ground.

(3) "Repair" means the restoration of a tank or an underground storage tank or [any of] its components that has caused a release of a product from the system or the modification of the tank or a system component. "Repair" shall not include routine maintenance, [or] cathodic protection applied to existing installations, or the application of [or] interior lining.

(4) "Remove or removal" means permanently taking an underground storage tank or [any of] its components out of service by removing it from the ground.

(5) "Supervise" means being physically on site and having the authority and responsibility for the direction of other employees engaged in carrying out the installation of, making repairs on site to, closure, or removal of UPST systems as well as having the authority to exercise independent judgment regarding the recommendation of activities to other employees acting under his direction.

(6) "Underground storage tank" is [means as] defined by KRS 224.60-100(1) [224.810].

(7) "UPST liner" means an individual or organization who applies an interior coating of material to existing steel and fiberglass reinforced plastic (FRP) underground storage tanks used solely for the storage of petroleum and petroleum products.

(8) "UPST system" means an underground storage tank at defined by KRS 224.60-100(1) that is [224.810 and] used solely for the storage of petroleum and petroleum products.

Section 2. [Effective April 1, 1994.] (1) A permit for the installation of an [any] UPST system shall not be issued by the State Fire Marshal unless the applicant for the permit:

(a) Is a certified contractor; and

(b) [the applicant] Assures the State Fire Marshal's Office, in writing, that the installation shall comply with all applicable requirements of the Natural Resources and Environmental Protection Cabinet promulgated in 401 KAR Chapter 42.

(2) An individual or company shall not install, remove, repair, interior line, or close an [any] UPST system unless the installation, removal, repair, interior lining, or closure:

(a) Is made by a certified contractor; and

(b) [unless the installation, removal, repair, interior lining, or closure of the UPST system] Complies with applicable administrative regulations of the Natural Resources and Environmental Protection Cabinet, set forth in 401 KAR Chapter 42.

(3) A company may be the certified contractor and may engage in the activities regulated by this administrative regulation if it has in its employ at least one (1) person who has passed the examination and demonstrated the experience to obtain qualification for the company as a certified contractor and that person supervises the activities described by Section 3 of this administrative regulation.

Section 3. Supervision Requirements. (1) A certified contractor shall be present on site for each of the following activities:

(a) Preparation of the excavation immediately prior to receiving backfill or any component of the UPST system;

(b) Setting of the UPST system, including placement of an [any] anchoring device[s], backfilling to the level of the UPST system and

strapping, if any;

(c) Installing piping and ~~any of~~ its components or field coating and cathodically protecting the ~~any~~ piping and its components;

(d) Final inspection and pressure testing of a ~~any~~ component of the tank or piping components of the UPST system; and

(e) Completion of the backfilling and filling of the excavation.

(2) Repairs to a UPST system shall require a certified contractor to be present on site for each of the following activities:

(a) The actual excavation of existing UPST systems;

(b) The actual performance of repairs to the UPST system;

(c) The connection of components of the piping during the repair project ~~[Any time during the repair project in which components of the piping are connected];~~

(d) The pressure testing of the UPST or its associated piping during the repair project ~~[Any time during the repair project in which the UPST or its associated piping is pressure tested];~~

(e) The replacement of piping valves, fill pipes, vents, leak detection devices, or spill and overfill protection devices; and

(f) The addition of leak detection devices or spill and overfill devices.

(3) Preparation for closing a UPST system shall require a certified contractor to be present on site for each of the following activities:

(a) The cleaning and purging of a UPST system;

(b) The filling of a UPST system with an inert solid material;

(c) All testing associated with the cleaning and purging processes;

and

(d) The disconnection or capping of the components of the UPST system during the closing ~~[Any time during the closing in which components of the UPST system are disconnected or capped].~~

(4) Removal of a UPST system shall require a certified contractor to be present on site during each of the following activities:

(a) The cleaning and purging of the UPST system;

(b) The actual excavation and removal of the UPST system or a component ~~[any of its components];~~

(c) All testing associated with the cleaning and purging processes;

and

(d) The disconnection or capping of the components of the UPST system during the removal ~~[Any time during the removal in which components of the UPST system are disconnected or capped].~~

(5) The lining of a UPST system shall require a certified contractor to be present on site during each of the following activities:

(a) The cleaning and purging of the UPST system;

(b) The excavation of the tank top;

(c) The cutting of the top of the tank;

(d) The entry of the tank;

(e) The preparation of the interior of the tank;

(f) The application of the lining of the tank; and

(g) The closing and testing of the tank.

Section 4. Certificate Availability. Each certified contractor shall have a copy of the current certificate issued by the State Fire Marshal at the location where he is supervising work. Upon request of a fire official or agent of the Natural Resources and Environmental Protection Cabinet, a certified contractor shall make the current certificate available for inspection.

Section 5. Application for Certification Requirements. Each applicant for certified contractor shall ~~meet all of the following application requirements:~~

(1) ~~[The applicant shall]~~ Submit an application accompanied by a nonrefundable fee of \$150, to the State Fire Marshal, on application form "SFM/UPST #01, August, 1996"; [hereby incorporated by reference.] [the form furnished by the State Fire Marshal and outlined in Section 11 of this administrative regulation, accompanied by a nonrefundable fee of \$150; and]

[(a) A copy of application form SFM/UPST #01 may be obtained from the State Fire Marshal, Division of Hazardous Materials, 1047

U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday between 8 a.m. and 4:30 p.m. or requested by telephone at (502) 564-3626.

[(b) A copy of application form SFM/UPST #01 may be inspected or copied at the above address, Monday through Friday between 8 a.m. and 4:30 p.m.; and]

(2) ~~[The applicant shall]~~ Be an individual ~~[and shall be]~~ at least eighteen (18) years of age; ~~[and]~~

(3) ~~[The individual shall]~~ Verify to the State Fire Marshal the individual's experience in the installation of, performance of repairs on site, lining of, closure and removal of UPST systems, as required by Section 6 of this administrative regulation; ~~[and]~~

(4) ~~[The individual shall]~~ Complete the examination requirements of Section 7 of this administrative regulation; ~~[and]~~

(5) ~~[Upon application or prior to the issuance of the certificate, the individual shall]~~ Provide proof of financial capability for taking corrective action and for compensating third parties for bodily injury and property damage by submitting certificates of general liability insurance in the minimum amount of \$500,000 and pollution liability insurance or other proof of financial capability to respond to damages in the minimum amount of \$25,000 per occurrence; and

(6) If the individual wishes the certificate to be issued with a company name, the company name shall be indicated on the application form and the company shall provide the insurance certificates required by subsection (5) of this section and otherwise be subject to this administrative regulation.

Section 6. Experience Requirements. (1) The person making application shall demonstrate that within five (5) years immediately prior to making application, that he has participated in the installation of, performance of repairs on site to, closure of, lining of, or removal of a minimum of six (6) underground storage tanks. Of the participations, a minimum of three (3) shall have involved the installation of UPST tanks, except that: ~~[or]~~

(a) ~~[(2)]~~ Technical training of the type provided and documented by the manufacturer of the underground storage tanks and approved by the State Fire Marshal shall reduce the experience requirements of this subsection by one-third (1/3); or

(b) ~~[(3)]~~ A BS degree in engineering with a concentration in the area of underground containment systems or a Kentucky license to practice engineering shall reduce the experience requirements of subsection (1) by two-thirds (2/3).

(2) ~~[(4)]~~ An applicant requesting contractor certification pursuant to this administrative regulation for the limited function of removal and closure shall demonstrate experience in removal and closure of six (6) underground storage tanks. ~~[or]~~

(3) An applicant requesting contractor certification pursuant to this administrative regulation for the limited function of tank lining shall demonstrate experience in lining of six (6) underground storage tanks.

Section 7. Probationary Certification. If the applicant does not comply with the level of experience required by Section 6~~[(4)]~~ of this administrative regulation, the applicant may receive a probationary certificate under the following conditions:

(1) An applicant shall obtain a minimum score of eighty-five (85) percent on the written examination; ~~[and]~~

(2) An applicant shall complete three (3) tank installations within one (1) year of the issuance of the certificate; ~~[and]~~

(3) All UPST activities shall comply with applicable codes and statutes; ~~[and]~~

(4) An applicant shall not remove, close, line, backfill around or cover a tank installation during the probationary period without prior approval of the State Fire Marshal's office; and

(5) An applicant shall pay a \$100 add-on inspection fee for each site where a tank is removed, closed or installed.

Section 8. Examination Requirements. Each applicant for certified

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contractor shall take and pass a written examination administered by the State Fire Marshal in compliance with this section.

(1) The applicant shall submit payment of a twenty-five (25) dollar nonrefundable fee at least ten (10) days prior to the date of examination.

(2) The examination for full certification shall be a written multiple choice examination covering all aspects of the installation, repair, closure, and removal of underground petroleum storage tank systems. The examination shall test the applicant's knowledge of codes, standards, laws and administrative regulations and of current technological and industry recommended practices with respect to the proper installation, repair, closure, and removal of UPST systems.

(3) An applicant who requests to be a certified contractor for the limited purpose of removing and permanently closing UPST systems shall be tested on knowledge of closure and removal ~~[only]~~.

(4) An applicant who requests to be a certified contractor for the limited function of interior lining of UPST systems shall be tested on knowledge of cleaning, and lining the interior of underground petroleum storage tanks.

(5) An applicant may request permission to take the examination orally, upon good cause shown.

(6) ~~[(6)]~~ An applicant shall obtain a minimum score of seventy-five (75) percent on the written examination to satisfactorily pass.

(7) ~~[(6)]~~ An applicant who fails the examination may request reexamination upon payment of a nonrefundable twenty-five (25) dollar fee. An application shall remain pending for that purpose for a period of one (1) year after the date the application was submitted. If the applicant has not requested reexamination within the one (1) year period, the applicant shall file a new application for certification with the State Fire Marshal.

(8) ~~[(7)]~~ Examinations shall be given monthly in the State Fire Marshal's Office located at 1047 U.S. 127 South, Frankfort, Kentucky.

(9) ~~[(8)]~~ All examinations shall be graded and the applicants notified on the day of the examination. Examination papers shall not be returned to the applicant, but may be reviewed by the applicant on the day of the examination.

(10) ~~[(9)]~~ With the application, the State Fire Marshal shall furnish the applicant with a set of instructions and sample examination questions. Instruction sheets shall refer the applicant to appropriate laws, administrative regulations and industry publications.

Section 9. Certification and Renewal Procedures. (1) ~~[Effective April 1, 1991,]~~ The State Fire Marshal shall issue a certificate to each individual or company as set forth in Sections 5 through 7 of this administrative regulation. The certificate shall be renewed annually for a fee of fifty (50) dollars.

(2) The application or renewal for a certified contractor shall be denied by the State Fire Marshal if the applicant ~~[any of the following occurs]~~:

(a) ~~[The applicant]~~ Fails to provide the information required by the application form SFM/UPST #01; ~~[incorporated by reference in Section 5(1) of this administrative regulation (prescribed by the State Fire Marshal and outlined in Section 11 of this administrative regulation); or]~~

(b) ~~[The applicant]~~ Fails to provide the insurance or financial responsibility certificates or the fee required for application and examination; ~~[or]~~

(c) ~~[The applicant]~~ Fails to comply with the experience and education requirements of this administrative regulation; ~~[or]~~

(d) Fails to ~~[The applicant does not]~~ successfully pass the examination required by this administrative regulation; or

(e) ~~[The applicant]~~ Makes a misrepresentation or submits false statements with the application.

(3) If a certified contractor fails to renew his certification within a one (1) year period from the most recent expiration date of his certification, the contractor's certificate shall be revoked. [Any certified contractor who fails to renew within a one (1) year

period from the most recent expiration date of their certification shall result in the revocation of their certificate.] The contractor may become certified at a later date by complying with Sections 5 through 7 of this administrative regulation, and successfully retaking the examination. [Retesting shall be required.]

Section 10. Revocation or Suspension of Certification. A certificate issued pursuant to this administrative regulation may be suspended or revoked by the State Fire Marshal if ~~[for any of the following reasons]~~:

(1) The certified contractor negligently, incompetently, recklessly or intentionally violated a ~~[any]~~ provision of this administrative regulation or a ~~[any]~~ required code relating to installation, repair, lining, closure or removal; ~~[or]~~

(2) The certified contractor recklessly or intentionally caused or permitted a person under the contractor's supervision to install, perform a repair on site to, close, line, or remove a UPST system in violation of the Kentucky Standards of Safety (815 KAR 10:050 ~~[40:040]~~); ~~[or]~~

(3) The certified contractor obtained the certification through fraud or misrepresentation;

(4) The individual who took the examination, provided the experience requirements and requested the certificate to be issued with a company's name and proof of insurance is no longer employed by the company in whose name the certificate was issued; or

(5) The certified contractor failed to renew the certification in accordance with Section 9 of this administrative regulation.

Section 11. Incorporation by Reference. (1) Application Form SFM/UPST#01, "Application for Certification as an Underground Tank Contractor", (August, 1996 Edition), State Fire Marshal's Office, is incorporated by reference.

(2) It may be inspected, copied or obtained at the State Fire Marshal's Office, Division of Hazardous Materials, 1047 US 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

~~[Section 11. Application Form for Certification of Underground Petroleum Storage Tank Contractors.]~~

APPLICATION FOR CERTIFICATION OF UNDERGROUND PETROLEUM STORAGE TANK CONTRACTORS

TYPE: Full Remover FOR OFFICE USE ONLY
Application Fee: \$150 Rec'd (Date)
Examination: \$25 Yes No Money Rec'd
(Remit by check or money) Application #
order only. Payable to: Certification #
Kentucky State Treasurer)

PLEASE PRINT OR TYPE AND SIGN

1. Full Name of Qualifying Person
2. Permanent Residence

Street/Box Office Number

City County State Zip

3. Telephone Residence Business

4. Birthdate 5. Social Security #

6. Place of Birth

City County State

7. Company Name

Company Address

Street/Box Office Number

City County State Zip

8. Certificate to be issued in:

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Company Name _____ Individual Name _____
0. Send Mail to: _____
Company Address/#7 _____

Permanent Residence/#2 _____
10. List any schools or training seminars concerning tank installations which you have attended:

Title _____ Presented By _____ Date(s) _____

11. With whom did you most recently apprentice as a tank installer?
Business name: _____
Address: _____

Street _____ City _____ State _____ Zip _____

Person who supervised you: _____

Period of apprenticeship:

From _____ To _____

Month Yr _____ Month Yr _____

12A. Number of years experience as a tank installer: _____

12B. Number of years experience as a tank remover: _____

13. Approximate # of tank installations you have:

Supervised? _____ Participated in? _____

Bare/asphalt coated steel _____

Fiberglass _____

Fiberglass coated steel _____

Cathodically protected steel _____

(STI P3) _____

Dual containment (excavation _____

liner) _____

Dual containment (double wall _____

tank) _____

TOTALS _____

14A. Approximate number of piping installations you have:

Supervised? _____ Participated in? _____

Black iron/galvanized _____

Copper _____

Fiberglass _____

Cathodically protected steel _____

Dual wall _____

TOTALS _____

14B. Approximate number of tank removals you have:

Supervised _____ Participated in _____

15. List the names and addresses of at least 3 people (e.g., employer, supervisors) familiar with your work as a tank installer/remover:

Name _____ Address _____ Telephone # _____

1. _____

2. _____

3. _____

16. Attach proof of general liability insurance. (Certificate of Insurance from a company authorized to do business in Kentucky)

17. Attach proof of pollution liability insurance. Certificate of insurance from an authorized insurer countersigned by a licensed Kentucky agent or from an eligible surplus lines insurer obtained through a Kentucky surplus lines broker; surety bond from a Kentucky authorized company or an irrevocable letter of credit from an FDIC Kentucky Domicile Bank)

18. Attach experience, listing of jobs (i.e., name of project, company

name, dates, city, county, state, size and number of tanks, etc.) for qualifying individual.

I, _____, hereby certify that the information contained on this application and attached Experience Data Sheets is true and correct to the best of my knowledge.

Signature of Applicant for Company _____

Date _____

NOTARIZED BY:

State of _____

County of _____

Subscribed and sworn to before me this _____ day of _____, 19____

Notary Public _____

My Commission expires] _____

CHARLES A. COTTON, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: September 6, 1996

FILED WITH LRC: September 9, 1996 at 2 p.m.

CABINET FOR HEALTH SERVICES Department for Public Health (As Amended)

902 KAR 1:400. Administrative hearings.

RELATES TO: KRS Chapter 13B, 211.180, 211.190, 211.210, 211.357, 211.360, 211.760, 211.844, 211.870, 211.925, 211.964, 212.170, 212.210, 212.230, 212.620, 212.627, 216.920, 217.075, 217.126, 217.809, 217.950, 217C.040, 217C.050, 219.031, 219.370, 223.070, 7 CFR 246

STATUTORY AUTHORITY: KRS 13B.170, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health with the Cabinet for Health Services. KRS Chapter 13B establishes a uniform procedure to be followed by administrative agencies in conducting agency hearings. The function of this administrative regulation is to establish, consistent with the requirements of KRS Chapter 13B, the procedures to be followed by the Department for Public Health in hearing appeals of actions taken under the public health laws of the Commonwealth.

Section 1. Scheduling the Conference [Hearing]. (1) The Department for Public Health shall provide the opportunity for a conference [hearing] to any regulated entity aggrieved by any action of the Department for Public Health by issuing a notice of proposed action by letter or by use of Form DFS-214.

(2) The notice of action by the department shall contain:

(a) A description of the proposed action or action taken;

(b) The reasons for the action;

(c) The statutory or regulatory authority by which action is taken; and

(d) An explanation of the right to a conference [hearing] if requested within ten (10) days of the date of mailing by letter or by use of Form DFS-212.

(e) Notice of conference time, date and place shall be made by letter to the requester's last known address or by use of Form DFS-213.

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Section 2. Conference ~~[Hearing]~~. (1) The conference ~~[hearing]~~ shall be conducted by a representative of the agency taking the action.

(2) During the course of the conference ~~[hearing]~~, the appellant may:

- (a) Be represented by counsel;
 - (b) Cross examine witnesses against him; and
 - (c) Present evidence in his favor.
- (3) The purpose of the conference ~~[hearing]~~ is to:
- (a) Clarify the position of the parties; and
 - (b) To resolve any dispute over the pending action.

Section 3. Conference ~~[Hearing]~~ Report. (1) Within five (5) days of the conclusion of the conference ~~[hearing]~~, the agency representative shall issue a report to the administrative agency detailing any settlement of the action appealed ~~[repealed]~~.

(2) The report shall contain the appellant's further right to appeal pursuant to KRS Chapter 13B and a copy of the report shall be mailed to the appellant's last know address.

Section 4. Appeals. (1) The appellant may file an appeal with the Cabinet for Health Services within ten (10) days of receipt of the conference ~~[hearing]~~ report by mailing a letter of appeal to the Commissioner for Public Health, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621.

(2) Upon receipt of an appeal, the commissioner shall set the date, time and place for the hearing requested.

(3) The notice of appeal hearing shall ~~[-~~

~~(a) Be issued no later than twenty (20) days prior to the date of the appeal hearing; and~~

~~(b)] conform to KRS 13B.050;~~

(4) The appeal hearing shall be conducted by a hearing officer appointed by the secretary and in accordance with KRS 13B.080, ~~[and]~~ 13B.090, and 13B.110.

(5) An official record of the appeal hearing complying with KRS 13B.130 shall be retained by the Cabinet for Health Services.

(6) ~~[Within twenty (20) days of the conclusion of the appeal hearing, the hearing officer shall issue a recommended order containing:~~

~~(a) Findings of fact;~~

~~(b) Conclusions of law; and~~

~~(c) A recommendation to the agency head.~~

~~(7) A copy of the recommended order shall be sent to each party to the hearing or their counsel.~~

~~(8) Each party shall have fifteen (15) days from the date of mailing within which to file exceptions to the recommended order with the secretary.~~

~~(9) Within twenty (20) days of the last day on which to receive exceptions,~~ The secretary shall issue a final order complying with the requirements of KRS 13B.120~~(3)~~.

Section 5. Nothing in this administrative regulation shall be construed to prevent the Department for Public Health from taking emergency action to protect the public health and safety under the provisions of KRS 13B.125 ~~[Senate Bill 202, Section 12]~~.

Section 6. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) DFS-212, revised 10/96;

(b) DFS-213, revised 8/96;

(c) DFS-214, revised 8/96.

(2) This material may be inspected, copied or obtained at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

RICE C. LEACH, M.D., Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: September 6, 1996
FILED WITH LRC: September 11, 1996 at 11 am.

CABINET FOR HEALTH SERVICES Department for Public Health Division of Epidemiology (As Amended)

902 KAR 2:090. Tuberculosis detection, prevention, and control ~~[testing]~~.

RELATES TO: KRS 158.037, 211.180, 214.034, 215.520, 1996 Ky. Acts ch. 33

STATUTORY AUTHORITY: KRS 194.050, 211.090, 215.520, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 211.180 mandates the Cabinet for Health Services ~~[Human Resources]~~ to implement a statewide program for the detection, prevention, and control of communicable diseases. KRS 214.034 requires the establishment of tuberculosis testing schedules for children by the Cabinet for Health Services ~~[Human Resources]~~. KRS 215.520 requires the cabinet to promulgate administrative regulations to carry out the provisions of 1996 Ky. Acts ch. 33. This administrative regulation describes the procedure for drug susceptibility testing of antituberculosis drugs, the procedure by which timely hospitalization for persons with active tuberculosis shall be obtained, and measures to be taken to prevent spread of tuberculosis. KRS 158.037 requires the establishment of administrative ~~[reporting]~~ regulations for reporting tuberculin skin test results in children attending all public or private elementary or secondary schools by the Cabinet for Health Services ~~[Human Resources]~~. This administrative regulation mandates tuberculin testing for all first time school enrollees in private and public schools in Kentucky and describes the methods for reporting tuberculin skin test results on children to local health departments.

Section 1. Definitions. (1) "Child" means an individual under the age of eighteen (18) years.

(2) "Tuberculin skin test" means the intradermal ~~[intracutaneous]~~ injection of five (5) tuberculin units of Purified Protein Derivative (PPD) by the Mantoux technique ~~[or multiple puncture, but preferably the former]~~.

(3) "First-time enrollee" means a child entering private or public school (primary school, entry level through 12th grades) in the Commonwealth, the child never having attended school in the Commonwealth previously.

(4) The definition of "active tuberculosis" is governed by KRS 215.511.

(5) The definition of "isolates" is governed by KRS 215.511.

(6) "Exception patient" means a patient with tuberculosis identified by the local health department as being in exceptional or infrequent circumstances.

(7) "Exceptional or infrequent circumstances" means ~~[are those which require]~~:

(a) Short-term hospitalization for invasive diagnostic procedures, respiratory isolation, management of drug-resistant disease, other rare clinical circumstances which, in the judgement of a physician of the Cabinet for Health Services require hospitalization; or

(b) Security measures to counter recalcitrant behavior.

Section 2. (1) A reaction to a tuberculin skin test shall be interpreted using the "Treatment of Tuberculosis Infection in

Adults and Children". [Criteria currently recommended by the American Thoracic Society and the Centers for Disease Control and Prevention.]

(2) When the skin test of any child indicates that treatment is needed, the child shall be treated using "Treatment of Tuberculosis Infection in Adults and Children". [In accordance with the recommendations of the American Thoracic Society and the Centers for Disease Control and Prevention.]

Section 3. A first-time enrollee in public or private school in the Commonwealth shall be tested for tuberculosis by tuberculin skin test within eighteen (18) months prior to entering the public or private school. A child who has not been tested prior to entering the public or private schools may be permitted to attend class for a period of time not to exceed thirty (30) days, as approved in writing by the director [health officer] of the local health department having jurisdiction. Further attendance shall be conditioned upon presentation of proof of having been tested for tuberculosis in accordance with Section 3 of this administrative regulation.

Section 4. ~~(3-)~~ (1) A first-time enrollee in a public or private school shall present a valid certificate approved by the Cabinet for Health Services [Human Resources] and signed by the attending physician, advanced registered nurse practitioner, or by the director [health officer] of the local health department having jurisdiction or his designee, containing the date of the most recent tuberculin skin test, the type of skin test given (Mantoux, multiple puncture or other), and the millimeters of induration at forty-eight (48) to seventy-two (72) hours posttesting. The test shall have been read by a licensed or certified health professional. The certificate shall become a permanent part of the child's school health record.

(2) If tuberculin skin testing is medically contraindicated according to the written statement of a [non-attending] physician [or of the health officer of the local health department having jurisdiction], the child shall receive a chest x-ray. The only exception to this requirement is a child who can present documentation of a completed course of the currently recommended American Thoracic Society and the Centers for Disease Control and Prevention [isoniazid] prophylaxis or multiple drug treatment for previously diagnosed tuberculosis infection or disease.

Section 5. ~~(4-)~~ A public or private school shall, within sixty (60) days of the beginning of each school year, forward to the local health department having jurisdiction in the area a report containing:

(1) [The type of skin test and] (d) The millimeters of induration for all first-time enrollees who had any induration at forty-eight (48) to seventy-two (72) hours indicated on their tuberculin skin testing certificate and all first-time enrollees who were excepted in accordance with Section 3(2) of this administrative regulation; and [A list showing:]

(a) The child's name;

(b) Grade; and

[(c) Type of tuberculin skin test performed; and]

(2) The number of first-time enrollees by school grade; and of those, the number tested.

Section 6. ~~(5-)~~ If the prevalence of significant tuberculin reactors among first-time enrollees at a [ny] school exceeds or equals five-tenths (0.5) of one (1) percent, additional testing may be required by the director [health officer] of the local health department having jurisdiction or the Cabinet for Health Services [Human Resources]. Results of the testing shall be provided the local health department having jurisdiction. Additional control measures may then be required at the [sound] discretion of the director [health officer] of the local health department having jurisdiction or the Cabinet for Health Services [Human Resources] in order to protect the public health.

Section 7. Drug susceptibility testing to determine the efficacy of

prescribed drug therapy for all persons with active tuberculosis shall be performed as follows:

(1) Drug susceptibility testing of initial isolates from clinical specimens obtained from any patient with active tuberculosis shall be performed by a licensed clinical laboratory or the state public health laboratory.

(2) Repeat drug susceptibility testing of a specimen ordered by a physician from a patient who, after three (3) months of treatment, continues to produce specimens which are culture positive for tuberculosis shall be performed by a licensed clinical laboratory or the state public health laboratory on the latest isolate obtained from the patient by the physician.

Section 8. The exception patient shall be assured of timely hospitalization so that no delay shall occur in diagnosis, treatment, or respiratory isolation, when required. The hospitalization shall be facilitated through a local health department director's designee. Private practitioners may refer an exception patient to the local health department in the county in which the exception patient resides.

Section 9. (1) An exception patient who is hospitalized shall be interviewed by the local health department director's designee within seventy-two (72) hours to determine existing health care insurance coverage (third-party insurer, Medicaid).

(2) The local health department director's designee shall ensure that a hospitalized exception patient without health coverage is evaluated for Medicaid eligibility by the Cabinet for Families and Children and shall assist the exception patient and the Cabinet for Families and Children in efforts to obtain health coverage.

(3) Reimbursement for tuberculosis inpatient services for an exception patient who is determined to be ineligible for health care insurance coverage shall be made to the provider by the Cabinet for Health Services through the local health department at the Medicaid per diem rate or other rate as approved in advance by the Cabinet for Health Services. Reimbursement for tuberculosis inpatient services for an exception patient shall be contingent on the amount of funds accessible to the Tuberculosis Control Program of the Department for Public Health.

(4) Time-limited payment for the hospitalized exception patient shall be made through a contract or memorandum of understanding between the local health department and the admitting facility.

(a) The local health department shall consult with the Cabinet for Health Services, Tuberculosis Control Program, prior to admission of an exception patient in order to access Cabinet for Health Services funds.

(b) If an emergency or nonbusiness day admission of an exception patient is required, this consultation shall occur within seventy-two (72) hours.

Section 10. (1) A security measure which prevents continued transmission of tuberculosis by the exception patient shall be applied incrementally, progressing from remaining at home which is the least restrictive measure, to a more restrictive measure which may be admission to a suitable halfway house, hospital-based respiratory isolation, with guard if necessary, or an adequately ventilated correctional unit.

(2) The local health department director's designee shall arrange adequate security measures to prevent continued transmission of tuberculosis in a setting commensurate with the degree of risk posed by the exception patient.

(3) Time-limited payment for security of an exception patient who is hospitalized or who enters a receiving facility, such as a halfway house or correctional unit, shall be made through a contract or memorandum of understanding between the local health department and the receiving facility.

(a) The local health department shall consult with the Cabinet for Health Services prior to acquisition of security services or placement

in a receiving facility in order to access Cabinet for Health Services funds.

(b) If an emergency or nonbusiness day admission or placement is required, this consultation shall occur within seventy two (72) hours.

Section 11. The following material is incorporated by reference in this administrative regulation:

(1) The Joint Statement of the American Thoracic Society and the Centers for Disease Control and Prevention, "Treatment of Tuberculosis and Tuberculosis Infection in Adults and Children, 1994", [adopted March 1993,] and published by the American Lung Association.

(2) Material incorporated by reference may be reviewed or obtained at the Office of the Commissioner, Department for Public Health, 275 East Main Street, Frankfort, Kentucky, 40621, 8 a.m. through 4:30 p.m., Monday through Friday.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: October 7, 1996

FILED WITH LRC: October 8, 1996 at 11 a.m.

CABINET FOR HEALTH SERVICES

Department for Public Health

Division of Environmental Health & Community Safety

(As Amended)

902 KAR 105:070. Violations and enforcement.

RELATES TO: KRS 211.870[, 211.890, 211.993]

STATUTORY AUTHORITY: KRS 13B.170, [Chapter 13B,] 194.050(1), 211.090(3), 211.870, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996 reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 211.870 authorizes the Cabinet for Health Services to promulgate administrative regulations relating to operators of sources of radiation, other than practitioners of the healing arts. [The Cabinet for Health Services [Human Resources] is authorized by KRS 211.870, 211.890 and 211.993 to regulate operators of sources of radiation other than licensed practitioners of the healing arts, including but not limited to: the classification and certification of operators; examination; standards of training and experience; curricula standards for institutions teaching persons to operate sources of radiation; issuance, renewal, and revocation of certificates; the fixing of a reasonable schedule of fees and charges to be paid by applicants for examinations, certificates, and renewal certificates; and to set other standards as may be appropriate for the protection of health and safety.] [The purpose of] This administrative regulation establishes [ie to establish] uniform enforcement procedures applicable [to the cabinet's administrative regulations relating] to the certification of operators of sources of radiation.

Section 1. [Applicability. This administrative regulation shall relate to the enforcement procedures of the cabinet pertaining to the certification of operators of sources of radiation.

Section 2. Denial, Revocation and Suspension of Certificates. The cabinet may deny, revoke or suspend the certificate of an operator of a source of radiation [a person] who:

(1) Has engaged in [dishonorable, unethical or unprofessional] conduct relating to his profession of a character likely to deceive, defraud or harm the public;

(2) Has engaged in alcohol and other drug abuse as defined in KRS 222.005(12); [Becomes a drug dependent person or drug abuser as defined in KRS 222.011(8);

(3) ~~Becomes an alcoholic person who suffers from alcoholism as defined in KRS 211.011(3);]~~

(3) [(4)] Develops a physical or mental disability or other condition that continued practice or performance of his [this] duties may be dangerous to patients or the public; or

(4) [(5)] Fails to comply with any administrative regulation of the cabinet relating to the certification of an operator of a source [operators of sources] of radiation.

Section 2. [3.] Hearings. (1) The cabinet shall furnish the certificate holder with written notice of [setting out the substance of each offense charged with] sufficient detail to reasonably apprise a person of the nature, time and place of the offense charged.

(2) An operator [thereof. The person] to whom a notice or [an] order is directed shall comply [therewith] immediately.

(3) An applicant for a hearing [; but applicants for hearings] to the cabinet shall be granted [afforded] a hearing in accordance with 902 KAR 1:400. [The certificate holder shall have the right to be present in person, be represented by counsel, to present evidence and to be heard in opposition to the charges which may be instituted. The cabinet shall make a finding of fact and conclusion of law. The hearing may be conducted by a hearing officer appointed by the Secretary of the Cabinet for Human Resources.]

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: September 5, 1996

FILED WITH LRC: September 11, 1996 at 11 am.

CABINET FOR HEALTH SERVICES

Department for Public Health

Division of Maternal and Child Health

(As Amended)

902 KAR 115:020. Enforcement of Water Fluoridation Program.

RELATES TO: KRS 211.190(11) [211.180] [211.190]

STATUTORY AUTHORITY: KRS 13B.170, 194.050(1), 211.090(3), [Chapter 13B, 194.050, 211.180, 211.190(11),] EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194.050(1) and 211.090(3) authorize the cabinet to promulgate administrative regulations to protect the health and welfare of the citizens. This administrative regulation establishes the procedures for the enforcement of the Cabinet for Health Services [Human Resources] Water Fluoridation Programs as directed by KRS 211.190(11). Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and the Dental Health Program under the Cabinet for Health Services.

Section 1. Notice of Violation. (1) If the Cabinet for Health Services [Human Resources] has reasonable grounds to believe that a violation of 902 KAR 115:010 has occurred, it shall serve the alleged violator with a [cabinet Form DH-36,] "Notice of Violation" (DH-36).

(2) The "Notice of Violation" shall state:

(a) The violation;

(b) [In particular, the specific:

1. Violation; and

2. Measures required to be taken to correct the violation; [and]

(c) [(b)] The date by which the corrective measures shall be completed;

(d) [(e)] That the alleged violator has the right to request a hearing which shall be conducted in accordance with 902 KAR 1:400; and [before the cabinet, at which he may;

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1. Be represented by counsel;
2. Present evidence on his behalf; and
3. Cross-examine witnesses;

~~(e) [(d)] That the alleged violator may file an appeal in accordance with 902 KAR 1:400. [That the request for a hearing shall be made on cabinet Form DH-37, "Request For Hearing";~~

~~(e) That a written transcript of a hearing shall:~~

1. Not be made unless requested by a party; and
2. Be paid for by the requesting party; and

~~(f) That, within thirty (30) days of the date of the notice, the cabinet shall begin legal proceedings against the alleged violator if he fails to:~~

1. Take the corrective measures specified in the notice; or
2. Request a hearing.]

Section 2. Hearing. An administrative hearing shall be conducted in accordance with 902 KAR 1:400. [(1) If an alleged violator requests a hearing, the cabinet shall notify him of the:

a) Time and place of the hearing; and

(b) Name of the hearing officer;

(2) Notice of the hearing shall be made on Form DH-38, "Notice of Hearing"; and

(3) The decision of the hearing officer shall:

(a) Be written;

(b) Made upon the evidence presented; and

(c) Include findings of fact and conclusions of law.]

Section 3. Incorporation by Reference. (1) Form [The form necessary for notifying water companies of a violation is being incorporated by reference. This form is the] [following material is incorporated by reference:

(a) Form] DH-36, "Notice of Violation (4/96 Edition), Cabinet for Health Services, is incorporated by reference. [10/04)]";

(b) Form DH-37, "Request for Hearing (12/04)"; and

(c) Form DH-38, "Notice of Hearing (7/96)";]

(2) This form [These forms] may be inspected, copied, or obtained at the Office of the Commissioner for Public Health [Health Services], 275 East Main Street, Frankfort Kentucky, 8 a.m. to 4:30 p.m., Monday through Friday.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: September 5, 1996

FILED WITH LRC: September 11, 1996 at 11 am.

CABINET FOR FAMILIES AND CHILDREN Department for Social Services (As Amended)

905 KAR 1:320. Fair hearing.

RELATES TO: KRS 13B.005 to 13B.170, 45 CFR 205.10, 29 USC 794, 42 USC 12101 et seq., 2000a et seq.

STATUTORY AUTHORITY: KRS 194.050, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: Under Titles IV-A, IV-B, IV-C, IV-E and Title XX of the Social Security Act, the single state agency responsible for the program shall be required by federal regulation, 45 CFR 205.10, to provide a hearing to an applicant or recipient who is aggrieved by an agency action resulting in denial, suspension, reduction, discrimination, exclusion or termination of services. The Department for Social Services has assured various federal agencies that it shall comply with the provisions of 29 USC 794, 42 USC 12101 et seq., 42 USC 2000a et seq., and with 45 CFR 205.10. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Social Services and the Child Welfare Program under the Cabinet for

Families and Children. This administrative regulation amends provisions to comply with requirements of KRS 13B.005 to 13B.170.

Section 1. Definitions. (1) "Applicant for services" means a person who has applied for services from the Department for Social Services by means of signing an application.

(2) "Client" means a recipient or a person who has been determined to be eligible to receive services from the Department for Social Services and has been registered in a case to receive ongoing services or a person who has been ordered by a court to receive services from the Department for Social Services.

(3) "Complainant" means the applicant for services, client, foster parent or adoptive parent who after submitting their written complaint, is entitled to a fair hearing.

(4) "Hearing officer" means a person who is trained in administrative hearing procedures designated by the Commission for Social Services or designee to conduct fair hearings.

(5) "Local resolution process guidelines" means the local resolution conference consisting of an informal process that gives the complainant the opportunity to discuss his complaint and clarify issues and attempt to resolve those issues. The complainant shall be afforded the opportunity to decide whether he continues to desire a formal hearing following the local resolution process.

(6) "Timely" means that a notice is mailed at least ten (10) days before the date of the action, except that adequate written notice shall be given no later than the date of the action if staff determines that delaying the action endangers the health or well-being of the children or that the health or well-being of children may be endangered if prior notice is given.

Section 2. Right to a Fair Hearing. (1) The department shall not on the basis of race, color, national origin, sex, age, religion or disability:

(a) Deny an individual aid, care, services or other benefits of the department, either directly or through contractual or other agreements.

(b) Provide aid, care, services, or other benefits to an individual which is different or is provided in a different manner from that provided to others.

(c) Subject an individual to segregation or separate treatment in a matter related to his receipt of aid, care, services or other benefits.

(d) Restrict an individual in the enjoyment of an advantage or privilege enjoyed by others receiving aid, care, services or other benefits.

(e) Treat an individual differently from others in determining whether he satisfies eligibility or other requirements or conditions which individuals shall meet to receive aid, care, services or other benefits.

(f) Deny an individual an opportunity to participate in the program through the provision of services or afford him an opportunity to do so which is different from that afforded others.

(2) A notice of the client's right to a hearing shall be displayed prominently in each Department for Social Services residential treatment facility, clinical programs, day treatment center, group home, and in each Department for Social Services office in a location easily accessible to clients. The notice of right to a hearing shall state:

(a) If you are dissatisfied with the action taken, you may request a fair hearing within thirty (30) days from the date of the action by filing a written request or a DSS-154, Request for Fair Hearing form, incorporated by reference herein, with the Quality Assurance Branch, Department for Social Services, ~~404 Ann Street, Frankfort, Kentucky 40601.~~

(b) You may be represented by an attorney or other spokesman.

(3) Staff of the Department for Social Services, shall have the responsibility of advising applicants, clients, foster parents and subsidized adoptive parents in writing of their right to a fair hearing:

(a) During intake or the initial treatment planning conference,

using the DSS-154, Request for Fair Hearing form.

(b) During any action affecting services or assistance:

1. Staff shall give the applicant, client or subsidized adoptive parent timely and adequate notice and an opportunity to object, using the DSS-154A, Notice of Intended Action form, incorporated by reference herein.

2. If a request for a hearing is made within ten (10) days of the notice of an action affecting services, services shall be continued until a decision is rendered after a hearing, unless staff determines that continuation of the services or delay of the action endangers the health or well-being of a child; and

(c) Staff shall give new foster parents, upon approval a written notice of their right to a fair hearing when:

1. A foster home is closed;

2. A child is removed from one (1) foster home to another foster home; and

3. Training provided by the department is denied.

(4) Hearing entitlement.

(a) An applicant or client shall be entitled to a hearing on the following actions:

1. A denial, reduction, material modification, suspension, discontinuance, exclusion from or termination of a service;

2. Dissatisfaction with a service received, inappropriate or inadequate treatment, placement or visitation;

3. Failure of the department to act upon a request for service with reasonable promptness;

4. Failure of the department to take into account a client's choice of service or a determination that the individual shall participate in a service program against his wishes except where required by law; or

5. Discrimination against a client by department staff on account of age, sex, race, national origin, disability or religion.

(b) A foster parent shall be entitled to a hearing on the following decisions:

1. To remove a foster child from one foster home to another foster home except if the child has been the subject of a substantiated report of abuse or neglect by the foster parents;

2. To deny foster parents foster parent training provided and scheduled by the department.

3. To close the foster home;

4. Foster parents are not entitled to a fair hearing if:

a. Sexual abuse or sexual exploitation by the foster parents is substantiated;

b. Substantiation of physical abuse of a child or spouse warranting the removal of the victim;

c. Neglect by the foster parents is substantiated;

d. There is presence of a serious physical or mental illness which impairs or precludes adequate care of the child by the foster parents;

e. ~~[d.]~~ Foster parents are convicted of a felony offense; or

f. ~~[e.]~~ Foster parents have not had a placement within five (5) years of the approval date.

(c) Subsidized adoptive parents shall be entitled to a hearing on the decision to deny or reduce adoptive assistance for a special needs child. Adoptive parents eligible for a Title IV-E adoption subsidy for a special needs child are entitled to a hearing for:

1. Failure of the department to advise the adoptive parents of the availability of the adoption assistance for special needs children; and

2. Failure to provide the Title IV-E eligible adoptive parents known relevant facts regarding the child, biological family and child's background prior to finalization.

(5) The following issues shall not be considered through the hearing procedure described herein:

(a) Complaints related to legal issues, for example, actions involved in court cases or the interpretation of any statute or regulation;

(b) A complaint that has not been filed in writing with the Quality Assurance Branch;

(c) A complaint that has been abandoned by failure of the

complainant to carry forward with their complaint, to furnish information requested by the hearing officer or to appear at a scheduled hearing;

(d) ~~[A complaint of a provider of services under contract or memorandum of agreement, that is day treatment, group homes, private child care facilities or area development districts. Refer to 905 KAR 8:140, Hearing procedures for area agency on aging, contract selector actions, for formal complaint procedure for area agencies on aging;~~

~~(e)]~~ A client complaint involving services or discrimination against a contract agency;

~~(e)~~ ~~[(f)]~~ Discrimination practices in relation to departmental personnel policies and procedures. These grievances shall be handled per instructions in the personnel manual; and

~~(f)~~ ~~[(g)]~~ A report or investigation of child abuse or neglect and adult abuse or neglect.

Section 3. Request for Hearing. (1) The complainant or legal guardian shall sign the request and submit it to the Quality Assurance Branch. Upon request, departmental staff shall assist individuals in preparation and submission of a request for hearing. Staff shall not assume responsibility for mailing the request. Requests for hearing shall be in writing or filed on the DSS-154, Request for Hearing form and contain:

(a) Specific allegations or complaints against the department;

(b) Name of the staff person, or persons involved if known;

(c) Circumstances under which the alleged act occurred; and

(d) Date and place of alleged act.

(2) Requests shall be filed in writing within thirty (30) days after the alleged act or notice of a decision affecting services. If the notice is mailed, the date of the notice shall be the date mailed; otherwise it shall be the date of delivery. If the request is filed after the thirty (30) day period, a decision as to acceptance or denial of the complaint for action shall be made by the Commissioner of the Department for Social Services, or designee.

(a) Within five (5) working days of the receipt of the complaint, the Quality Assurance Branch shall notify the complainant of the receipt of the request and the department's policy of attempts at local resolution before a hearing is scheduled.

1. The appropriate family services district manager or designee shall also be notified of the receipt of the request and asked to set a meeting with the complainant to attempt to resolve the issues that led to the complaint.

2. The juvenile services specialist shall arrange a meeting with the complainant to attempt to resolve the issues that led to the complaint if received from youth in residential treatment facilities, Residential programs, group homes or day treatment programs.

(b) The local resolution facilitator contacts the complainant to:

1. Clarify the issues of the complaint;

2. Determine if the complainant wishes to participate in the local resolution process; and

3. Determine if the complainant is a client or a person filing on behalf of a client. If the complainant is not a client, notify the Quality Assurance Branch Manager immediately.

(c) The complainant may refuse to participate in the local resolution efforts and shall sign an acknowledgement to be forwarded to the Quality Assurance Branch Manager and choose:

1. To request that the complaint be withdrawn; or

2. That the complaint be referred for a formal fair hearing.

(d) If the complainant chooses to be involved in the local resolution process, the local resolution facilitator shall solicit information from the involved parties in an attempt to resolve the complaint in a manner that is acceptable to the complainant. The solicitation of information may include:

1. Interviews with the complainant and named DSS staff;

2. Interviews with other involved parties; and

3. A review of relevant case materials.

(e) Other issues identified as a result of the local resolution conference shall be brought to the attention of appropriate management and supervisory staff.

(4) The family services district manager or his designee or the juvenile services specialist shall forward to the Quality Assurance Branch, in writing, the results of their efforts to achieve local resolution of the complaint not more than thirty (30) days after the filing of the request for hearing. The report shall contain:

- (a) Nature of the complaint;
- (b) Date of resolution conference;
- (c) Persons present at the conference; and
- (d) A specific statement of any issues not resolved.

(5) If the complaint is resolved, the complainant shall sign an acknowledgment to be attached to the report. A copy of the local resolution report shall be sent to the complainant and involved staff.

Section 4. Hearing Before the State Agency. (1) If a complaint is not resolved within thirty (30) days after filing, it shall be referred to a hearing officer of the Quality Assurance Branch to conduct a hearing. The hearing shall be held within thirty (30) days after referral. If the complainant agrees to an extension of time, the time for final administrative action shall be correspondingly extended.

(2) The hearing shall be conducted at a reasonable location selected by the hearing officer.

(3) The complainant and representatives, as appropriate, the DSS staff involved in the complaint and their representatives, and Cabinet Office of the Counsel [CHR Department of Law] shall be given twenty (20) [seven (7) working] days written notice prior to the hearing. The hearing officer's notice shall comply with KRS 13B.050(2)(3). The following additional information shall be contained in the hearing officer's notice to the complainant and his representative and staff named in the complaint:

(a) ~~[The specific complaint issues to be heard at the hearing.]~~ The complainant shall be asked to notify the hearing officer in writing within five (5) working days of the receipt of the notice if the complaint issues have not been correctly stated. The hearing officer shall then make a determination as to whether to modify the complaint issues;

(b) Individuals to be present at the hearing;

(c) ~~[The complainant's option of presenting his case himself or with the aid of an authorized representative, for example, legal counsel, relative, friend or other spokesman;~~

(d) That the department shall not be responsible for any legal fees incurred by the complainant related to the hearing;

(d) ~~[(e)]~~ The nature and conduct of the hearing, shall be held in an orderly but informal manner, with an opportunity to present witnesses and to cross examine opposing witnesses; and

(e) The complainant's right to examine the contents of his case file and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing and instructions on how to access the material under the open records law as governed by KRS 61.870 to 61.884. [-and

~~(f) The complainant's right to examine the contents of his case file and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing and instructions on how to access the material under the open records law as governed by KRS 61.870 to 61.884.~~

(4) The following information shall be contained in the hearing officer's notice to staff named in the complaint:

(a) The specific complaint issues to be heard at the hearing;

(b) Individuals to be present at the hearing;

(c) The nature and conduct of the hearing, shall be held in an orderly but informal manner, with an opportunity to present witnesses and to cross examine opposing witnesses;

(d) The Department of Law shall represent the Department for Social Services in fair hearings; and

(e) The involved staff may present evidence in defense of their actions either on their own or through a representative of their

~~choosing. An attorney from the Department of Law may represent the involved staff provided there is not a conflict of interest. If staff obtain private legal representation, the Department of Social Services shall not be responsible for legal fees incurred.]~~

(4) ~~[(6)]~~ Attendance at the hearing shall be limited to:

- (a) The complainant and representatives;
- (b) Staff involved in the complaint and their representatives;
- (c) The department's attorney;
- (d) A representative of the department;
- (e) A person to operate the recording equipment;
- (f) Witnesses called by either the complainant or staff; and
- (g) The hearing officer.

(5) ~~[(6)]~~ The hearing shall be conducted as governed by KRS 13B.080 and 13B.090. ~~[in an orderly but informal manner, following the rules of procedure applicable to administrative hearings.]~~ Facts relevant to the issue shall be received.

(a) The hearing officer shall open the hearing by:

- 1. Describing the purpose of the hearing;
- 2. Explaining the role of the hearing officer; and
- 3. Introducing parties to the hearing.

4. The hearing officer may direct or grant a continuance for good cause shown.

5. The hearing officer shall carefully clarify the complaint issues to be heard with the parties to the hearing. The complaint issues shall be the same as those in the written notification of the hearing.

(b) ~~[Before receipt of testimony, the hearing officer shall administer the oath pursuant to KRS 194.025.~~

(c) ~~[(e)]~~ The hearing officer shall arrange for the separation of witnesses. Only the client and representatives; staff involved in the complaint and their representatives; the department's attorney; a representative of the department; the hearing officer; and a person to operate the recording equipment are entitled to be in the hearing room throughout the entire hearing. The hearing officer may permit others to remain throughout the entire hearing if circumstances dictate:

~~[(d) A witness shall complete direct testimony and then shall answer questions on cross examination by the adverse party.]~~

(c) ~~[(e)]~~ The complainant shall have the burden of proof and shall testify first and may present pertinent evidence, including testimony of witnesses and documents.

(d) ~~[(f)]~~ Upon completion of the case for the complainant, the respondents may testify and present other evidence including testimony of witnesses and documents.

(e) ~~[(g)]~~ Upon completion of the case for the respondents, the complainant may present additional evidence in strict rebuttal of the evidence presented by respondents. Additional evidence may be presented by either complainant or respondents at the discretion of the hearing officer.

(f) ~~[(h)]~~ The hearing officer may, if necessary to secure full information on the issue:

- 1. Postpone the hearing;
- 2. Examine each party who appears, and his witnesses; and
- 3. Take any additional evidence which he deems necessary including excerpts from the case record.

~~[(i) After both parties to the hearing have been given ample opportunity to present their testimony and evidence, the hearing officer shall give each party an opportunity to summarize the salient points of their cases.~~

~~[(j) Upon completion of the hearing, the hearing record shall be closed unless the hearing officer grants an exception under proper motion.]~~

(g) ~~[(k)]~~ The hearing officer shall advise the parties that a decision shall be rendered within thirty (30) [twenty (20)] days from the close of the hearing.

(h) ~~[(l)]~~ Ex parte communications with the hearing officer shall be prohibited. Ex parte communications with the hearing officers shall be shared with the parties to the hearing and become a part of the

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official record.

Section 5. Hearing Officer's Recommended Order [~~Report and Decision~~]. (1) Within ten (10) days after the close of the hearing, the hearing officer shall file a recommended order [~~written report~~] with the Quality Assurance Branch. The order [~~report~~] shall comply with KRS 13B.110 and at least contain:

- (a) Statement of the complaint;
- (b) Persons present at the hearing, including witness;
- (c) Findings of fact based solely on the evidence introduced at the hearing;
- (d) Conclusions as to whether or not the findings support the complaint, citing appropriate policy, procedures and practices in a recommended decision on the issues;
- (e) Recommendations as to action to be taken on the complaint; and
- (f) Other issues identified by the hearing officer shall be addressed in a separate memorandum [~~to the branch manager who shall forward them to the commissioner~~].

(2) Each party to the hearing shall have fifteen (15) days from date of recommended order to file exceptions.

(3) Within twenty (20) [~~ten (10)~~] days after receipt of the hearing officer's recommended order [~~report~~] by the Quality Assurance Branch, the commissioner, or designee, shall render a final order [~~written decision~~] on the complaint. The final order [~~written decision~~] shall be sent to the complainant by certified mail, return receipt requested, and to the staff involved, and shall comply with KRS Chapter 13B.120 and at least contain the following information:

- (a) Statement of the complaint;
- (b) Findings of fact and conclusion with applicable statutes, policies, procedures and practices in regard to the complaint; and
- (c) Decision and action to be taken based on findings of fact.

Section 6. Corrective Action. After reviewing the findings of fact and conclusions and recommendations of the hearing officer, if the commissioner or the commissioner's designee feels that corrective action is warranted, a memorandum shall be forwarded to the appropriate assistant director for family services or residential services requesting that corrective action be initiated. Corrective actions deemed necessary shall be initiated within ten (10) days.

Section 7. Record. The record of each administrative hearing shall comply with KRS 13B.130 [~~transcript or recording of testimony and exhibits, or an official report containing the substance of the testimony introduced at the hearing, together with all exhibits, papers and requests filed in the proceeding, ex parte communications and the report of the hearing officer shall constitute the exclusive record~~] and shall be available at the Frankfort office of the Quality Assurance Branch at any reasonable time in accordance with open records. The record of the fair hearing shall be maintained in a locked file separate from the case record of the complainant.

Section 8. Contract Agencies. (1) Contract agencies of the department shall follow procedures outlined in this administrative regulation [~~manual section~~] if a client has a complaint related to civil rights, discrimination or service delivery. If the complainant is dissatisfied with the written decision rendered by the contract agency, the client has ten (10) days from the date of the agency's decision to appeal. The agency, if requested, shall assist the complainant in filing an appeal of the decision. An appeal shall be mailed to the office of the commissioner.

(2) The commissioner shall forward the appeal of the decision to the Quality Assurance Branch to be reviewed by a hearing officer. After reviewing the decision made by the contract agency, the hearing officer shall file a written report with the commissioner which shall contain:

- (a) Conclusions as to whether the contract agency's finding

support the complaint, citing appropriate policy and procedure; and

- (b) Recommendations as to action to be taken on the complaint.

(3) After receipt of the hearing officer's report, the commissioner or the commissioner's designee shall render a written decision on the complaint. The written decision shall be sent to the complainant by certified mail, return receipt requested, and shall contain the following:

- (a) Statement of the appeal; and
- (b) Decision and action to be taken.

Section 9. Material Incorporated by Reference. (1) The DSS-154, Request for Hearing, revised December, 1992 and the DSS-154A, Notice of Intended Action, revised October, 1993 shall be incorporated by reference.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

VIOLA MILLER, Acting Commissioner and Secretary

APPROVED BY AGENCY: September 5, 1996

FILED WITH LRC: September 11, 1996 at 3 p.m.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

TRANSPORTATION CABINET
Department of Highways
Division of Operations
Department of Vehicle Regulation
Division of Motor Carriers
(Amended After Hearing)

603 KAR 5:330. Annual overweight permits for nondivisible loads.

RELATES TO: KRS 189.222, 189.2717, 23 CFR 658.17

STATUTORY AUTHORITY: KRS 189.2717(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.2717(1) ~~[HB 168 passed by the 1996 General Assembly created a new section of KRS Chapter 189 which]~~ authorizes the Department of Highways to issue an annual ~~[\$500]~~ permit for the movement of a motor vehicle whose nondivisible load does not exceed a gross weight of 120,000 pounds. This administrative regulation establishes the procedures for application and safety requirements necessary in the interest of highway safety and convenience for the issuance of this overweight permit.

Section 1. Definitions. (1) "Dual-wheel axle" means one (1) axle with two (2) wheels on each side of the axle.

(2) "Nondivisible load" means a load or vehicle which if separated into smaller loads would:

(a) Compromise the intended use of the vehicle, making it unable to perform the function for which it was intended;

(b) Destroy the value of the load or vehicle, making it unusable for its intended purpose; or

(c) Require more than eight (8) work hours to dismantle using appropriate equipment. [cannot be dismantled or divided without incurring substantial cost or delay.]

(3) ~~[(2)]~~ "Overweight" means the motor vehicle exceeds:

(a) The gross weight limit established for a highway segment in 603 KAR 5:301;

(b) The axle weight limit established in 603 KAR 5:066;

(c) The bridge weight limit established by 603 KAR 5:066; or

(d) The gross weight limit posted at a bridge or other structure.

(4) "Single-wheel axle" means a steering axle with one (1) wheel on each side of the axle.

Section 2. Application for Permit. (1) An application for an annual overweight permit issued pursuant to this administrative regulation shall contain the following information:

(a) The name, address, and telephone number of the applicant;
(b) The purpose of the movements for which a permit is requested;

(c) The portions of the state primary road system requested to be used;

(d) Description and identity of the vehicle for which the application is made including the following:

1. Vehicle identification number of the power unit;
2. Year, make, and model of the power unit;
3. License plate number of the power unit, if required; and
4. State which issued the license plate.

(e) An axle-by-axle breakdown of the weight of the combined vehicle and load;

(f) The gross weight of the vehicle and load for which the application is made;

(g) The KYU number required by 601 KAR 1:200 under which the overweight motor vehicle will be operated;

(h) Requested issue date for the permit; and

(i) A certification that the tractor, towing unit, or overweight vehicle has sufficient horsepower and braking capacity to safely transport the overweight load.

(2) A highway map showing each of the proposed routes for which application is being made shall also be attached to the application.

(3) A separate permit application and fee shall be required for each tractor or power unit which the applicant intends to operate under the provisions of this administrative regulation.

Section 3. Limits on Permits. (1) This annual overweight permit shall ~~only~~ be issued to a tractor or power unit which is:

(a) Registered in Kentucky for a combined gross weight of 80,000 pounds;

(b) Apportioned registered in another licensing jurisdiction to operate in Kentucky with a gross weight of 80,000 pounds; or

(c) ~~[It]~~ Not required to be registered or licensed in order to operate the vehicle in Kentucky.

(2) A trailer or semitrailer [All trailers or semitrailers] used in conjunction with the tractor or power unit shall be ~~[registered and licensed]~~:

(a) Registered and licensed in Kentucky; or

(b) If in another jurisdiction, apportioned registered to operate in Kentucky.

(3) Each annual permit issued shall be limited to designated portions of the state primary road system.

(4) An overweight permit shall not be issued or valid for a vehicle or vehicle combination whose axle weight exceeds the product of 700 pounds times the aggregate width in inches established from the manufacturer's stamped tire measurement for all tires on the axle.

(5) An annual overweight permit shall not be issued or valid for a vehicle or vehicle combination whose axle or axle group weight exceeds the limits set forth in subsection 2 of KRS 189.2717.

(6) An annual overweight permit shall not be issued or valid for a vehicle or vehicle combination which exceeds the following:

(a) 20,000 pounds on a dual-wheel axle; or

(b) 15,000 pounds on a single-wheel axle.

Section 4. Denial or Restriction of Permit Application. The Transportation Cabinet ~~may [shall have the right to]~~ deny or restrict a permit for the use of a [any] route which may be detrimental to public safety or convenience. The Transportation Cabinet shall consider the following when making the determination on the application:

(1) The strength of all bridges and structures on the route;

(2) Traffic congestion on the route;

(3) Horizontal and vertical alignment of the route;

(4) The availability of alternate routes that afford greater safety;

(5) Urban development in residential and commercial areas on the route;

(6) The proximity of schools to the route;

(7) Highway construction or reconstruction scheduled for the route; and

(8) Any other condition that would unduly compromise public safety and convenience.

Section 5. Permit Availability. (1) The original of the annual permit or a copy authenticated by the Department of Vehicle Regulation by embossing shall be carried in the overweight vehicle at all times.

(2) The annual permit shall be presented, upon request, to a [any] law enforcement officer or authorized personnel of the Department.

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ment of Vehicle Regulation.

(3) An unauthenticated photocopy of the annual permit shall not be valid.

Section 6. Overdimensional Loads. If ~~[any] movement [to be made under an annual permit issued under this administrative regulation]~~ involves a motor vehicle which exceeds the dimension limits for the routes requested, the permit holder shall apply for an overdimensional permit under the provisions of KRS 189.270, 189.273, or 189.274. ~~[Chapter 189.]~~

Section 7. Duplicate Permits. A duplicate permit which is needed to replace a lost, stolen or destroyed annual permit or to transfer the permit to another towing vehicle may be obtained from the Division of Motor Carriers by the payment of ten (10) dollars. ~~[Only]~~ One (1) transfer to another towing vehicle shall be allowed for each annual permit during its effective year. An ~~[Any]~~ additional transfer of the permit requested shall be subject to the fees set forth in KRS 189.2717(4). ~~[Chapter 189.]~~

Section 8. Permit Validity. (1) The annual permit issued under the provisions of this administrative regulation shall be valid for one (1) year from the date of issuance.

(2)(a) If the conditions on an approved route change, the permit holder shall notify the Transportation Cabinet of the change in order for the cabinet to determine if the route is still available for use by the overweight vehicle.

(b) If the route is unavailable for an overweight vehicle[s], the Transportation Cabinet shall attempt to reroute the permit holder.

(c) If an alternative route is approved, the Transportation Cabinet shall, free of charge, issue a supplemental permit to the permit holder. The supplemental permit shall expire either when the initial route is again available for use or at the end of the permit year.

(d) If an alternative route is unavailable, the permit holder shall not operate overweight until the initial route is again available for use.

ED LOGSDON, Commissioner
J.M. YOWELL, State Highway Engineer
JAMES C. CODELL III, Secretary

APPROVED BY AGENCY: November 12, 1996
FILED WITH LRC: November 13, 1996 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra Pullen Davis

(1) Type and number of entities affected: Only the few transportation companies which will be eligible for the annual overweight permit. Since most of the overweight loads in Kentucky are divisible, the transporters are not eligible for this permit. Other transporters need a new route each trip and therefore will not apply for an annual permit, but will continue to apply for a trip permit pursuant to 603 KAR 5:075. The few companies which will be eligible are those which deliver a commodity, such as a single coil of steel from one plant to another.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Public comment hearing held did not address this issue. However, there appears to be no impact.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Public comment hearing did not address this issue. However, HB 168 (rather than this administrative regulation) will decrease the cost of transporting certain products, reducing the cost of doing business for those particular companies.

(c) Compliance, reporting, and paperwork requirements, including

factors increasing or decreasing costs (note any effects upon competition) for the: Since HB 168 authorized an annual permit, the amount of paperwork will decrease significantly for those few companies able to take advantage of the annual permit. Currently, they must purchase a single trip permit each time a movement is made.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The passage of HB 168 will reduce the overweight permit fees collected by the Transportation Cabinet, but will also reduce the administrative duties of the cabinet. The net result should be \$0.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Road funds authorized in the biennium budget for the Transportation Cabinet's Department of Vehicle Regulation and Department of Highways.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Transportation Cabinet considered including all of the routes over which the permit holders could operate on the preprinted permit. However, such a list is not available and will take considerable effort to prepare.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: Not applicable

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. Tiering was not applied because this administrative regulation is only applicable in very restricted circumstances. All applicants for this permit should undergo the same administrative process.

CABINET FOR HEALTH SERVICES Department for Medicaid Services (Amended After Hearing)

907 KAR 1:715. School-based health services.

RELATES TO: KRS 156.070, 205.520

STATUTORY AUTHORITY: KRS 194.050, 205.560, 605.115, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services has responsibility to administer the program of Medicaid. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid

Program under the Cabinet for Health Services. KRS 205.520 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 Medicaid services to Kentucky's indigent citizenry. This administrative regulation sets forth the provisions relating to school-based health services (SBHS) for which payment shall be made by the Medicaid Program on behalf of Medicaid recipients.

Section 1. Definitions. (1) "Assistive technology device" means any item, piece of equipment, or product system that is needed to increase, maintain, or improve the functional capabilities of a child with a disability and which is medically necessary to implement the individual education program.

(2) "Incidental interpreter services" means those interpreter services which are necessary in order to allow the child to benefit from other covered school-based health services.

(3) "Recipient" means a Medicaid eligible child under the age of twenty-one (21), and may include the month in which the child becomes twenty-one (21).

(4) "School-based health services" (SBHS) means those services which are evaluative, diagnostic, preventive, rehabilitative, and treatment services provided to eligible recipients under age twenty-one (21) to provide the maximum reduction of physical or mental disability, to allow for functioning of the recipient to his best possible level, to prevent loss of current functional level, or to correct any defects or conditions. For purposes of coverage as provided for in 907 KAR 1:034 SBHS includes only those services identified as necessary within an individual education program for persons determined to be eligible under the provisions of the Individuals with Disabilities Education Act (IDEA), 20 USC Chapter 33, and 707 KAR Chapter 1.

Section 2. Participation Requirements. (1) School districts that request to participate as a school-based health care provider shall be required to comply with the following and submit to an annual review by the Department of Education for compliance with the standards for Medicaid certification as a participating Medicaid provider:

(a) Agree to provide school-based health services as required by IDEA, 20 USC 33, and as authorized in an approved individual education program by a multidisciplinary team of professionals acting within their scope of practice;

(b) Submit to or have completed an on-site survey by the Department of Education within seven (7) years from the date of enrollment in the Medicaid Program; and

1. Have been found to be in compliance with the requirements for provision of services required by the IDEA; or

2. If found to be in noncompliance, is taking action considered appropriate by the Department of Education to correct deficiencies;

(c) Employ or contract with health care professionals who meet the qualifications specified in Section 4 of this administrative regulation for the provision of Medicaid covered services;

(d) Provide to the Department of Education a proposed quality assurance outline;

(e) Agree to develop and implement, within one (1) year from the date of the recommendation for certification to the Department for Medicaid Services by the Department of Education, a quality assurance program for the provision of Medicaid covered services which has been approved by the Department of Education;

(f) Agree to maintain and submit to the Department of Education all required records and reports to ensure compliance with 20 USC 33; and

(g) Provide the Department of Education with a list of school-based health services that the school district requests to provide. The list shall include the names, credentials, salaries, fringe benefit percentages, and contract amounts of those employees and contractors.

(2) The Department for Medicaid Services may grant Medicaid certification to those providers who meet the criteria in subsection (1) of this section and are recommended by the Department of Education for certification and enrollment in the Kentucky Medicaid Program as a provider of school-based health services.

Section 3. Services. (1) Except as otherwise limited in this section and Sections 4, 5, and 6 of this administrative regulation, the following services shall be covered if provided to address a medical or mental disability and assist the individual in benefiting from special education programming which is included, authorized, and provided in accordance with the Individual Education Program:

(a) Nursing services;

(b) Audiology services;

(c) Speech and language services;

(d) Occupational therapy services;

(e) Physical therapy services;

(f) Mental health services;

(g) Incidental interpreter services provided in conjunction with another covered service;

(h) Assistive technology devices and appropriate related evaluations;

(i) Transportation; and

(j) Orientation and mobility service.

(2) If appropriate, services listed in subsection (1) of this section:

(a) Shall not be limited by site of service;

(b) May be provided in a group or one-on-one situation; and

(c) May include assessment, evaluation, treatment, and collateral components.

(3) Assessments and evaluations conducted prior to the establishment of the individual education program shall be covered if an individual education program is subsequently authorized and implemented.

Section 4. Staffing Requirements. School-based health services shall be reimbursable only if provided by professionals acting within their scope of practice as defined by state law as follows:

(1) Nursing services may be provided by:

(a) An advanced registered nurse practitioner with current license from the Kentucky Board of Nursing;

(b) A registered nurse with current license from the Kentucky Board of Nursing;

(c) A licensed practical nurse with appropriate supervision and delegated authority; and

(d) A health aide if he:

1. Is under the supervision of a specific registered nurse or advanced registered nurse practitioner;

2. Is trained by the supervising nurse for the specific nursing service for the specific recipient; and

3. Is approved in writing by the supervising registered nurse to possess adequate training and skills to perform the specific service in a safe, effective manner.

(2) Audiology services shall be provided by an audiologist with a current license from the Kentucky Board of Speech Language Pathology and Audiology.

(3) Speech and language services shall be provided by:

(a) A speech pathologist with:

1. A current license from the Kentucky Board of Speech Language Pathology and Audiology; or

2. A masters degree in the area of speech-language pathology or a substantive equivalent and currently certified by the Kentucky Education Professional Standards Board (KEPSB); and

(b) A speech-language pathology assistant with a current license from the Kentucky Board of Speech Language Pathology and Audiology and under the supervision of a licensed or certified masters-level speech language pathologist in accordance with KRS 334A.080.

(4) Occupational therapy services may be provided by:

(a) An occupational therapist with a current license from the Kentucky Occupational Therapy Board;

(b) An occupational therapy assistant licensed to assist under the supervision of an occupational therapist; and

(c) An unlicensed occupational therapy aide who assists in the practice of occupational therapy under the direct supervision of the licensed occupational therapist or occupational therapist assistant and has an understanding of occupational therapy in accordance with KRS 319A.010(5).

(5) Physical therapy services may be provided by:

(a) A physical therapist with a current license from the Kentucky Board of Physical Therapy;

(b) A physical therapist assistant with a current license, physical therapist with a temporary permit, and a student of physical therapy who are under the supervision of a licensed physical therapist; and

(c) A physical therapy aide under the direct on-site supervision of the licensed physical therapist or licensed physical therapist assistant in accordance with the provisions of 201 KAR 22:053, Section 5.

(6) Mental health services may be provided by:

(a) A licensed clinical psychologist;

(b) A licensed counseling psychologist;

(c) A licensed school psychologist;

(d) A school psychologist with a doctoral or master's degree and certified by the KEPSB;

(e) A certified psychologist with autonomous functioning;

(f) A certified psychologist or psychological associate with a master's degree under the supervision of the licensed psychologist in accordance with KRS Chapter 319;

(g) A social worker with a master's in social work and certified by KEPSB or a bachelor's degree in social work and two (2) years experience in individual counseling with adolescents in social service delivery;

(h) A licensed clinical social worker;

(i) A guidance counselor certified by the KEPSB; ~~and~~

(j) A psychometrist certified by the KEPSB; ~~and~~

(k) An advanced registered nurse practitioner (clinical specialist).

(7) Incidental interpreter services shall be provided in accordance with the following:

(a) Minimum qualifications during 1995 and 1996 shall be as follows:

1. Sign language interpreters shall be certified by the Registry of Interpreters for the Deaf or other national certifying body or shall hold the beginning level of the Kentucky Interpreting Skills Screening.

2. Cued speech interpreters shall demonstrate ability to perform at Level 1 of the National Cued Speech Association's certification examination.

3. Oral interpreters shall be certified by the Registry of Interpreters for the Deaf.

(b) Minimum qualifications after 1996 shall be as follows:

1. Sign language interpreters shall be certified by the Registry of Interpreters for the Deaf or other national certifying body or shall hold the intermediate level of the Kentucky Interpreting Skills Screening.

2. Cued speech interpreters shall demonstrate ability to perform at Level 2 of the National Cued Speech Association's certification examination.

3. Oral interpreters shall be certified by the Registry of Interpreters for the Deaf.

(8) Orientation and mobility services shall be provided by an orientation and mobility specialist certified by the Association of Education and Rehabilitation for the Blind and Visually Impaired (AER).

Section 5. Limitations on Transportation Services. (1) Transportation services include transporting the recipient to a site which is other than the school building in which he is enrolled for general education

purposes or to the service site if the child is a home-bound student and receives general education services at home.

(2) Transportation to and from home to the school shall not be a covered service under school-based health services.

(3) Transportation services shall be covered if provided using the type of vehicle which meets the specifications established by KRS 156.153, 702 KAR 5:060, and 702 KAR 5:130, and is appropriate for the disability.

(4) Transportation shall not be covered if provided by a member of the recipient's household if that person is not an employee of the school district.

Section 6. Special Requirements for Assistive Technology Devices. The item or device shall become the property of the recipient if purchased by the Medicaid Program.

Section 7. Material Incorporated by Reference. (1) The School-based Health Services Manual, dated, shall be incorporated by reference in this administrative regulation.

(2) The manual shall be on file in the Office of the Commissioner, Department for Medicaid Services, Cabinet for Health Services, 275 East Main Street, Third Floor East, Frankfort, Kentucky 40621.

(3) The manual shall be available for review during the normal business week, Monday through Friday, 8 a.m. through 4:30 p.m. (eastern standard time), excluding state holidays.

(4) Each participating provider shall be provided one (1) copy of the manual and appropriate manual updates following their incorporation by reference. Additional copies may be obtained from the Department for Medicaid Services upon payment of an appropriate fee which approximates cost in accordance with KRS 61.872.

Section 8. Implementation Date. In accordance with the provisions of KRS 605.115, this administrative regulation shall be applicable for services provided on and after January 1, 1995.

JOHN H. MORSE, Commissioner and Secretary

APPROVED BY AGENCY: November 15, 1996

FILED WITH LRC: November 15, 1996 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick (564-5020) or Karen Doyle

(1) Type and number of entities affected: Eligible Medicaid children under age 21 who have an individual education plan with the local school district and local school districts who wish to participate as school-based health services Medicaid providers.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: (Cost) \$62,293,445 from August 1, 1995 to June 1, 1996; \$70,466,043 for FY 1997*.

2. Continuing costs or savings: (Cost) \$80,916,953*

3. Additional factors increasing or decreasing costs: The number of services provided to eligible Medicaid recipients will increase or

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decrease the costs.

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky: Local educational funds will be conserved.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: To ensure that access to medically necessary health care services is available to Medicaid recipients.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of Medicaid recipients.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: *It should be noted that the state's share of the expenditures will be provided through certified expenditures at the local school districts using current appropriated funds.

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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.

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.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, NOVEMBER 15, 1996

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(Amendment)

201 KAR 20:390. Nursing incentive scholarship fund.

RELATES TO: KRS 314.025, 314.026, 314.027

STATUTORY AUTHORITY: KRS 314.026(1), 314.131

NECESSITY, FUNCTION, AND CONFORMITY: The nursing incentive scholarship fund program was created by the General Assembly. This regulation implements the administration of the program.

Section 1. Definitions. (1) "Academic year" means, for a registered nursing program, a minimum of two (2) semesters or its equivalent; and for a practical nursing program, the completion of the required program.

(2) "Board" means the Kentucky Board of Nursing.

(3) "Committee" means the Nursing Incentive Scholarship Fund Committee.

(4) ~~["Health facility" as used in this regulation shall have the same meaning as "health facility" as defined at KRS 216B.015(12).~~

(5) ~~["Program of nursing" means either a prelicensure, BSN completion or graduate nursing program.~~

(5) ~~["Resident" is defined by 13 KAR 2:045, Section 1(13).~~

(7) ~~"Rural area" means a county with less than 50,000 population or a county which is not part of a federally designated metropolitan statistical area.]~~

(6) ~~["Successful academic progression" means:~~

(a) For prelicensure and BSN completion nursing programs, the completion of a minimum of eight (8) credit hours per semester of published requirements for the program of nursing and maintenance of a minimum grade point average which would allow ~~[admission or]~~ continuation in a program of nursing; or

(b) For graduate nursing programs, the completion of a minimum of six (6) credit hours per semester of published requirements for the program of nursing and maintenance of a minimum grade point average which would allow continuation in the graduate program.

Section 2. Application. (1) To be eligible for a nursing incentive scholarship, an applicant shall:

(a) Be a Kentucky resident; and

(b) Have been accepted ~~[applied]~~ for admission to a ~~[an educational institution with an approved]~~ program of nursing, ~~[in Kentucky;~~

(c) ~~Have declared nursing as the major course of study; and~~

(d) ~~Have obtained a Kentucky health facility or Kentucky educational institution as a sponsor.]~~

(2) ~~[Residency shall be determined pursuant to the provisions of 13 KAR 2:045.~~

(3) ~~An applicant shall submit a completed [a] "Nursing Incentive Scholarship Application" by the date specified on the application. [The application shall be received by the board between January 1 and June 1.~~

(4) ~~An applicant shall send or cause to be sent to the board by June 1 an official high school transcript or equivalent (GED) or official transcripts showing postsecondary work completed, whichever is most recent.]~~

(3) ~~["(5) An applicant may [shall] attach to the application a copy of the Student Aid Report from the Free Application for Federal Student Aid (FAFSA) for the current year or other evidence of financial need.~~

(6) ~~An applicant may apply for scholarship funds for prenursing courses only to the extent of the published prerequisites of the~~

~~college or university in which the applicant is enrolled.]~~

Section 3. The Committee. (1) Members of the committee shall serve for two (2) years ~~[one (1) year]~~ and may be reappointed.

(2) The committee shall meet at least annually by July 15 and more often if necessary to decide on scholarships for the upcoming academic year.

(3) The committee shall serve without compensation but may be reimbursed for actual and necessary expenses related to serving on the committee.

Section 4. Criteria for Awards. The committee shall ~~[may]~~ consider the following criteria in evaluating applicants and shall award points as designated herein:

(1) Preference categories as specified in KRS 314.025(2) - licensed practical nurses, twenty-five (25) points; registered nurses pursuing graduate nursing education, twenty-five (25) points; financially needy residents, thirty (30) points maximum, determined as follows:

(a) FAFSA index (or equivalent) under 1000 = thirty (30) points;

(b) FAFSA index (or equivalent) between 1001 and 2000 = twenty-five (25) points;

(c) FAFSA index (or equivalent) between 2000 and 3000 = fifteen (15) points;

(d) FAFSA index (or equivalent) over 3000 = ten (10) points.

(2) Potential for academic success, as follows:

(a) High school, vocational school, college or university grade point average of three and five-tenths (3.5) to four (4.0) = twenty-five (25) points, three (3) to three and four-tenths (3.4) = twenty (20) points, and two and five-tenths (2.5) to two and nine-tenths (2.9) = fifteen (15) points.

(b) Successful progression in a program of nursing shall be equal to five (5) points for each semester or quarter, to a maximum of ten (10) points.

(3) Previous health care experience, either paid or volunteer, shall be equal to five (5) points for each year in which service is validated, to a maximum of ten (10) points.

(4) ~~Prior health care work experience or education;~~

(2) ~~Previous academic achievement as indicated by transcripts;~~

(3) ~~Current acceptance as a declared nursing major in an educational institution with an approved program of nursing;~~

(4) ~~Current admission or enrollment in an approved program of nursing.]~~

Section 5. Amount of Award. (1) The committee shall be notified by the board's fiscal officer as to the current fund balance prior to making awards.

(2) ~~The committee shall defer awarding a portion of the amount collected in odd-numbered fiscal years to the following fiscal year. The amount of the deferred portion shall be determined as follows: add the number of licensed RNs renewing as of the current year to the number of licensed LPNs who renewed in the previous year. Divide by two (2). Multiply by five (5). Subtract that figure from the amount collected, less administrative costs.~~

(3) ~~The committee shall first make awards to those recipients who received awards in the previous year and remain eligible to receive awards pursuant to Section 7 of this regulation in the current year.~~

(4) ~~The committee shall divide the remaining funds among the remaining applicants based on KRS 314.025(2), 314.026(3), 314.027(2) and on the criteria considered in Section 4 of this regulation.~~

(5) ~~(a) The maximum award granted each year shall be the highest tuition charged per academic year for a full-time student in a~~

program of nursing in a public institution at Kentucky enrolled in a comparable program.

(b) By June 1 of each year, the committee shall determine the:

1. Highest annual tuition rate charged by a practical nursing program in a public institution in Kentucky;
2. Highest annual tuition rate charged by an associate degree registered nursing program in a public institution in Kentucky; and
3. Highest annual tuition rate charged by a prelicensure baccalaureate degree registered nursing program in a public institution in Kentucky; and
4. Highest annual tuition rate charged by a graduate nursing program in a public institution in Kentucky.

(c) For students who will not be enrolled for an entire academic year, the award shall be one-half (1/2) the maximum.

(d) Upon request of the recipient and the sponsor, the committee may award less than the maximum.

Section 6. Procedure for Disbursement of Awards. (1) Disbursement of funds shall be made directly to the school by the board on behalf of the recipient.

(2) Disbursement shall be made by semester. Disbursement of the second semester's payment shall be contingent on successful academic progression during the first semester upon verification by the educational institution on a "Nursing Incentive Scholarship Fund Verification of Academic Progression" form.

(3) Each educational institution shall certify to the board no later than thirty (30) days from the beginning of each semester, that the recipient has enrolled in the nursing program [see 808]. The educational institution shall send the certification to the board on the "Certification of Enrollment" form.

Section 7. Continuing Eligibility Criteria. (1) A recipient of a nursing incentive scholarship shall be eligible to continue to receive an award provided successful academic progression through the program is maintained and there is continued maintenance of any preference categories. The recipient shall submit to the board by the date specified on the [June, the following]:

(a) Verification of successful academic progression from the academic advisor of record on a "Nursing Incentive Scholarship Fund Verification of Academic Progression" form;

(b) A "Nursing Incentive Scholarship Fund [Request for] Continuance" form. The educational institution shall immediately notify the board of any change in a recipient's enrollment status. [;

(c) Grade reports, verified by an official transcript for the preceding academic year when available, and within thirty (30) days after the recipient has enrolled each semester. The educational institution shall immediately notify the board of any change in a recipient's enrollment status;

(d) A student aid report for the current year.]

(2) [The amount of the award shall be determined pursuant to Section 5(5) of this administrative regulation.

(3) Award recipients in practical nursing programs are not eligible for continued awards while enrolled in such programs.

Section 8. Disbursement Contract. Prior to disbursement of initial funds [for a particular year], the recipient shall sign a "Nursing Incentive Scholarship Fund Contract". The recipient shall sign [and] a "Nursing Incentive Scholarship Fund Promissory Note" for each year in which funds are disbursed.

Section 9. Repayment and Deferral. (1) If a recipient fails to complete the nursing program in which he is enrolled within the time specified by the program of nursing or if he fails to complete the required employment [with the sponsor] as specified in the contract, he shall immediately become liable to the board to pay the sum of all scholarships received and accrued interest thereon.

(2) Written notification of demand for repayment shall be sent by

the board to the scholarship recipient's last known address and shall be effective upon mailing. The board may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the board. Payments shall first be applied to interest and then to principal on the earliest unpaid contracts.

(3) Repayment may be deferred in the case of disability, major illness or accident which prevents a recipient from completing a [an approved] program of nursing or being employed as a nurse in Kentucky. [by the sponsor.]

(4) [Repayment may be deferred if the recipient fails to obtain acceptance to a program of nursing. This deferral shall only apply for two (2) consecutive academic years. If the recipient fails to obtain acceptance to a program of nursing after that time, repayment shall be due. If the recipient obtains acceptance to a program of nursing within the allotted time, he may apply for a continuation award pursuant to Section 7 of this administrative regulation.

(5) [A student enrolled in a program of nursing may defer repayment if the student fails to achieve successful academic progression. This deferral shall only apply for one (1) academic year. [two (2) consecutive academic years.] If the student fails to achieve successful academic progression after that time, repayment shall be due. If the student achieves successful academic progression within the allotted time, he may apply for a continuation award pursuant to Section 7 of this administrative regulation.

(5) [If a deferral is requested, the recipient shall submit the request to the committee on a "Nursing Incentive Scholarship Fund Request for Deferral" form.

(6) [If a recipient fails to pass the licensure examination within two (2) years of graduation, the sum of all nursing incentive scholarships received by the recipient, and accrued interest thereon, shall become due and payable.

Section 10. Verification. (1) Verification of employment as a nurse in Kentucky pursuant to the contract [with the health facility or educational institution] shall be submitted [by the sponsor] to the board when the recipient's employment commitment begins and when it is completed. Any termination of employment prior to completion shall be reported to the board within thirty (30) days by the employer and the recipient.

(2) Recipients shall notify the board immediately of any change of name or address or enrollment status in school.

Section 11. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) "Nursing Incentive Scholarship Fund Application (10/96) [(8/94)]";

(b) "Nursing Incentive Scholarship Fund Request for Continuance (10/96) [(8/94)]";

(c) "Nursing Incentive Scholarship Fund Verification of Academic Progression (8/94)";

(d) "Nursing Incentive Scholarship Fund Request for Deferral (10/96) [(8/94)]";

(e) "Nursing Incentive Scholarship Fund Contract (10/96) [(8/94)]"; [and]

(f) "Nursing Incentive Scholarship Fund Promissory Note (10/96) [(8/94)]"; and

(g) "Certification of Enrollment" (8/96).

(2) These forms may be inspected, copied, or obtained at the Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, 8:30 a.m. to 4:30 p.m., Monday through Friday.

LINDA J. THOMAS, President

APPROVED BY AGENCY: October 18, 1996

FILED WITH LRC: October 30, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 23, 1996, at 9 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway,

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Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 16, 1996, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on 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 the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 329-7900.

REGULATORY IMPACT ANALYSIS

Contact person: Nathan Goldman

(1) Type and number of entities affected: Applicants for scholarships. Number unknown.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on 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: Requirements on the board will remain the same.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: License renewal fee.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: An increase in the number of applicants funded is anticipated. This may lead to an increase in the number of licensed nurses as well as more highly educated nurses.

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: An increase in the number of nurses as well as more highly educated nurses.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: N/A

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not used as the regulation applies to all affected parties.

TOURISM CABINET

Department of Fish and Wildlife Resources (Amendment)

301 KAR 2:225. Dove, wood duck, teal, and other migratory game bird hunting.

RELATES TO: KRS ~~[150.015,]~~ 150.025(1), ~~[150.170, 150.300,]~~ 150.320(1), 150.330, 150.340, 150.360, 150.603(1), 150.620

STATUTORY AUTHORITY: KRS 150.025(1), ~~[150.015, 150.170, 150.320, 150.340,]~~ 150.360(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.360(1) requires the department to establish open seasons for the taking of wildlife. The function of this administrative regulation is to allow the taking of migratory game birds within reasonable limits based upon an adequate supply, and within the frameworks established by the U.S. Fish and Wildlife Service. ~~[This administrative regulation contains the substance of 301 KAR 2:044, which it replaces. Substantive changes from 301 KAR 2:044 consist of date changes to reflect calendar shifts.]~~

Section 1. Definitions. (1) "Migratory game birds" means mourning dove, wood duck, teal, common moorhen, woodcock, common snipe, purple gallinule, Virginia rail, and sora rail.

(2) "Teal" means green-winged teal, blue-winged teal, and cinnamon teal.

Section 2. Season Dates for Gun Archery and Falconry. A person shall not hunt migratory game birds except on the dates listed in this administrative regulation. (1) Doves: September 1 through September 30; October 5 [7] through October 28 [30]; and November 28 [23] through December 3 [November 28].

(2) Woodcock: October 12 [14] through December 15 [17].

(3) Common snipe: September 18 [13] through November 3 [October 27] and November 28 [23] through January 26 [23].

(4) Wood duck and teal: September 18 [13] through September 22 [17].

(5) Virginia and sora rails, common moorhen and purple gallinule: September 1 through November 9.

Section 3. Bag and Possession Limits. A person ~~[Persons]~~ shall not exceed the following limits:

(1) Doves: daily limit, fifteen (15); possession limit, thirty (30).

(2) Woodcock: daily limit, five (5); possession limit, ten (10).

(3) Common snipe: daily limit, eight (8); possession limit, sixteen (16).

(4) Virginia rails and sora rails, singly or in the aggregate: daily and possession limit, twenty-five (25).

(5) Common moorhen and purple gallinules singly or in the aggregate: daily limit, fifteen (15); possession limit, thirty (30).

(6) Wood duck and teal: daily limit, four (4); shall not include more than two (2) wood ducks; possession limit, eight (8); shall not include more than four (4) wood ducks.

(7) A person ~~[For identification purposes, persons]~~ shall leave the head or one (1) fully feathered wing attached to migratory game birds, except doves, being held in the field or transported.

Section 4. Shooting Hours. A person shall not take migratory game birds except during the times listed in this section. ~~[Persons may take:]~~

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(1) Doves:

- (a) From 11 a.m. until sunset during the September and October portions of the season; and
 - (b) From sunrise to sunset during the November-December portion of the season.
- (2) Other species listed in this administrative regulation, from one-half (½) hour before sunrise to sunset.

Section 5. Shot Requirements. A person ~~[Persons]~~ hunting wood ducks or teal shall not use or possess shotgun shells:

- (1) Longer than three and one-half (3 1/2) inches; or
- (2) Containing:
 - (a) Lead shot;
 - (b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or
 - (c) Shot larger than size "T".

Section 6. Exceptions to Statewide Migratory Bird Seasons on Specified Wildlife Management Areas. (1) On wildlife management areas owned or controlled by the department:

(a) Unless excepted below, all provisions ~~[sections]~~ of this administrative regulation apply.

(b) A person ~~[Persons]~~ shall not:

1. Hunt wood ducks or teal on areas closed to waterfowl hunting by 301 KAR 2:222.

2. Hunt in areas marked by signs as closed to hunting.

3. Enter areas marked by signs as closed to the public.

(2) A person ~~[Persons]~~ hunting doves on the Ballard, Swan Lake, Peal, Sloughs, Ohio River Islands, Duck Island, Kaler Bottoms, Kentucky River and Westvaco Wildlife Management Areas shall not use or possess shotgun shells containing lead shot.

(3) Ballard Wildlife Management Area. A person shall not hunt:

(a) ~~[Persons shall not hunt]~~ Migratory birds after October 13, except as provided in 301 KAR 2:221.

(b) Woodcock. ~~[Dove hunters shall not carry firearms except during shooting hours.]~~

(4) Central Kentucky Wildlife Management Area.

(a) A person shall not hunt:

1. Migratory game ~~[Persons shall not hunt migratory]~~ birds after October 13, except as provided in 301 KAR 2:221.

2. Woodcock.

(b) A dove hunter shall not carry firearms except during shooting hours.

(5) Grayson Lake Wildlife Management Area.

(a) Migratory bird hunters shall check in and out daily at designated check stations.

(b) A person ~~[Persons]~~ shall not hunt:

1. Within the no wake zone at the dam site marina;

2. On Deer Creek Fork; or

3. On or from the shores of Camp Webb or the state park.

(6) Land Between the Lakes. A person ~~[Persons]~~ shall not hunt doves, woodcock or common snipe between the last Saturday in September and November 30.

(7) West Kentucky Wildlife Management Area. A person shall not hunt:

(a) ~~[Persons shall not hunt]~~ Doves after October 13, except on tracts 2, 3, 6, and 7 during the November-December portion of the season.

(b) ~~[Persons shall not hunt]~~ Woodcock and snipe except on tracts 2, 3, 6, and 7.

(c) ~~[Persons shall not hunt]~~ On tracts designated by numbers followed by the letter "A".

(8) Yatesville Lake Wildlife Management Area. Migratory game bird hunters shall check in and out daily.

(9) A person ~~[Persons]~~ shall not hunt migratory game birds on the main block of Robinson Forest.

Section 7. Dove Hunter Guidelines on Wildlife Management Areas. (1) The department may establish hunter density guidelines for dove hunting fields on department property after considering the following:

(a) Terrain of fields;

(b) Topography of fields;

(c) Providing for approximately forty (40) yards between hunters.

(2) Strategically located signs shall be posted in fields advising hunters:

(a) Of recommended hunter densities;

(b) That hunting in excess of the desired hunter density limit shall be at the hunter's own risk.

(3) Hunters behaving in an unsafe or uncooperative manner shall be required to leave the premises.

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: June 14, 1996

FILED WITH LRC: October 25, 1996 at 9 am.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 23, 1996 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 1995, 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 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: John Wilson, Assistant Director, Public Affairs/Policy, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406, FAX 564-6508.

REGULATORY IMPACT ANALYSIS

Agency Contact: John Wilson

(1) Type and number of entities affected: An estimated 90,000 persons will participate in the migratory bird hunting proposed by this administrative regulation.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. Direct costs involve the purchase of a state hunting license, a federal migratory bird hunting and conservation stamp and a state waterfowl stamp if hunting waterfowl. Indirect costs would be determined by the hunter, depending on his level of participation. U.S. Fish and Wildlife Service approved nontoxic shot is required for all waterfowl hunting. Approved nontoxic shot costs approximately \$2 to \$7 more per box of 25 shells, dependent on shot material selected, than does lead shot.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have no anticipated impact on the cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Persons participating in the

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hunting proposed for authorization by this administrative regulation are required to possess a valid hunting license (\$12.50 for residents) unless exempt by administrative regulations. Waterfowl hunters are required to possess a \$15 federal migratory bird hunting and conservation stamp and a \$7.50 state waterfowl stamp. These are existing requirements which this administrative regulation will not change.

2. Second and subsequent years: Same as for first year.

(3) Effects on the promulgating administrative body: Requires time and effort in developing, publishing reporting on, and enforcing the proposed administrative regulation.

(a) Direct and indirect costs or savings: Primary costs are associated with enforcement of the administrative regulation.

1. First year: This administrative regulation will not impose additional costs or create additional savings.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Randomly selected waterfowl hunters will be asked to report their hunting success by completing and mailing a Kentucky and federal waterfowl survey in a postage paid envelope.

(4) Assessment of anticipated effect on state and local revenues: A positive effect could be expected on state revenues since hunters are required to purchase a hunting license and pay other state taxes on items purchased in connection with hunting and the hunting trip. The average migratory bird hunter in Kentucky will expend about \$228 a season on food, lodging, transportation and equipment. This will add about \$20,520,000 to the income of local businesses.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation. Revenue from the sale of hunting and fishing licenses and will be used for implementation and enforcement of this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods, reasons why alternatives were rejected: Reasons why alternatives were rejected: The U.S. Fish and Wildlife Service requires that any harvest of migratory game birds be through a regulated hunting season that is held within a specific time frame. Therefore, the only available alternative to regulated hunting is to close the season which was rejected since migratory birds are a renewable resource and involved species are at population levels that permit regulated hunting for the benefit of Kentucky.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation is intended to conserve populations of migratory birds, a positive impact on environmental welfare. It also allows utilization of these populations as a recreational resource, having a positive effect on the health and well-being of those who participate.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Reduction in the potential recreational opportunity and the loss of conservation of migratory birds.

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

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied? No. Only one class of citizen, the hunter, is impacted by this administrative regulation. Disregarding

physiography, distribution of the species sought by hunters is assumed to be uniform, thus negating the need to recognize tiers. Tiering according to physiography is impractical and unnecessary as a means of species protection or provision of hunter opportunity.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or administrative regulation constituting the federal mandate. 50 CFR Part 20.

2. State compliance standards. State seasons and bag limits are within federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. Woodcock - season frameworks between September 1, 1996, and January 31, with a 65 day maximum season. Bag limits may be a maximum of 5 per day with 10 in possession. Wood duck and teal - season frameworks allow 5 days in September. Bag limits may total 4 per day with not more than two of these being wood ducks. Possession limit is 8 of which not more than 4 can be wood ducks. Dove - season frameworks allow either 70 or 60 days between September 1 and January 15. Bag limits may be either 12 per day with 24 in possession for the 70 day season or 15 per day with 30 in possession for the 60 day season. Common snipe - season frameworks allow a 107 day season between September 1 and February 28. Bag and possession limit is 8 and 16, respectively. Virginia and sora rails - the season may not exceed 70 days with a season framework between September 1 and January 20. Bag and possession limit of 25 per day, singly or in aggregate. Common moorhen and purple gallinule - the season may not exceed 70 days with a season framework between September 1 and January 20. Daily bag limit of 15, singly or in aggregate. Possession limit is twice the daily bag limit.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Water (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 (1995 [1993]), 42 USCA 300f, 300g, 300j

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 directs the cabinet to enforce statutes and administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising this [such] primary enforcement responsibility. The purpose of this administrative regulation is to define terms used by the cabinet in the 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. This administrative regulation conforms to federal regulations if federal regulations have definitions for terms contained in this administrative regulation.

Section 1. The following definitions shall apply to 401 KAR

Chapter 8:

(1) "Action level" means 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) "Auxiliary intake" means a piping connection or other device whereby raw water may be secured for treatment from a location or source other than the intake which is normally used.

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

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

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

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

(8) "Boil water notice" means a notice to the consuming public through radio, television, direct mail, posting, newspaper or other media to convey to the consuming public in the quickest manner possible information that water provided by a system is unfit for human consumption unless first boiled for three (3) ~~two (2)~~ minutes at a rolling boil.

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

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

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

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

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

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

(15) "Certified laboratory" means a laboratory where the physical, instrumental, procedural, and personnel capabilities have been approved by either the U.S. Environmental Protection Agency or the cabinet. A laboratory may be certified for one (1) or more types of the

contaminants listed in these administrative regulations or for one (1) or more of the specific constituents or combinations of constituents listed.

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

(17) "Coagulation" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into flocs.

(18) "Commercial facility" means a building or other place at which commerce or trade takes place.

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

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

(21) "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.

(22) "Consecutive public water systems" means two (2) or more public water systems with interconnected distribution systems, the effect of which is to distribute water from one (1) system to the next.

(23) "Contaminant" means a physical, chemical, biological, or radiological substance or other matter found in water.

(24) "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.

(25) "Conventional filtration treatment" means a series of processes including coagulation, flocculation, sedimentation, and filtration resulting in substantial particulate removal.

(26) "Corrosion" means the dissolution or erosion of pipe or other plumbing material by water.

(27) "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.

(28) "Corrosivity" means the tendency of water to form or dissolve calcium carbonate as a film or scale.

(29) "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.

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

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

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

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

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

(31) "Department" means the Kentucky Department for Environmental Protection.

(32) "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.

(33) "Direct filtration" means a series of processes including coagulation and filtration but excluding sedimentation resulting in substantial particulate removal.

(34) "Direct responsible charge" means personal, first hand responsibility, control or supervision of the operation of a public water system.

(35) "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 the point where residual disinfectant concentration ("C") is measured. If more than one (1) "C" is measured, "T" means for the first measurement of "C", the time in minutes that it takes for water to move from the first or only point of disinfectant application to a point before or at the point where the first "C" is measured and for subsequent measurements of "C", the time in minutes that it takes for water to move from the previous "C" measurement point to the "C" measurement point for which the particular "T" is being calculated. Disinfectant contact time in pipelines 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.

(36) "Disinfection" means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

(37) "Distributed water" means water leaving the water treatment facility and entering the distribution system.

(38) "Division" means the Division of Water.

(39) "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.

(40) "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).

(41) "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.

(42) "Fee" means a monetary charge to be assessed by the cabinet.

(43) "Filtration" means a process for removing particulate matter from water by passage through porous media.

(44) "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.

(45) "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.

(46) "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.

(47) "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

(48) "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.

(49) "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.

(50) "Initial compliance period" means the first full three (3) year compliance period: January 1993 to December 1995 for systems serving more than 150 service connections. For the contaminants listed at 401 KAR 8:250, Section 12(11) to (15); 401 KAR 8:400, Section 2(19) to (33); and 401 KAR 8:420, Section 2(1)(s) to (u); the initial compliance period shall be January 1996 to December 1998 for systems having fewer than 150 service connections.

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

(52) "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.

(53) "Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

(54) "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.

(55) "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.

(56) "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 Celsius [~~Centigrade~~] (seventy-seven (77) degrees Fahrenheit) or above.

(57) "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.

(58) "Mineral water" means bottled water that contains no less than ~~250~~ [500] parts per million total dissolved solids.

(59) "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.

(60) "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".

(61) "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.

(62) "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.

(63) "PicoCurie (pCi)" means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

(64) "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.

(65) "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.

(66) "Point-of-use treatment device" means a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one (1) tap.

(67) "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.

(68) "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.

(69) "Product water" means the water processed by a bottled water treatment plant that is used for bottled drinking water.

(70) "Professional engineer" means an engineer with current registration as a professional engineer in Kentucky.

(71) "Public water system" means a water system 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. The term [and] includes collection, treatment, storage and distribution facilities under control of the operator of the system and used primarily in connection with the system and collection and pretreatment storage facilities not under control of the operator of the water system which are used primarily in connection with the water system.

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

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

either transient or nontransient.

1. "Transient noncommunity water system" means a noncommunity water system that does not regularly serve at least twenty-five (25) of the same persons over six (6) months per year. [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.

(72) "Rem" means the unit of dose equivalent from ionizing radiation to the total body or an internal organ or organ system.

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

(74) "Residual disinfectant concentration" ("C" in CT calculations) means the concentration of disinfectant measured in mg/l in a representative sample of water.

(75) "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.

(76) "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.

(77) "Secondary standards" means the maximum contaminant levels for secondary contaminants.

(78) "Secretary" means the secretary for the Natural Resources and Environmental Protection Cabinet.

(79) "Sedimentation" means a process for removal of solids before filtration by gravity or separation.

(80) "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. Semipublic water systems which are commercial facilities which serve food or drink to the public shall meet the requirements of 401 KAR 8:020.

(81) "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.

(82) "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.

(83) "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.

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

(85) "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.

(86) "Standard Methods" means the 18th [16th] Edition of "Standard Methods for the Examination of Water and Wastewater," and it supplement, prepared and jointly published by the American Public Health Association, the American Water Works Association, and the Water Environment [Pollution Control] Federation.

(87) "Standard sample" means the aliquot of finished drinking water that is examined for the presence of coliform bacteria.

(88) "Supplier of water" means a person who owns or operates a public water system.

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

(90) "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.

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

(92) "System with a single service connection" means a system which supplies drinking water to consumers via a single service line.

(93) "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.

(94) "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.

(95) "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.

(96) "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.

(97) "Virus" means a virus of fecal origin which is infectious to humans by waterborne transmission.

(98) "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.

(99) "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.

(100) "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.

(101) "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.

(102) "Water treatment plant" or "purification plant" means that portion of the water supply system which is designed to alter either the physical, chemical or bacteriological quality of the water prior to entry to the water distribution system.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: November 4, 1996

FILED WITH LRC: November 8, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed amended regulation is scheduled for December 23, 1996, at 1 p.m. (eastern time), in Room G-1 of the Capital Plaza Tower, Mero Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify Jack A. Wilson in writing at the address noted below by December 16, 1996 of their intent to attend the hearing and be heard. 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 amended regulation. Persons testifying at the hearing are asked to provide the cabinet with a written copy of their testimony, if available. 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 amended regulation. Written comments

must be received by Jack A. Wilson at the address below no later than 4:30 p.m. (eastern time) on December 23, 1996. 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. Wilson at the address below before December 16, 1996, between 8 a.m. and 4:30 p.m.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410 (Voice), (502) 564-4245 (Fax).

REGULATORY IMPACT ANALYSIS

Contact Person: Jack A. Wilson, Director

(1) Type and number of entities affected: This administrative regulation establishes definitions for terms used in 401 KAR Chapter 8, which establishes regulations for the proper design, construction, and maintenance for public and semipublic water systems, as well as monitoring and reporting requirements. It is being amended to clarify that water should be boiled for three minutes during a boil water advisory; to correct an error in the definition of "initial compliance period"; to incorporate a new federal standard for "mineral water"; to incorporate new federal language for "transient noncommunity water system"; to redefine "standard methods" to be the eighteenth edition and its supplement; and to clarify that a "water treatment plant" does not include the distribution system. There are currently about 761 public water systems in Kentucky. This number fluctuates somewhat from month to month. Public water systems will not be impacted by a change in the definition; any impact would occur in the regulation where the term is used.

(2) Direct and indirect costs or savings on the affected entities: This regulation contains definitions for 401 KAR Chapter 8. By itself, it creates no costs or savings for the affected entities. Other regulations in Chapter 8 do create costs or savings which will be explained in the Regulatory Impact Analysis for each regulation.

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received; however, this regulation, by itself, has no effect on the cost of living and employment in Kentucky.

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received; however, this regulation has no effect on the cost of doing business in Kentucky.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received; however, this regulation has no effect on compliance, reporting or paperwork requirements; will not increase or decrease costs; and will have no effect on competition for the first year following implementation.

2. Second and subsequent years: No public comments were received; however, this regulation has no effect on compliance, reporting or paperwork requirements; will not increase or decrease costs; and will have no effect on competition for the second and subsequent years following implementation.

(3) Effects on the promulgating administrative body: This regulation will have no effect on the promulgating administrative body.

(a) Direct and indirect costs or savings: This administrative regulation will have no direct or indirect costs or savings.

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1. First year: This administrative regulation will have no costs or savings.

2. Continuing costs or savings: This administrative regulation will have no continuing costs or savings.

3. Additional factors increasing or decreasing costs: Other regulations within Chapter 8, for which this regulation provides definitions, may increase or decrease costs. Those factors will be discussed in the Regulatory Impact Analysis for each of those administrative regulations.

(b) Reporting and paperwork requirements: This regulation does not affect reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: The amendments to this regulation will not affect state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The enforcement of 401 KAR Chapter 8, including this regulation, uses appropriations from state General Fund revenue as well as federal funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on: No public comments were received regarding the economic impact of this regulation.

(a) Geographical area in which administrative regulation will be implemented: The amendments to this regulation will have no economic impact.

(b) Kentucky: The amendments to this regulation will have no economic impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation contains definitions for 401 KAR Chapter 8. The alternative for this regulation would be to define terms in the first section of each administrative regulation. One regulation with the definitions for the entire chapter is easier to use and amend.

(8) Assessment of expected benefits of the administrative regulation: This administrative regulation, when combined with the rest of Chapter 8, will help assure a high quality of water for customers of public water systems.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will help assure quality drinking water for all public and semipublic water systems in Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented: If not for the standards in 401 KAR Chapter 8, some people who get water from public water systems could be subjected to water borne disease, and a generally poor quality of drinking water.

(c) If detrimental effect would result, explain detrimental effect: Taste, color, and odor problems frequently occur when public water systems are poorly operated. Various microbiological water borne diseases can be caused by poorly treated drinking water.

(10) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation, or government policy is in conflict 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 administration regulation with conflicting provisions: No conflict exists.

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? This administrative regulation contains definitions for 401 KAR Chapter 8. Although this regulation is not tiered, other regulations in Chapter 8 are tiered to the size of the water system as well as the source of the water used.

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 public water systems, many of which are owned or controlled by local government.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation affects public water systems which provide drinking water to their customers.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the 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. There is no fiscal impact.

Revenues (+/-): None

Expenditures (+/-): None

Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USCA 300f, 300g, 300j, and 40 CFR Parts 141, 142, and 143 allow the Administrator of the United States Environmental Protection Agency to delegate primary enforcement authority to states where state statutes and regulations are no less stringent than federal regulations. Kentucky has received this delegation for the above statutes and regulations.

2. State compliance standards. This administrative regulation defines terms used throughout 401 KAR Chapter 8. The amendments to this regulation clarify or correct several terms.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 141.2 defines certain terms, and when the same term is used in this regulation, it is the same.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

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

401 KAR 8:060. Variances and exemptions.

RELATES TO: KRS Chapter 224, 21 CFR ~~Parts [402.35,]~~ 110, 129, 165 (1996) ~~[(4093)]~~, 40 CFR Part 142 (1995) ~~[(4093)]~~

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 ~~Parts [402.35,]~~ 110, 129, 165 (1996), 40 CFR ~~Parts 141, 142 (1995) [(4093)]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 directs the cabinet to enforce administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, 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 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. This administrative regulation conforms to, and is no more stringent than, federal regulations.

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 system, the 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 when ~~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), (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 contaminant level or treatment technique requirement;

(b) The public water system was in operation on the effective date of the 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 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 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 the ~~such~~ improvements without an extension; or that the water system has entered into

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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 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 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 when ~~(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]	X	
(u) Aldicarb sulfoxide		X	
(v) Aldicarb sulfone		X	
(w) Atrazine	[X]	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]	X	
(ff) Methoxychlor		X	
(gg) PCBs		X	
(hh) Pentachlorophenol		X	
(ii) Toxaphene		X	
(jj) 2,4,5-TP	[X]	X	
(kk) Benzo(a)pyrene		X	
(ll) Dalapon	[X]	X	
(mm) Dichloromethane	X		
(nn) Di(2-ethylhexyl)adipate	X	X	
(oo) Di(2-ethylhexyl)phthalate		X	
(pp) Dinoseb	[X]	X	
(qq) Diquat		X	
(rr) Endothall		X	
(ss) Endrin	[X]	X	
(tt) Glyphosate			X
(uu) Hexachlorobenzene	X		[X]
(vv) Hexachlorocyclopentadiene	X	X	
(ww) Oxamyl (Vydate)		X	
(xx) Picloram	[X]	X	
(yy) Simazine	[X]	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

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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/liter.

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 subsections (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 129.35(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 Parts ~~110, [and] 129, and 165 (1996), [(401)]~~ all hereby adopted ~~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.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: November 4, 1996

FILED WITH LRC: November 8, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed amended regulation is scheduled for December 23, 1996, at 1 p.m. (eastern time), in Room G-1 of the Capital Plaza Tower, Mero Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify Jack A. Wilson in writing at the address noted below by December 16, 1996 of their intent to attend the hearing and be heard. 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 amended regulation. Persons testifying at the hearing are asked to provide the cabinet with a written copy of their testimony, if available. 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 amended regulation. Written comments must be received by Jack A. Wilson at the address below no later than 4:30 p.m. (eastern time) on December 23, 1996. 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. Wilson at the address below before December 16, 1996, between 8 a.m. and 4:30 p.m.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410 (Voice), (502) 564-4245 (Fax).

REGULATORY IMPACT ANALYSIS

Contact Person: Jack A. Wilson, Director

(1) Type and number of entities affected: This administrative regulation establishes conditions where variances or exemptions may be granted from the requirements of 401 KAR Chapter 8, which relates to public water systems. It is being amended to correct errors in the Table of Best Available Technology in Section 5, and to adopt new federal bottled water requirements. There are currently about 761 public water systems in Kentucky. This number may fluctuate somewhat from month to month.

(2) Direct and indirect costs or savings on the affected entities: The amendments to this regulation will provide no direct or indirect cost or savings for the affected entities. The amendments are corrections and will not make substantive changes. In addition, no public water system has ever requested or received a variance or exemption.

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received; however, the amendments to this regulation will have no effect on the cost of living or employment.

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received; however the amendments to this regulation will have no effect on the cost of doing business.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the: No public comments were received; however, the amendments to this regulation will have no effect on compliance, reporting, and paperwork, will not increase or decrease costs, and will have no effect on competition.

1. First year following implementation: No public comments were received; however, the amendments to this regulation will have no effect on costs in the first year after implementation.

2. Second and subsequent years: No public comments were received; however, the amendments to this regulation will have no effect on costs in the second and subsequent years.

(3) Effects on the promulgating administrative body: The amendments to this regulation will have no effect on the promulgating administrative body.

(a) Direct and indirect costs or savings: This regulation will have no direct or indirect costs or savings.

1. First year: This regulation will have no direct or indirect costs or savings in the first year.

2. Continuing costs or savings: This regulation will have no continuing direct or indirect cost or savings.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The amendments to this regulation will not affect reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: The amendments to this regulation will not affect state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The implementation and enforcement of 401 KAR Chapter 8, including this regulation, uses appropriations from state General Fund revenue as well as federal funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments were received; however, the amendments to this regulation will have no economic impact on Kentucky.

(b) Kentucky: The amendments to this regulation will have no economic impact on Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Any alternative to this regulation would cause the regulation to be either more stringent or less stringent than the federal requirements.

(8) Assessment of expected benefits of the administrative regulation: This regulation will allow public water systems to seek a variance or exemption from the requirements of 401 KAR Chapter 8 where appropriate.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation allows a public water system to apply for and receive a variance or an exemption from requirements of Chapter 8, if the system legitimately cannot meet one or more of those requirements.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A public water system that legitimately could not meet a requirement of Chapter 8 might have to stop serving water if this regulation were not available.

(c) If detrimental effect would result, explain detrimental effect: If a public water system could no longer serve water to its customers, they could be forced to use a less convenient or lower quality source of water.

(10) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation, or government policy is in conflict 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 administration regulation with conflicting provisions: No conflict exists.

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? Yes. This regulation is tiered to reflect different ways that a public water system may be allowed to deviate from the requirements of 401 KAR Chapter 8.

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 public water systems, many of which are owned or controlled by local government.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation affects public water systems which provide drinking water to their customers.

4. Estimate the effect of this administrative regulation on the

expenditures and revenues of a local government for the first full year the 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. There is no fiscal impact as a result of the amendments to this administrative regulation.

Revenues (+/-): None
Expenditures (+/-): None
Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USCA 300f, 300g, 300j, and 40 CFR Parts 141, 142, and 143 allow the Administrator of the United States Environmental Protection Agency to delegate primary enforcement authority to states where state statutes and regulations are no less stringent than federal regulations. Kentucky has received this delegation for the above statutes.

2. State compliance standards. This regulation allows variances and exemptions from certain requirements of 401 KAR Chapter 8.

3. Minimum or uniform standards contained in the federal mandate. Federal standards for variances and exemptions are identical to the states.

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

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Water (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 (1995 [4093]), 42 USCA 300f, 300g, 300j

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 directs the cabinet to enforce administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, 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 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. This administrative regulation conforms to, and is no more stringent than, federal regulations. ~~[Several new sections of mandatory language have been added to reflect the expanded list of contaminants being regulated.]~~

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 or nitrite, 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 to give notice equivalent to the requirements of noncommunity systems.

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 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 and zero-tenths (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 or ~~or~~ 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 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-dichloro-

ethylene 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 ~~0.006~~ ~~[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 as 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-TCDD (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.

JAMES E. BICKFORD, Secretary

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FILED WITH LRC: November 8, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed amended regulation is scheduled for December 23, 1996 at 1 p.m. (eastern time), in Room G-1 of the Capital Plaza Tower, Mero Street, Frankfort, Kentucky. Individuals interested in attending

this hearing shall notify Jack A. Wilson in writing at the address noted below by December 16, 1996 of their intent to attend the hearing and be heard. 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 amended regulation. Persons testifying at the hearing are asked to provide the cabinet with a written copy of their testimony, if available. 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 amended regulation. Written comments must be received by Jack A. Wilson at the address below no later than 4:30 p.m. (eastern time) on December 23, 1996. 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. Wilson at the address below before December 16, 1996, between 8 a.m. and 4:30 p.m.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410 (Voice), (502) 564-4245 (Fax).

REGULATORY IMPACT ANALYSIS

Contact Person: Jack A. Wilson, Director

(1) Type and number of entities affected: This administrative regulation establishes the requirements for public notification when a public water system has failed to comply with one or more provisions of 401 KAR Chapter 8 for monitoring, reporting, when a maximum contaminant level has been exceeded, or other situation when public notification is required. It is being amended to correct the standard contained in the mandatory language for notification about Di(2-ethylhexyl)phthalate in Section 6(60), from 0.004 to 0.006 parts per million (ppm). This regulation applies to 761 public water systems. This number may fluctuate from month to month.

(2) Direct and indirect costs or savings on the affected entities: The amendment to this regulation corrects an error in Section 6(60), where the maximum contaminant level for Di(2-ethylhexyl)phthalate is corrected to 0.006 ppm. There will be no costs or savings to the affected entities.

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received; however, the amendment to this regulation will have no effect on the cost of living or employment.

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received; however, the amendment to this regulation will have no effect on the cost of doing business.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the: No public comments were received; however, the amendment to this regulation will have no effect on compliance, reporting, paperwork requirements, increasing or decreasing costs or competition.

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: No cost or savings will be realized.

1. First year: No cost or savings.

2. Continuing costs or savings: None

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 not change reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: The amendment to this regulation will not affect state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The enforcement of 401 KAR Chapter 8, including this administrative regulation uses appropriations from state General Fund revenue and federal funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on: No public comments were received; however, the amendment to this regulation will have no economic impact.

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The requirements of this regulation are set by the U.S. Environmental Protection Agency.

(8) Assessment of expected benefits of the administrative regulation: The amendment to this regulation corrects the standard for public notification for Di(2-ethylhexyl)phthalate.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The public could be misinformed of the maximum contaminant level for this contaminant.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No, since the maximum contaminant level in other regulations is correct.

(c) If detrimental effect would result, explain detrimental effect: None

(10) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation, or government policy is in conflict 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 administration regulation with conflicting provisions: No conflict exists.

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? Yes. This regulation is tiered according to type of water system and the media available in the water system's area.

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 public water systems, many of which are owned or controlled by local government.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation affects public water systems which provide drinking water to their customers.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the 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. There is no fiscal impact.

Revenues (+/-): None

Expenditures (+/-): None

Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USCA 300f, 300g, 300j, and 40 CFR Parts 141, 142, and 143 allow the Administrator of the United States Environmental Protection Agency to delegate primary enforcement authority to states where state statutes and regulations are no less stringent than federal regulations. Kentucky has received this delegation for the above statutes.

2. State compliance standards. This regulation requires public water systems to notify the public when certain violations of 401 KAR Chapter 8 occur.

3. Minimum or uniform standards contained in the federal mandate. Federal regulations require public water systems to notify the public when the same violations of federal regulations occur.

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

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

401 KAR 8:100. Design, construction and approval of facilities.

RELATES TO: KRS Chapter 224; 40 CFR Part 141 (1995 [4993])

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 40 CFR Part 141 (1995) [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, FUNCTION, AND CONFORMITY: KRS 224.10-110 directs the cabinet to enforce administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising this primary enforcement responsibility. This administrative regulation 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 activated carbon. There is no federal regulation that deals with this subject matter, therefore, this administrative regulation is no more stringent than the federal regulation. The plans review process specified in this administrative regulation allows plans to be reviewed and certain judgments to be made about water systems to ensure that other state and federal requirements are being met.

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: the [such] project will result in exceeding eighty-five (85) percent of the purchasers current purchase contract; or the [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, the [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 shall not 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 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 does [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 the [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 nonpermeable [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. The requirements of this subparagraph may be waived, in writing, if the public water system shows to the satisfaction of the cabinet, that the protection afforded by nonpermeable material is unnecessary due to hydrological, geological, or other physical conditions at a particular site.

(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 (1) 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 if the ~~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) All plans and specifications submitted pursuant to this administrative 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 of this administrative 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, 1995, submit to the cabinet for approval plans to establish the capacity to feed activated 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. 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 for state holidays, at the Division of Water, 14 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, 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.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: November 4, 1996

FILED WITH LRC: November 8, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed amended regulation is scheduled for December 23, 1996,

at 1 p.m. (eastern time), in Room G-1 of the Capital Plaza Tower, Mero Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify Jack A. Wilson in writing at the address noted below by December 16, 1996 of their intent to attend the hearing and be heard. 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 amended regulation. Persons testifying at the hearing are asked to provide the cabinet with a written copy of their testimony, if available. 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 amended regulation. Written comments must be received by Jack A. Wilson at the address below no later than 4:30 p.m. (eastern time) on December 23, 1996. 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 M. Wilson at the address below before December 16, 1996, between 8 a.m. and 4:30 p.m.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410 (Voice), (502) 564-4245 (Fax).

REGULATORY IMPACT ANALYSIS

Contact Person: Jack A. Wilson, Director

(1) Type and number of entities affected: This regulation relates to plans approval for new or modified water treatment facilities and water line extensions. It is being amended to allow plans review engineers to waive the requirement for nonpermeable water lines within two hundred feet of an underground storage tank, if any leakage from the tank would clearly be unable to reach the water line. This administrative regulation affects 761 public and semipublic water systems. It also will affect any new public water systems which may be developed in the future. The actual number of water systems can change somewhat from month to month.

(2) Direct and indirect costs or savings on the affected entities: The amendments to this regulation could save a water system 30% or more in original material costs for up to 400 feet of line, if permeable water line is used within 200 feet of an underground storage tank instead of nonpermeable material.

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received; however, the amendment to this regulation will have no effect on the cost of living or employment.

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received; however, the amendment to this regulation will have no effect on the cost of doing business.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the: No public comments were received; however, the amendment to this regulation may allow some water systems to use permeable rather than nonpermeable water line within 200 feet of an underground storage tank, if it can be shown that leakage from the tank can not reach the water line. The amendment to this regulation will have no effect on reporting or paperwork requirements, may occasionally reduce costs in a small way, and will have no effect on competition.

1. First year following implementation: No significant effect will occur.

2. Second and subsequent years: The amendment to this regulation will allow rare exceptions to a minor requirement. No significant effects will be noted.

(3) Effects on the promulgating administrative body: The amendment to this regulation will have no effect 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: No other factors will increase or decrease costs.

(b) Reporting and paperwork requirements: The amendments to this regulation will not affect reporting and paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: The amendments to this regulation will not affect state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Implementation and enforcement of 401 KAR Chapter 8, including this regulation, uses appropriations from state General Fund revenues and federal funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on: No public comments were received relating to the economic impact of this regulation.

(a) Geographical area in which administrative regulation will be implemented: The amendment to this regulation will have no economic impact.

(b) Kentucky: The amendment to this regulation will have no economic impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative to amending this regulation is to not amend it, thereby continuing to require water systems to use nonpermeable water pipe where it may not be needed.

(8) Assessment of expected benefits of the administrative regulation: The amendment to this regulation will allow plans review engineers to waive requirements for nonpermeable pipe material where it is not needed.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The amendment to this regulation will have no effect on public health or environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The amendment to this regulation will not have a detrimental effect on public health or environment if it is not implemented.

(c) If detrimental effect would result, explain detrimental effect: N/A

(10) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation, or government policy is in conflict 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 administration regulation with conflicting provisions: No conflict exists.

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? This regulation is tiered according to the type of the water system. However, the amendment to this regulation would apply only to water systems laying pipe within 200 feet of an underground storage tank where special circumstances make nonpermeable pipe unnecessary.

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 public water systems, many of which are owned or controlled by local government.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation affects public water systems which provide drinking water to their customers.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the 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. Public water systems may save very incremental amounts under very limited circumstances. The cost of permeable pipe is about thirty or forty percent less than nonpermeable pipe.

Revenues (+/-): This regulation will have no effect on revenues.

Expenditures (+/-): The amendment to this regulation may produce very minor savings in very limited circumstances.

Other explanation: Public water systems may occasionally be able to take advantage of the amendment to this regulation to achieve incremental savings on pipe.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. No federal regulation or statute compares with this regulation. This regulation allows plans to be reviewed and approved pursuant to KRS 224.10-110.

2. State compliance standards. This regulation requires plans for new and modified public water systems and line extensions to be reviewed and approved prior to construction. The amendment to this regulation will allow plans review engineers to waive the requirement for nonpermeable pipelines within 200 feet of underground storage tanks, if leakage from such tanks will not be able to reach the water line.

3. Minimum or uniform standards contained in the federal mandate. There is no comparable federal program. The plans review process does however, provide the Cabinet with information about public water systems which assists in making judgments relating to other state and federal regulations.

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. This regulation is a requirement of state law, KRS 224.10-110(3) and (4).

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. KRS 224.10-110 requires the cabinet's review and approval of public and semipublic water system plans for construction of new or modified facilities.

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

401 KAR 8:150. Disinfection and filtration.

RELATES TO: KRS Chapter 224, 40 CFR Parts 141, 142 (1995 [4093])

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 40 CFR Parts 141 and 142 (1995 [4093]), 42 USCA 300f, 300g, 300j

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 directs the cabinet to enforce administrative regulations adopted by

the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising this primary enforcement responsibility. This administrative regulation 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. This administrative regulation requires disinfection of water supplies whose source is groundwater, which is not required under federal regulations. Groundwater disinfection is necessary due to the karstic nature of Kentucky's geology and to protect against bacteria that could develop in water systems. Disinfection ensures that citizens of the Commonwealth receive quality drinking water. The other states in U.S. Environmental Protection Agency's southeastern region, Region IV, also require groundwater disinfection. Federal regulations also do not require filtration of all public water systems using surface water as a source, however these systems shall meet federal drinking water standards. None of Kentucky's public water systems using surface water as the source could meet the federal standards without filtration. Therefore, this administrative regulation requires filtration on those systems.

Section 1. Disinfection. All public and semipublic water systems shall provide disinfection, except as provided in this section. Semipublic water systems may satisfy this requirement either by complying with the requirements of this section for public water systems or by meeting the requirements of Section 2(5) of this administrative regulation.

(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) 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)(e) of this administrative 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.

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

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

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 and no HPC is measured;

d = number of instances that residual disinfectant concentration is below two-tenths (0.2) milligrams per liter 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 the ~~new~~ systems shall be submitted to the cabinet in accordance with 401 KAR 8:100, and shall comply with the following:

(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) Semipublic water systems may enter into a protocol with the cabinet whereby the filtration and disinfection requirements of this administrative regulation are achieved using filtration technology, disinfection technology, or a combination of both, if the technology will achieve a ninety-nine and nine-tenths (99.9) percent removal or inactivation of Giardia lamblia cysts and 99.99 percent removal or inactivation of viruses. The protocol shall contain a schedule for maintenance and testing of the filtration and disinfection equipment to assure that the requirements of this subsection are met. Intensive bacteriological testing may be included in the protocol. If surface water is a source of water, filtration shall be an element of the protocol. If groundwater is the only source of water, the semipublic and public water systems eligible under this subsection may enter into a protocol with the cabinet to demonstrate through a regular schedule of bacteriological testing, that filtration or disinfection is not needed. The protocol shall stipulate that any positive bacteriological test shall require disinfection of the water, unless the cabinet has reason to believe that the positive result was due to error.

(6) Variances or exemptions shall not be granted for this section.

Section 3. Analytical and Monitoring Requirements. (1) Analytical requirements. Analyses required by this administrative regulation shall be conducted in accordance with the requirements of 40 CFR 141.74, in effect on July 1, 1995, hereby adopted without change. [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 Inoculation 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 Autoanalytic Colifort 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 administrative 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 the [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)(e) 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)(e) 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) or according to a schedule approved by the cabinet. 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 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 the cabinet.

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 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601:

(1) Standard Methods for the Examination of Water and Wastewater, 18th [16th] edition 1992, and its supplement, (1996, and for the purposes of 401 KAR 8:160, 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 Environment [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.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: November 4, 1996

FILED WITH LRC: November 8, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed amended regulation is scheduled for December 23, 1996 at 1 p.m. (eastern time), in Room G-1 of the Capital Plaza Tower, Mero Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify Jack A. Wilson in writing at the address noted below by December 16, 1996 of their intent to attend the hearing and be heard. 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 amended regulation. Persons testifying at the hearing are asked to provide the cabinet with a written copy of their testimony, if available. 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 amended regulation. Written comments must be received by Jack A. Wilson at the address below no later than 4:30 p.m. (eastern time) on December 23, 1996. 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. Wilson at the address below before December 16, 1996, between 8 a.m. and 4:30 p.m.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410 (Voice), (502) 564-4245 (Fax).

REGULATORY IMPACT ANALYSIS

Contact Person: Jack A. Wilson, Director

(1) Type and number of entities affected: This administrative regulation establishes requirements for disinfection and filtration of

drinking water. It is being amended to update analytical requirements. This regulation applies to public and semipublic water systems. There are currently about 761 public water systems in Kentucky.

(2) Direct and indirect costs or savings on the affected entities: The amendments to this regulation will cause no direct costs or savings. If a laboratory chooses to update to new equipment in order to use new analytical techniques, some indirect costs or savings may occur, however, older analytical techniques are still available.

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received; however, the amendments to this regulation are not likely to change the cost of living or employment.

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received; however, the amendments to this regulation will affect the cost of doing business only if a laboratory chooses to use new analytical techniques.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the: No public comments were received.

1. First year following implementation: The amendments to this regulation will not affect compliance, reporting, or paperwork requirements; and will have no effect on competition.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: The amendments to this regulation will have no effect on the promulgating administrative body.

(a) Direct and indirect costs or savings: The amendments to this regulation will have no direct or indirect costs or savings for the promulgating administrative body.

1. First year: No direct or indirect costs or savings.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The amendments to this regulation will not change reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: The amendments to this regulation will not affect state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The implementation and enforcement of 401 KAR Chapter 8, including this regulation, uses appropriations from state General Fund revenue as well as federal funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on: No public comments were received regarding the economic impact of this regulation.

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impacts.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives to the amendments in this regulation, which deal with approved analytical techniques and methods, would be either more stringent or less stringent than federal requirements. While there is justification for differences in portions of this regulation, analytical methods should be the same.

(8) Assessment of expected benefits of the administrative regulation: The amendments to this regulation will allow certified laboratories to use the latest methods approved by the Environmental Protection Agency.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Use of the most recent methods for analyzing drinking water assures the

fastest and most accurate results, producing more timely notice of the public to any contamination in their drinking water. The amendments to this regulation will have no effect on environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect would occur if the amendments to this regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would occur.

(10) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation, or government policy is in conflict 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 administration regulation with conflicting provisions: No conflict exists.

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? This administrative regulation is tiered to the size and type of water system involved. However, the amendments to this regulation are not tiered, although most analyses may be achieved with more than one analytical 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 affects public water systems, many of which are owned or controlled by local government.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation affects public water systems which provide drinking water to their customers.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the 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. There is no fiscal impact.

Revenues (+/-): None

Expenditures (+/-): None

Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USCA 300f, 300g, 300j, and 40 CFR Parts 141, 142, and 143 allow the Administrator of the United States Environmental Protection Agency to delegate primary enforcement authority to states where state statutes and regulations are no less stringent than federal regulations. Kentucky has received this delegation for the above statutes and regulations.

2. State compliance standards. 401 KAR 8:150 requires all public water systems to disinfect, and all water systems using surface water as a source to filter.

3. Minimum or uniform standards contained in the federal mandate. Kentucky has received delegation for primary enforcement of the statutes and regulations pursuant to the Safe Drinking Water Act. The Environmental Protection Agency's regulations set forth standards for contaminants and treatment techniques. As long as water systems remain within the standards, and practice applicable techniques, water systems are in compliance. At this time, federal regulations do not require water systems using groundwater as a source to disinfect. However, the 1986 amendments to the Safe Drinking Water Act required EPA to establish such a regulation, and the 1996 amendments require a regulation to disinfect groundwater unless a water system can demonstrate it is unnecessary. Because

of the karstic nature of Kentucky's geology, as well as the need to protect the water distribution system from contamination, groundwater disinfection is a longstanding requirement. All of the states in EPA's southeastern region require groundwater disinfection. EPA's requirements for surface water treatment set up standards and criteria which a water system must meet to avoid filtration. One of these criteria is a well-developed watershed protection program. Kentucky has not had a watershed protection program and therefore could not avoid filtration under federal regulations. Indeed, it is unlikely that there is any surface water in Kentucky, or has been in modern times, that could meet federal microbiological requirements without filtration. Kentucky's drinking water program has therefore required filtration of surface water systems for many years, long before federal requirements came into being.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? Yes. Because of the karstic nature of Kentucky's geology, as well as the need to protect the water distribution system from contamination, groundwater disinfection is a longstanding requirement. In addition, the requirements for filtration of surface water sources is different in approach, although the outcome for filtration of all surface water systems in Kentucky would be the same under both regulatory strategies.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The karstic nature of Kentucky's geology, as well as the need to protect the water distribution system from contamination, makes groundwater disinfection a necessary requirement. The surface water filtration requirement predates EPA's regulation by many years. Since the outcome is the same, there is no reason to adopt the more cumbersome federal regulation.

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

401 KAR 8:200. Microbiological monitoring.

RELATES TO: KRS Chapter 224, 40 CFR Part 141 (1995 ~~[1993]~~)

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 40 CFR Part 141 (1995 ~~[1993]~~), 56 FR 1557 (1991), 42 USCA 300f, 300g, 300h, 300j

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 directs the cabinet to enforce administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. 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. This administrative regulation conforms to, and is no more stringent than, federal regulations.

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 Monthly Samples	Population Served	Minimum Number Monthly 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) If ~~[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) If ~~[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. Semipublic water systems shall cause samples to be tested, for the purpose of determining the presence or absence coliforms, at least twice per month, or in accordance with a protocol agreed to pursuant to 401 KAR 8:150, Section 2(5). 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, unday 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.

(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 CL 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. Analysis for microbiological contaminants shall be conducted in accordance with 40 CFR 141.21(f), in effect on July 1, 1995, hereby adopted without change.

(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 Wastewater, 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, CERL 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;~~

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, CERL, U.S. EPA, Cincinnati, Ohio 45268), Part III, Section B.2.1 2.6, pp. 108-112;~~

3. ~~Presence-Absence (P-A) Coliform Test, as set forth in Standard Methods for the Examination of Water and Wastewater, 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 (c) 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 18th [46th] edition of Standard Methods for the Examination of Water and Wastewater, 1992, and its supplement [4985], 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)(e)) at sites without a disinfectant residual.

Section 4. 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 document is [documents are] hereby incorporated by reference and is [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 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601:

(4) Standard Methods for the Examination of Water and Wastewater, 18th [46th] edition, 1992, and its supplement [4985], prepared and jointly published by the American Public Health Association, the American Water Works Association, and the Water Environment [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, 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.]

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: November 4, 1996

FILED WITH LRC: November 8, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed amended regulation is scheduled for December 23, 1996, at 1 p.m. (eastern time), in Room G-1 of the Capital Plaza Tower, Mero Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify Jack A. Wilson in writing at the address noted below by December 16, 1996 of their intent to attend the hearing and be heard. 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 amended regulation. Persons testifying at the hearing are asked to provide the cabinet with a written copy of

their testimony, if available. 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 amended regulation. Written comments must be received by Jack A. Wilson at the address below no later than 4:30 p.m. (eastern time) on December 23, 1996. 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. Wilson at the address below before December 16, 1996, between 8 a.m. and 4:30 p.m.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410 (Voice), (502) 564-4245 (Fax).

REGULATORY IMPACT ANALYSIS

Contact Person: Jack A. Wilson, Director

(1) Type and number of entities affected: This administrative regulation establishes requirements for monitoring, analyzing, and reporting the results of microbiological testing, conducted by public and semipublic water systems. The amendments to this regulation update analytical methods approved by the Environmental Protection Agency. There are currently about 761 public water systems in Kentucky. This number may change somewhat from month to month.

(2) Direct and indirect costs or savings on the affected entities: If a public water system or commercial laboratory choose to use new methods for analysis, some initial cost for equipment would be entailed. In addition, all methods require some ongoing replacement of used chemicals. However, all existing techniques are still available if a water system or laboratory choose to stay with them.

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received; however, the amendments to this regulation will not affect the cost of living.

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received; however, the amendments to this regulation will not affect the cost of doing business unless the business makes a decision to purchase new equipment.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the: No public comments were received.

1. First year following implementation: The amendments to this regulation will not affect compliance, reporting, or paperwork requirements. A public water system may make a business decision to purchase new equipment to use new analytical methods. The amendments will not affect competition.

2. Second and subsequent years: The amendments to this regulation will not affect compliance, reporting, or paperwork requirements. A public water system may make a business decision to purchase new equipment to use new analytical methods. The amendments will not affect competition.

(3) Effects on the promulgating administrative body: The amendments to this regulation will not affect the promulgating administrative body.

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

1. First year: None

2. Continuing costs or savings: None

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3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The amendments to this regulation will not affect reporting and paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: The amendments to this regulation will not affect state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The implementation and enforcement of 401 KAR Chapter 8, including this regulation, uses appropriations from state General Fund revenue as well as federal funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on: No public comments were received regarding the economic impact of this regulation.

(a) Geographical area in which administrative regulation will be implemented: This amendments to this regulation will have no economic impact.

(b) Kentucky: No impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Any alternative to this regulation would make the regulation either more stringent or less stringent than federal regulation.

(8) Assessment of expected benefits of the administrative regulation: The amendments to this regulation will allow public water systems and certified laboratories to use the most recently approved analytical methods.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The amendments to this regulation will not have an effect on public health and environmental welfare, although microbiological testing does help assure the quality of drinking water.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The amendments to this regulation would not result in a detrimental effect on environment and public health.

(c) If detrimental effect would result, explain detrimental effect: N/A

(10) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation, or government policy is in conflict 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 administration regulation with conflicting provisions: No conflict exists.

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? The amendments to this regulation deal with analytical methods, and are not tiered. However, the regulation itself is tiered according to size of the water system and the source of the water.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. This regulation affects public water systems, many of which are owned or controlled by local government.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation affects public water systems which provide drinking water to their customers.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the 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. There is no fiscal impact.

Revenues (+/-): None

Expenditures (+/-): None

Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USCA 300f, 300g, 300j, and 40 CFR Parts 141, 142, and 143 allow the Administrator of the United States Environmental Protection Agency to delegate primary enforcement authority to states where state statutes and regulations are no less stringent than federal regulations. Kentucky has received this delegation for the above statutes and regulations.

2. State compliance standards. This regulation sets out monitoring, reporting, and analytical requirements for bacteriological testing in public water systems.

3. Minimum or uniform standards contained in the federal mandate. Federal regulations set out monitoring reporting and analytical requirements for bacteriological testing in 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? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

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

401 KAR 8:250. Inorganic chemical sampling, analytical techniques and maximum contaminant levels.

RELATES TO: KRS Chapter 224, 40 CFR Part 141 (1995 [1993])

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 40 CFR 141.23, 141.41 (1995), 42 USCA f, 300g, 300j

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 directs the cabinet to enforce administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising this primary enforcement responsibility. This administrative regulation lists sampling and analytical requirements for certain inorganic chemicals and sets maximum contaminant levels for those chemicals which, if exceeded, could affect public health. This administrative regulation conforms to, and is no more stringent than, federal regulations.

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)

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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 shall ~~(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
		<u>Atomic Absorption; Platform</u>	0.0008 ^{5 (6)}
		ICP-Mass Spectrometry	0.0004
		Hydride-Atomic Absorption	0.001
Asbestos	7 MFL ^{1 (9)}	Transmission Electron Microscopy	0.01 MFL
Barium	2	Atomic Absorption; furnace technique	0.002
		Atomic Absorption; direct aspiration	0.1
Beryllium	0.004	Inductively Coupled Plasma	0.002(0.001) ⁽⁴⁾
		Atomic Absorption; Furnace	0.0002
		<u>Atomic Absorption; Platform</u>	0.00002 ^{5 (6)}
		Inductively Coupled Plasma ^{2 (9)}	0.0003
Cadmium	0.005	ICP-Mass Spectrometry	0.0003
		Atomic Absorption; furnace technique	0.0001
Chromium	0.1	Inductively Coupled Plasma	0.001 ⁽⁴⁾
		Atomic Absorption; furnace technique	0.001
Cyanide	0.2	Inductively Coupled Plasma	0.007(0.001) ⁽⁴⁾
		Distillation, Spectrophotometric ^{3 (4)}	0.02
		Distillation, Automated,	0.005
		Spectrophotometric ^{3 (4)}	
		Distillation, Selective Electrode ^{3 (4)}	0.05
Mercury	0.002	Distillation, Amenable,	0.02
		Spectrophotometric ^{4 (6)}	
Nickel	0.1	Manual Cold Vapor Technique	0.0002
		Automated Cold Vapor Technique	0.0002
Nitrate	10 (as N)	Atomic Absorption; Furnace	0.001
		<u>Atomic Absorption; Platform</u>	0.0006 ^{5 (6)}
		Inductively Coupled Plasma ^{2 (9)}	0.005
		ICP-Mass Spectrometry	0.0005
Nitrite	1 (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
Selenium	0.05	Spectrophotometric	0.01
		Automated Cadmium Reduction	0.05
		Manual Cadmium Reduction	0.01
		Ion Chromatography	0.004
Thallium	0.002	Atomic Absorption; furnace	0.002
		Atomic Absorption; gaseous hydride	0.002
		Atomic Absorption; Furnace	0.001
		<u>Atomic Absorption; Platform</u>	0.0007 ^{5 (6)}
		ICP-Mass Spectrometry	0.0003

¹Using concentration technique in Appendix A to EPA Method 200.7.

²MF/L = million fibers per liter greater than ten (10) μ m.

³Using a 2X preconcentration step as noted in EPA Method 200.7. Lower MDLs may be achieved when using a 4X preconcentration.

⁴Screening method for total cyanides.

⁵Measures "free" cyanides.

⁶Lower 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 antimony, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, and selenium, and thallium 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 12 (4) of this administrative regulation shall be as follows:

(1) Each community and nontransient, noncommunity water system shall ~~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. A waiver for cyanide may be granted if the cabinet determines the system is not vulnerable due to lack of any industrial source of cyanide.

(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, if ~~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, antimony, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, ~~or~~ selenium, or thallium 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 12 ~~(4)~~ 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, or ~~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 antimony, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, ~~and~~ selenium, or thallium 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 antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate, nitrite, ~~and~~ selenium, sodium, and thallium shall be conducted in accordance with 40 CFR 141.23(k), in effect on July 1, 1995 ~~[(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~~

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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) [(16)] of this section shall apply to community water systems and nontransient, noncommunity water systems. The maximum contaminant level specified in subsections (1) and (16) 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
Nitrite	5,7
Selenium	1,2 ³ ,6,7,9
Thallium	1,5

¹BAT only if influent Hg concentrations are less [greater] than or equal to 10 µg/l.

²BAT for Chromium III only.

³BAT 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 14. 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 141.23(k), in effect on July 1, 1995 ~~41(d) (1993)~~, hereby adopted without change.

(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 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 the ~~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. 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 if 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 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 generally available is not available and effective for the system.

(3) 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 the ~~such~~ treatment methods for that system:

- (a) Modification of lime softening;
- (b) Alum coagulation;
- (c) Electrodialysis;
- (d) Anion exchange resins;

- (e) Well field management;
- (f) Alternate source; and
- (g) Regionalization.

(4) If the cabinet determines that a treatment technique identified in subsection (3) of this section is technically feasible, economically reasonable and will achieve fluoride reductions commensurate with costs incurred with the installation and use of the 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.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: November 4, 1996

FILED WITH LRC: November 8, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed amended regulation is scheduled for December 23, 1996, at 1 p.m. (eastern time), in Room G-1 of the Capital Plaza Tower, Mero Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify Jack A. Wilson in writing at the address noted below by December 16, 1996 of their intent to attend the hearing and be heard. 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 amended regulation. Persons testifying at the hearing are asked to provide the cabinet with a written copy of their testimony, if available. 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 amended regulation. Written comments must be received by Jack A. Wilson at the address below no later than 4:30 p.m. (eastern time) on December 23, 1996. 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. Wilson at the address below before December 16, 1996, between 8 a.m. and 4:30 p.m.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410 (Voice), (502) 564-4245 (Fax).

REGULATORY IMPACT ANALYSIS

Contact Person: Jack A. Wilson, Director

(1) Type and number of entities affected: This administrative regulation sets out sampling, analytical techniques, and maximum contaminant levels for certain inorganic chemicals. It is being amended to correct errors and adopt the latest analytical techniques. The amendments to this regulation will affect about 761 public water systems.

(2) Direct and indirect costs or savings on the affected entities: The amendments to this administrative regulation will provide no direct or indirect costs or savings for public water systems.

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received; however, the amendments to this regulation will have no effect on the cost of living or employment.

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received; however, the amendments to this regulation will have no effect on the cost of doing business.

(c) Effect on the compliance, reporting, and paperwork require-

ments, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the: No public comments were received.

1. First year following implementation: The amendments to this regulation will have no effect on compliance, reporting, paperwork, or competition. No other factors will increase or decrease costs.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: The amendments to this regulation will have no effect 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: No other factors will increase or decrease costs.

(b) Reporting and paperwork requirements: The amendments to this regulation will have no effect on reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: The amendments to this regulation will not affect state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The implementation and enforcement of 401 KAR Chapter 8, including this regulation, uses appropriations from state General Fund revenue as well as federal funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on: No public comments were received regarding the economic impact of this regulation.

(a) Geographical area in which administrative regulation will be implemented: The amendments to this regulation will have no effect on the economic impact of Kentucky.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives to the amendments to this regulation would make the regulation either more stringent or less stringent than federal regulation.

(8) Assessment of expected benefits of the administrative regulation: The amendments to this regulation will adopt the Environmental Protection Agency's most recent analytical methods for inorganic chemicals.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The amendments to this regulation will allow laboratories to use all the analytical methods approved by the Environmental Protection Agency for inorganic chemicals.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect to the environment and public health would occur if the amendments to this regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: N/A

(10) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation, or government policy is in conflict 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 administration regulation with conflicting provisions: No conflict exists.

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? Yes. This regulation is tiered according to the type of population served by the water system. The amendments relate to correcting errors and adopting analytical techniques and are not 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 affects public water systems, many of which are owned or controlled by local government.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation affects public water systems which provide drinking water to their customers.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the 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. There is no fiscal impact.

Revenues (+/-): None

Expenditures (+/-): None

Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USCA 300f, 300g, 300j, and 40 CFR Parts 141, 142, and 143 allow the Administrator of the United States Environmental Protection Agency to delegate primary enforcement authority to states where state statutes and regulations are no less stringent than federal regulations. Kentucky has received this delegation for the above statutes and regulations.

2. State compliance standards. This regulation requires public water systems to monitor for certain inorganic contaminants.

3. Minimum or uniform standards contained in the federal mandate. Federal regulations require public water systems to monitor for the same inorganic 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. N/A

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

401 KAR 8:300. Lead and copper.

RELATES TO: KRS Chapter 224, 40 CFR Part 141 (1995 [~~4093~~])
STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 40 CFR 141 (1995 [~~4093~~]), 42 USCA 300f, 300g, 300j

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 directs the cabinet to enforce administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising this primary enforcement responsibility. This administrative regulation bans lead in drinking water facilities and provides standards for lead and copper in drinking water. This administrative regulation conforms to, and is no more stringent than, federal regulations.

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 notice to persons served by that system that may be affected by lead contamination of their drinking water. The cabinet may require subsequent notices.

(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 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 given by continuous posting. If posting is used, the notice shall have been posted in a conspicuous place in the area served by the system, shall have begun no later than June 19, 1988, and shall have continued 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 specific language in 401 KAR 8:070, Section 6(74).

(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 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 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 90th percentile copper level is greater than one and three-tenths (1.3) mg/L).

(c) The 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 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 90th percentile tap water lead level computed under Section 3(4)(c) of this administrative regulation, and the highest source water lead concen-

tration, 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) (1995 [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. The requirement for any small or medium-size system, including systems deemed to have optimized corrosion control under subsection (2)(a) of this section, to implement corrosion control treatment steps in accordance with subsection (5) of this section shall be triggered if any small or medium-size system exceeds the lead or copper action level.

(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) of 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 time frames:

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. ~~The [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.

(8) 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 Health Services (~~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 if [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 if [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[s] 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 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, if [when] an inhibitor containing a phosphate compound is used;

(d) Silica, if [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, if ~~when~~ an inhibitor containing a phosphate compound is used;

4. Silica, if ~~when~~ an inhibitor containing a silicate compound is used; and

5. Calcium, if ~~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. If ~~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. If ~~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 the ~~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) consecutive 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 141.23(k) and 141.89, in effect on July 1, 1995 [~~(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 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, or, for systems with more than one (1) entry point, at all entry points 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 within the first ten (10) days following [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.]~~

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: November 4, 1996

FILED WITH LRC: November 8, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed amended regulation is scheduled for December 23, 1996, at 1 p.m. (eastern time), in Room G-1 of the Capital Plaza Tower, Mero Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify Jack A. Wilson in writing at the address noted below by December 16, 1996 of their intent to attend the hearing and be heard. 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 amended regulation. Persons testifying at the hearing are asked to provide the cabinet with a written copy of their testimony, if available. 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 amended regulation. Written comments must be received by Jack A. Wilson at the address below no later than 4:30 p.m. (eastern time) on December 23, 1996. 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. Wilson at the address below before December 16, 1996, between 8 a.m. and 4:30 p.m.

ADMINISTRATIVE REGISTER - 2592

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410 (Voice), (502) 564-4245 (Fax).

REGULATORY IMPACT ANALYSIS

Contact Person: Jack A. Wilson, Director

(1) Type and number of entities affected: This administrative regulation establishes requirements for monitoring, analyzing, reporting, and controlling lead and copper contamination in drinking water furnished by public water systems. The amendments to this regulation correct errors and update analytical methods approved by the Environmental Protection Agency. There are currently about 761 public water systems in Kentucky. This number may change somewhat from month to month.

(2) Direct and indirect costs or savings on the affected entities: If a public water system or commercial laboratory choose to use new methods for analysis, some initial cost for equipment may be encountered. In addition, all methods require some ongoing replacement of used materials.

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received; however, the amendments to this regulation will not affect the cost of living.

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received, for the: No public comments were received will not affect the cost of doing business unless the business makes a decision to purchase new equipment.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the: No public comments were received.

1. First year following implementation: The amendments to this regulation will not affect compliance, reporting, or paperwork requirements. A public water system may make a business decision to purchase new equipment to use new analytical methods. The amendments will not affect competition.

2. Second and subsequent years: The amendments to this regulation will not affect compliance, reporting, or paperwork requirements. A public water system may make a business decision to purchase new equipment to use new analytical methods. The amendments will not affect competition.

(3) Effects on the promulgating administrative body: The amendments to this regulation will not affect the promulgating administrative body.

(a) Direct and indirect costs or savings: There will be no direct or 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: The amendments to this regulation will not affect reporting and paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: The amendments to this regulation will not affect state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The implementation and enforcement of 401 KAR Chapter 8, including this regulation, uses appropriations from state General Fund revenue as well as federal funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on: No public comments were received regarding the economic impact of this regulation.

(a) Geographical area in which administrative regulation will be implemented: The amendments to this regulation will have no economic impact.

(b) Kentucky: No impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Any alternative to this regulation would make the regulation either more stringent or less stringent than federal regulation.

(8) Assessment of expected benefits of the administrative regulation: The amendments to this regulation will allow public water systems and certified laboratories to use the most recently approved analytical methods.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The amendments to this regulation will not have an effect on public health and environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The amendments to this regulation would not result in a detrimental effect on environment and public health if not implemented.

(c) If detrimental effect would result, explain detrimental effect: N/A

(10) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation, or government policy is in conflict 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 administration regulation with conflicting provisions: No conflict exists.

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? The amendments to this regulation deal with analytical methods, and are not tiered. However the regulation itself is tiered according to the population which receives the water (nontransient versus transient), and the source of the water.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. This regulation affects public water systems, many of which are owned or controlled by local government.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation affects public water systems which provide drinking water to their customers.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the 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. There is no fiscal impact.

Revenues (+/-): None

Expenditures (+/-): None

Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USCA 300f, 300g, 300j, and 40 CFR Parts 141, 142, and 143 allow the Administrator of the United States Environmental Protection Agency to delegate primary enforcement authority to states where state statutes and regulations are no less stringent than federal regulations. Kentucky has received this delegation for the above statutes and regulations.

2. State compliance standards. This regulation sets out monitoring, reporting, and analytical requirements to protect against lead or copper contamination in public water systems.

3. Minimum or uniform standards contained in the federal mandate. Federal regulations set out monitoring reporting and analytical requirements for bacteriological testing in 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? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

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

401 KAR 8:350. Corrosivity monitoring.

RELATES TO: KRS Chapter 224, 40 CFR 141.42

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 40 CFR Part 141 (1995), [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, FUNCTION, AND CONFORMITY: KRS 224.10-110 directs the cabinet to enforce 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 this [such] primary enforcement responsibility. This administrative regulation sets forth the requirements for the monitoring and reporting of corrosion characteristics of water supplies. This administrative regulation conforms to, and is no more stringent than, federal regulations.

Section 1. Potentially Corrosive Elements. Community [Applicability. (1) Each community water system which utilizes surface water sources or groundwater sources shall identify specific types of corrosivity related characteristics within their water distributed for human, domestic or industrial consumption.

(2) Sampling frequency. The supplier shall collect two (2) samples, or more at the request of the cabinet, for analysis from each plant using any surface water source. One (1) sample shall be collected during midwinter and one (1) sample shall be collected during midsummer. The supplier of water shall collect one (1) sample, or more if required by the cabinet, for analysis from each plant using any groundwater source. 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.

(3) Sampling point. Suppliers of water for community public water systems shall collect samples from a representative entry point to the water distribution system for analysis to determine the corrosivity characteristics of the water.

(4) Determination of corrosivity characteristics. Parameters for the determination of corrosivity characteristics shall include pH, calcium hardness, alkalinity, temperature, total dissolved solids (total filterable residue), and calculation of the Langelier Index in accordance with subsection (5) of this section. The determination of corrosivity characteristics shall include one (1) round of sampling using two (2) samples per plant for surface water and one (1) sample per plant for groundwater sources. However, the cabinet may require more

frequent monitoring as appropriate. In addition, the cabinet may require monitoring for additional parameters which may indicate corrosivity characteristics, such as sulfates and chlorides.

(5) Langelier Index calculation. Based on the parameters in subsection (4) of this section, the Langelier Index shall be calculated pursuant to Standard Methods. In certain cases, the Aggressive Index can be used instead of the Langelier Index. The supplier shall request substitution, in writing, to the cabinet and the cabinet shall make the determination. For interpretive purposes, the following table of indices shall be used:

**Corrosivity Characteristics as
Addressed by Indices**

Corrosive Characteristics	Langelier Index	Aggressive Index
Highly aggressive	< 2.0	< 10.0
Moderately aggressive	2.0 to 0.0	10.0 to 12.0
Nonaggressive	> 0.0	> 12.0

(6) Reporting. The results of the analyses for the corrosivity characteristics shall be reported to the cabinet within ten (10) days after the sample results are received. If more frequent sampling is required by the cabinet, the supplier may accumulate the data and report each value within ten (10) days of the end of the month in which the analytical results of the last sample are received.

(a) If the corrosive characteristics derived from the calculation in subsection (5) of this section indicate that the water distributed is highly aggressive the water supply systems shall notify the cabinet [as] whether any of the following materials are present in the distribution system:

(1) [1-] Lead from piping, solder, caulking, interior lining of distribution mains, alloys, or any other source;

(2) [2-] Copper from piping, alloys, service lines, or any other source;

(3) [3-] Galvanized piping in service lines;

(4) [4-] Ferrous piping materials, such as cast iron and steel; and

(5) [5-] Asbestos cement pipe.

Section 2. [(b)] In addition, the cabinet may require identification and reporting of other materials of construction present in distribution systems that may contribute contaminants to the drinking water, including, but not limited to:

(1) [1-] Vinyl-lined asbestos cement pipe; and

(2) [2-] Coal tar-lined pipes and tanks.

[(7) Measurement techniques. Measurement for corrosive characteristics, as listed in subsection (4) of this section shall be conducted in accordance with the procedures and methods set forth in Standard Methods. Alternative methods approved by the cabinet may be substituted.

Section 2. Standard Methods for the Examination of Water and Wastewater, 16th edition, 1985, is hereby incorporated by reference and is available from 8 a.m. to 4:30 p.m. Monday through Friday for public inspection and copying at the Division of Water, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601. This document is 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 from the Publication Office, American Public Health Association, 1015 Fifteenth Street, N.W., Washington, D.C. 20005.

Section 3. Severability. If any provision of this administrative regulation is set aside by a court of competent jurisdiction, the remainder of this administrative regulation remains in effect.]

JAMES E. BICKFORD, Secretary

ADMINISTRATIVE REGISTER - 2594

APPROVED BY AGENCY: November 4, 1996

FILED WITH LRC: November 8, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed amended regulation is scheduled for December 23, 1996, at 1 p.m. (eastern time), in Room G-1 of the Capital Plaza Tower, Mero Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify Jack A. Wilson in writing at the address noted below by December 16, 1996 of their intent to attend the hearing and be heard. 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 amended regulation. Persons testifying at the hearing are asked to provide the cabinet with a written copy of their testimony, if available. 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 amended regulation. Written comments must be received by Jack A. Wilson at the address below no later than 4:30 p.m. (eastern time) on December 23, 1996. 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. Wilson at the address below before December 16, 1996, between 8 a.m. and 4:30 p.m.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410 (Voice), (502) 564-4245 (Fax).

REGULATORY IMPACT ANALYSIS

Contact Person: Jack A. Wilson, Director

(1) Type and number of entities affected: This administrative regulation establishes requirements for public water systems to report to the Cabinet the presence of lead copper and certain other contaminants which may be present in a distribution system. This regulation is being amended to strike out a body of the regulation made irrelevant by the adoption of 401 KAR 8:300 relating to lead and copper. This regulation effects 525 community public water systems.

(2) Direct and indirect costs or savings on the affected entities: The amendments to this regulation will have no direct or indirect costs or savings.

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received; however, the amendments to this regulation will not affect the cost of living or employment.

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received; however, the amendments to this regulation will not affect the cost of doing business.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the: No public comments were received.

1. First year following implementation: The amendments to this regulation will not affect compliance, reporting, paperwork requirements, or competition. No other factors will increase or decrease costs.

2. Second and subsequent years: The amendments to this regulation will not affect compliance, reporting, paperwork requirements, or competition. No other factors will increase or decrease

costs.

(3) Effects on the promulgating administrative body: The amendments to this regulation will not affect the promulgating administrative body.

(a) Direct and indirect costs or savings: There will be no direct or 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: The amendments to this regulation will not affect reporting and paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: The amendments to this regulation will not affect state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The implementation and enforcement of 401 KAR Chapter 8, including this regulation, uses appropriations from state General Fund revenue as well as federal funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on: No public comments were received regarding the economic impact of this regulation.

(a) Geographical area in which administrative regulation will be implemented: The amendments to this regulation will have no economic impact.

(b) Kentucky: No impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Any alternative to this regulation would make the regulation either more stringent or less stringent than federal regulation.

(8) Assessment of expected benefits of the administrative regulation: The amendments to this regulation will allow public water systems to stop doing several activities regarding the corrosivity of their water since these activities were replaced by the requirement of 401 KAR 8:300.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The amendments to this regulation will not have an effect on public health and environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The amendments to this regulation would not result in a detrimental effect on environment and public health.

(c) If detrimental effect would result, explain detrimental effect: N/A

(10) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation, or government policy is in conflict 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 administration regulation with conflicting provisions: No conflict exists.

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? This regulation is tiered in the sense that it applies only to community 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 affects public water systems, many of which are owned or controlled by local government.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation affects public water systems which provide drinking water to their customers.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the 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. There is no fiscal impact.

Revenues (+/-): None
Expenditures (+/-): None
Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USCA 300f, 300g, 300j, and 40 CFR Parts 141, 142, and 143 allow the Administrator of the United States Environmental Protection Agency to delegate primary enforcement authority to states where state statutes and regulations are no less stringent than federal regulations. Kentucky has received this delegation for the above statutes and regulations.

2. State compliance standards. This regulation sets out certain information that community public water systems should report to the cabinet.

3. Minimum or uniform standards contained in the federal mandate. Federal regulations set out certain information that community public water systems should report to the cabinet.

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

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

401 KAR 8:400. Synthetic organic chemicals.

RELATES TO: KRS Chapter 224, 40 CFR Part 141 (1995 [1993])

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 42 USCA 300f, 300g, 300j, 40 CFR 141.24(e), 141.24(h)[(12)], (13), 141.40 (1995) [(1993)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS [Chapter] 224.10-110 directs the cabinet to enforce administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising this primary enforcement responsibility. This administrative regulation provides maximum contaminant levels and sampling and analytical requirements for certain organic chemicals. This administrative regulation conforms to, and is no more stringent than, federal regulations.

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, in effect on July 1, 1995, analysis of the contaminants listed in Section 2 [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 2 [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 noncommunity 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 contribution of the system. If a determination by the cabinet reveals no previous use of the contaminant within the watershed or zone of contribution, 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 2 [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 2 [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 2 [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 2 [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 2 [4] of this administrative regulation shall be conducted in accordance with 40 CFR 141.24(e) in effect on July 1, 1995 ~~[(h)(12)(1993)]~~, hereby adopted without change.

(13) Analysis for PCBs shall be conducted in accordance with 40 CFR 141.24(e) and (h)(13) in effect on July 1, 1995 ~~[(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,

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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 2 [4] of this administrative regulation the laboratory shall:

(a) Analyze Performance Evaluation samples which include those substances approved ~~provided~~ by EPA's Environmental Monitoring and Support Laboratory or equivalent samples approved ~~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 2. [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) 1646-88 [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

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(33) 1746-01-6 2,3,7,8-TCDD (Dioxin) 3 x 10⁻⁸

Section 3. [6.] 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 2 [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	
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		

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JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: November 4, 1996

FILED WITH LRC: November 8, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed amended regulation is scheduled for December 23, 1996, at 1 p.m. (eastern time), in Room G-1 of the Capital Plaza Tower, Mero Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify Jack A. Wilson in writing at the address noted below by December 16, 1996 of their intent to attend the hearing and be heard. 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 amended regulation. Persons testifying at the hearing are asked to provide the cabinet with a written copy of their testimony, if available. 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 amended regulation. Written comments must be received by Jack A. Wilson at the address below no later than 4:30 p.m. (eastern time) on December 23, 1996. 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. Wilson at the address below before December 16, 1996, between 8 a.m. and 4:30 p.m.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410 (Voice), (502) 564-4245 (Fax).

REGULATORY IMPACT ANALYSIS

Contact Person: Jack A. Wilson, Director

(1) Type and number of entities affected: This administrative regulation establishes requirements for monitoring, analyzing, reporting and controlling certain organic chemicals in drinking water furnished by public water systems. The amendments to this regulation correct errors and update analytical methods approved by the Environmental Protection Agency. There are currently about 761 public water systems in Kentucky. This number may change somewhat from month to month.

(2) Direct and indirect costs or savings on the affected entities: If a public water system or commercial laboratory choose to use new methods for analysis, some initial cost for equipment may be encountered. In addition, all methods require some ongoing replacement of used materials.

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received; however, the amendments to this regulation will not affect the cost of living.

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received; however, the amendments to this regulation will not affect the cost of doing business unless the business makes a decision to purchase new equipment.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the: No public comments were received.

1. First year following implementation: The amendments to this regulation will not affect compliance, reporting, or paperwork requirements. A public water system may make a business decision to

purchase new equipment to use new analytical methods. The amendments will not affect competition.

2. Second and subsequent years: The amendments to this regulation will not affect compliance, reporting, or paperwork requirements. A public water system may make a business decision to purchase new equipment to use new analytical methods. The amendments will not affect competition.

(3) Effects on the promulgating administrative body: The amendments to this regulation will not affect the promulgating administrative body.

(a) Direct and indirect costs or savings: There will be no direct or 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: The amendments to this regulation will not affect reporting and paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: The amendments to this regulation will not affect state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The implementation and enforcement of 401 KAR Chapter 8, including this regulation, uses appropriations from state General Fund revenue as well as federal funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on: No public comments were received regarding the economic impact of this regulation.

(a) Geographical area in which administrative regulation will be implemented: The amendments to this regulation will have no economic impact.

(b) Kentucky: No impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Any alternative to this regulation would make the regulation either more stringent or less stringent than federal regulation.

(8) Assessment of expected benefits of the administrative regulation: The amendments to this regulation will allow public water systems and certified laboratories to use the most recently approved analytical methods.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The amendments to this regulation will not have an effect on public health and environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The amendments to this regulation would not result in a detrimental effect on environment and public health if not implemented.

(c) If detrimental effect would result, explain detrimental effect: N/A

(10) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation, or government policy is in conflict 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 administration regulation with conflicting provisions: No conflict exists.

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? The amendments to this regulation deal with analytical methods, and are not tiered. However, the regulation itself is tiered according to the population which receives the water (nontransient versus transient), as well as the source of the water.

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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 public water systems, many of which are owned or controlled by local government.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation affects public water systems which provide drinking water to their customers.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the 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. There is no fiscal impact.

Revenues (+/-): None

Expenditures (+/-): None

Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USCA 300f, 300g, 300j, and 40 CFR Parts 141, 142, and 143 allow the Administrator of the United States Environmental Protection Agency to delegate primary enforcement authority to states where state statutes and regulations are no less stringent than federal regulations. Kentucky has received this delegation for the above statutes and regulations.

2. State compliance standards. This regulation sets out monitoring, reporting, and analytical requirements to protect against certain organic chemicals in public water systems.

3. Minimum or uniform standards contained in the federal mandate. Federal regulations set out monitoring reporting and analytical requirements for certain organic chemicals in 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? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

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

401 KAR 8:420. Volatile organic chemicals.

RELATES TO: KRS Chapter 224, 40 CFR Part 141 (1995 [1993])

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 40 CFR part 136, Appendix B (1995 [1993]), 40 CFR 141.24 (1995 [1993]), 42 USCA 300f, 300g, 300j

NECESSITY, FUNCTION, AND CONFORMITY: KRS [Chapter] 224.10-110 directs the cabinet to enforce administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising this primary enforcement responsibility. This administrative regulation sets forth monitoring and testing require-

ments, 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 2 [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 2 [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 2 [3](1)(a) to (h) of this administrative regulation and the monitoring for the contaminants listed in Section 2 [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 2 [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 2 [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 2 [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 contribution of the system. If a determination by the cabinet reveals no previous use of the contaminant within the watershed or zone of contribution, 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 2 [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 2 [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 2 [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 2 [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(e) (1995) ~~(4)(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(e) (1995) ~~(4)(16)~~ ~~(1993)~~ hereby adopted without change.

(15) Compliance with Section 2 [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 2 [3](1)(a) to (u) of this administrative regulation shall be conducted in accordance with 40 CFR 141.24(e), in effect on July 1, 1995 ~~(#)(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 2 [3](1)(b) to (u) of this administrative regulation the laboratory shall:

1. Analyze performance evaluation samples which include contaminants set forth in Section 2 [3](1)(b) to (u) of this administrative regulation and are approved ~~provided~~ by EPA's Environmental Monitoring Systems Laboratory or equivalent samples approved ~~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 2 [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 (1995 [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 (1995 [1993]) hereby adopted without change; and

4. Obtain certification for the contaminants listed in Section 2 [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 2 [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 certified ~~approved~~ laboratory shall determine the method detection limit (MDL), as defined in Appendix B to 40 CFR Part 136 (1995 [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 administrative 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 subsections (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, and 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 actual 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 3.] 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

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(k) 100-41-4	Ethylbenzene	0.7	145-73-3	Endothall	GAC
(l) 108-90-7	Monochlorobenzene	0.1	72-20-8	Endrin	GAC
(m) 95-50-1	o-Dichlorobenzene	0.6	1071-53-6	Glyphosate	OX
(n) 100-42-5	Styrene	0.1	118-74-1	Hexachlorobenzene	GAC
(o) 127-18-4	Tetrachloroethylene	0.005	77-47-3	Hexachlorocyclopentadiene	GAC or PTA
(p) 108-88-3	Toluene	1	23135-22-0	Oxamyl (Vydate)	GAC
(q) 156-60-5	trans-1,2-Dichloroethylene	0.1	1918-02-1	Picloram	GAC
(r) 1330-20-7	Xylenes (total)	10	122-34-9	Simazine [Simaxine]	GAC
(s) 75-09-2	Dichloromethane	0.005	120-82-1	1,2,4-Trichlorobenzene	GAC or PTA
(t) 120-82-1	1,2,4-Trichlorobenzene	0.07	79-00-5	1,1,2-Trichloroethane	GAC or PTA
(u) 79-00-5	1,1,2-Trichloroethane	0.005	1746-01-6	2,3,7,8-TCDD (Dioxin)	GAC

(2) The following, granular activated carbon (GA), 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	GA
116-06-3	Aldicarb	GAC
1646-88-4 [87-3]	Aldicarb sulfone	GAC
1646-87-3	Aldicarb sulfoxide	GAC
1912-24-9	Atrazine	GAC
71-43-2	Benzene	GAC or PTA
1563-66-2	Carbofuran	GAC
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
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

¹GAC Granular activated carbon;
PTA - Packed Tower aeration; and
OX - Oxidation.

Section 3. [4-] Miscellaneous Provisions. (1) Increased monitoring. The cabinet may increase required monitoring if 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) Purchasers. Public water systems which purchase water from a public water system which is monitoring for VOCs under this administrative regulation are exempt from the requirements of this administrative 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) 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 4. [5-] Variances. Variances from the maximum contaminant levels for synthetic organic chemicals may be granted pursuant to 401 KAR 8:060.

Section 5. [6-] 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 violation on a short-term basis until best available technology can be put in place. The 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. 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.

ADMINISTRATIVE REGISTER - 2605

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: November 4, 1996

FILED WITH LRC: November 8, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed amended regulation is scheduled for December 23, 1996, at 1 p.m. (eastern time), in Room G-1 of the Capital Plaza Tower, Mero Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify Jack A. Wilson in writing at the address noted below by December 16, 1996 of their intent to attend the hearing and be heard. 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 amended regulation. Persons testifying at the hearing are asked to provide the cabinet with a written copy of their testimony, if available. 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 amended regulation. Written comments must be received by Jack A. Wilson at the address below no later than 4:30 p.m. (eastern time) on December 23, 1996. 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. Wilson at the address below before December 16, 1996, between 8 a.m. and 4:30 p.m.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410 (Voice), (502) 564-4245 (Fax).

REGULATORY IMPACT ANALYSIS

Contact Person: Jack A. Wilson, Director

(1) Type and number of entities affected: This administrative regulation establishes requirements for monitoring, analyzing, reporting and controlling certain volatile organic chemicals in drinking water furnished by public water systems. The amendments to this regulation correct errors and update analytical methods approved by the Environmental Protection Agency. There are currently about 761 public water systems in Kentucky. This number may change somewhat from month to month.

(2) Direct and indirect costs or savings on the affected entities: If a public water system or commercial laboratory choose to use new methods for analysis, some initial cost for equipment may be encountered. In addition, all methods require some ongoing replacement of used materials.

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received; however, the amendments to this regulation will not affect the cost of living.

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received; however, the amendments to this regulation will not affect the cost of doing business unless the business makes a decision to purchase new equipment.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the: No public comments were received.

1. First year following implementation: The amendments to this regulation will not affect compliance, reporting, or paperwork requirements. A public water system may make a business decision to

purchase new equipment to use new analytical methods. The amendments will not affect competition.

2. Second and subsequent years: The amendments to this regulation will not affect compliance, reporting, or paperwork requirements. A public water system may make a business decision to purchase new equipment to use new analytical methods. The amendments will not affect competition.

(3) Effects on the promulgating administrative body: The amendments to this regulation will not affect the promulgating administrative body.

(a) Direct and indirect costs or savings: There will be no direct or 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: The amendments to this regulation will not affect reporting and paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: The amendments to this regulation will not affect state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The implementation and enforcement of 401 KAR Chapter 8, including this regulation, uses appropriations from state General Fund revenue as well as federal funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on: No public comments were received regarding the economic impact of this regulation.

(a) Geographical area in which administrative regulation will be implemented: The amendments to this regulation will have no economic impact.

(b) Kentucky: No impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Any alternative to this regulation would make the regulation either more stringent or less stringent than federal regulation.

(8) Assessment of expected benefits of the administrative regulation: The amendments to this regulation will allow public water systems and certified laboratories to use the most recently approved analytical methods.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The amendments to this regulation will not have an effect on public health and environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The amendments to this regulation would not result in a detrimental effect on environment and public health if not implemented.

(c) If detrimental effect would result, explain detrimental effect: N/A

(10) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation, or government policy is in conflict 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 administration regulation with conflicting provisions: No conflict exists.

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? The amendments to this regulation deal with analytical methods, and are not tiered. However, the regulation itself is tiered according to the population which receives the water (nontransient versus transient), as well as the source of the water.

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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 public water systems, many of which are owned or controlled by local government.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation affects public water systems which provide drinking water to their customers.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the 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. There is no fiscal impact.

Revenues (+/-): None

Expenditures (+/-): None

Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USCA 300f, 300g, 300j, and 40 CFR Parts 141, 142, and 143 allow the Administrator of the United States Environmental Protection Agency to delegate primary enforcement authority to states where state statutes and regulations are no less stringent than federal regulations. Kentucky has received this delegation for the above statutes and regulations.

2. State compliance standards. This regulation sets out monitoring, reporting, and analytical requirements to protect against certain volatile organic chemicals in public water systems.

3. Minimum or uniform standards contained in the federal mandate. Federal regulations set out monitoring reporting and analytical requirements for certain volatile organic chemicals in 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? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

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

401 KAR 8:440. Special testing for unregulated inorganic and synthetic organic contaminants [chemicals].

RELATES TO: KRS Chapter 224, 40 CFR Part 141 (1995 [~~1993~~])

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 40 CFR 141 (1995 [~~1993~~]), 42 USCA 300f, 300g, 300j

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 directs the cabinet to enforce the 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 this primary enforcement responsibility. This administrative regulation lists certain [volatile] synthetic organic

contaminants and inorganic contaminants [chemicals] which, while unregulated, nevertheless shall be monitored by community and nontransient noncommunity public water systems. This administrative regulation conforms to, and is no more stringent than, federal regulations.

Section 1. Applicability. All community and nontransient noncommunity water systems shall comply with this administrative regulation.

(1) Public water systems shall have completed the monitoring required by this administrative regulation by December 31, 1995.

(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, 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~~]
- (f) [~~m~~] m-Dichlorobenzene
- (g) [~~1,1~~] 1,1-Dichloropropene
- (h) [~~1,1,2~~] 1,1,2-Dichloroethane
- (i) [~~1,3~~] 1,3-Dichloropropane
- (j) [~~Dibromomethane~~]
- (k) [~~Chloromethane~~]
- (l) [~~Bromomethane~~]
- (m) [~~1,2,3~~] 1,2,3-Trichloropropane
- (n) [~~1,1,1,2~~] 1,1,1,2-Tetrachloroethane
- (o) [~~Chloroethane~~]
- (p) [~~2,2~~] 2,2-Dichloropropane
- (q) [~~o~~] o-Chlorotoluene
- (r) [~~p~~] p-Chlorotoluene
- (s) [~~Bromobenzene~~]
- (t) [~~1,3~~] 1,3-Dichloropropane
- (u) [~~Ethylene dibromide (EDB)~~]
- (v) [~~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 (2) 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

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- (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), in effect as of July 1, 1995, ~~[(401) (1993)]~~ hereby adopted without change.

(2) Laboratory certification required. Analysis under this administrative regulation shall only be conducted by laboratories certified by EPA or the cabinet in accordance with 401 KAR 8:040 and 40 CFR 141.24(f)(17), in effect as of July 1, 1995, ~~[(g)(11) (1993)]~~ hereby adopted without change.

(3) Compositing of samples for chemicals listed in Section 3 of this administrative regulation may be performed for up to five (5) samples.

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 have been ~~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 have been ~~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 1 ~~[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), in effect as of July 1, 1995, ~~[(1993)]~~ hereby adopted without change.

~~[Section 6. 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 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.]~~

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: November 4, 1996

FILED WITH LRC: November 8, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed amended regulation is scheduled for December 23, 1996, at 1 p.m. (eastern time), in Room G-1 of the Capital Plaza Tower,

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Mero Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify Jack A. Wilson in writing at the address noted below by December 16, 1996 of their intent to attend the hearing and be heard. 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 amended regulation. Persons testifying at the hearing are asked to provide the cabinet with a written copy of their testimony, if available. 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 amended regulation. Written comments must be received by Jack A. Wilson at the address below no later than 4:30 p.m. (eastern time) on December 23, 1996. 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. Wilson at the address below before December 16, 1996, between 8 a.m. and 4:30 p.m.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410 (Voice), (502) 564-4245 (Fax).

REGULATORY IMPACT ANALYSIS

Contact Person: Jack A. Wilson, Director

(1) Type and number of entities affected: This administrative regulation establishes requirements for monitoring, analyzing, and reporting certain unregulated organic and inorganic chemicals in drinking water furnished by public water systems. The amendments to this regulation update analytical methods approved by the Environmental Protection Agency. There are currently about 761 public water systems in Kentucky. This number may change somewhat from month to month.

(2) Direct and indirect costs or savings on the affected entities: If a public water system or commercial laboratory choose to use new methods for analysis, some initial cost for equipment may be encountered. In addition, all methods require some ongoing replacement of used materials.

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received; however, the amendments to this regulation will not affect the cost of living.

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received; however, the amendments to this regulation will not affect the cost of doing business unless the business makes a decision to purchase new equipment.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the: No public comments were received.

1. First year following implementation: The amendments to this regulation will not affect compliance, reporting, or paperwork requirements. A public water system may make a business decision to purchase new equipment to use new analytical methods. The amendments will not affect competition.

2. Second and subsequent years: The amendments to this regulation will not affect compliance, reporting, or paperwork requirements. A public water system may make a business decision to purchase new equipment to use new analytical methods. The amend-

ments will not affect competition.

(3) Effects on the promulgating administrative body: The amendments to this regulation will not affect the promulgating administrative body.

(a) Direct and indirect costs or savings: There will be no direct or 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: The amendments to this regulation will not affect reporting and paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: The amendments to this regulation will not affect state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The implementation and enforcement of 401 KAR Chapter 8, including this regulation, uses appropriations from state General Fund revenue as well as federal funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on: No public comments were received regarding the economic impact of this regulation.

(a) Geographical area in which administrative regulation will be implemented: The amendments to this regulation will have no economic impact.

(b) Kentucky: No impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Any alternative to this regulation would make the regulation either more stringent or less stringent than federal regulation.

(8) Assessment of expected benefits of the administrative regulation: The amendments to this regulation will allow public water systems and certified laboratories to use the most recently approved analytical methods.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The amendments to this regulation will not have an effect on public health and environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The amendments to this regulation would not result in a detrimental effect on environment and public health if not implemented.

(c) If detrimental effect would result, explain detrimental effect: N/A

(10) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation, or government policy is in conflict 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 administration regulation with conflicting provisions: No conflict exists.

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? The amendments to this regulation deal with analytical methods, and are not tiered. However, the regulation itself is tiered according to the population which receives the water (nontransient versus transient), as well as the source of the water.

FISCAL NOTE ON LOCAL GOVERNMENT

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

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

water systems, many of which are owned or controlled by local government.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation affects public water systems which provide drinking water to their customers.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the 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. There is no fiscal impact.

Revenues (+/-): None

Expenditures (+/-): None

Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USCA 300f, 300g, 300j, and 40 CFR Parts 141, 142, and 143 allow the Administrator of the United States Environmental Protection Agency to delegate primary enforcement authority to states where state statutes and regulations are no less stringent than federal regulations. Kentucky has received this delegation for the above statutes and regulations.

2. State compliance standards. This regulation sets out monitoring, reporting, and analytical requirements to evaluate certain unregulated organic and inorganic chemicals in public water systems.

3. Minimum or uniform standards contained in the federal mandate. Federal regulations set out monitoring reporting and analytical requirements to evaluate certain unregulated organic and inorganic chemicals in 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? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

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

401 KAR 8:500. Disinfection by-products.

RELATES TO: KRS Chapter 224, 40 CFR Part 141, 40 CFR 142.60 (1995)

STATUTORY AUTHORITY: KRS 224.10-10, 224.10-110, 42 USCA 300f, 300g, 300j, 40 CFR 141.29, 141.30 (1995)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 directs the cabinet to enforce administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising primary enforcement responsibility. This administrative regulation sets forth the requirements for by-products of disinfectants used to purify drinking water. These [Such] by-products may, when consumed over a long period of time, cause adverse health affects. This administrative regulation stipulates who shall test for the by-products and what actions are to be taken when they are found. This administrative regulation conforms to, and is no more stringent than, federal regulations.

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 administrative regulation, as follows:

(1) Seller responsible. If a buyer does not practice booster disinfection or alter the water, the seller shall be responsible for monitoring. Sampling shall be performed pursuant to this administrative regulation at a point in the buyer's distribution system which reflects the longest period of retention.

(2) Buyer responsible. If a buyer practices booster disinfection or alters the water, monitoring shall be the responsibility of the buyer and sampling shall be performed pursuant to this administrative regulation. The raw water sample shall be taken at the point of entry into the system of the buyer and ahead of the booster chlorination point.

(3) Public notification. A public water system determined by the cabinet to be the major contributor to violations of maximum contaminant levels for total trihalomethanes shall notify the public in accordance with 401 KAR 8:070.

Section 2. Sampling Frequency. 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 quarterly sample shall be taken in the same week and at the same designated sample points during each quarter.

(5) Total samples. The minimum number of samples required for each system shall depend upon the number of treatment plants in the system. Each system shall collect four (4) samples from the distribution system per quarter for each treatment plant. One (1) raw water control sample shall be taken from each plant intake per quarter.

(6) Multiple plant operations. In multiple plant operations, sampling shall reflect the distribution from each plant.

Section 4. Maximum Trihalomethane Limits. The maximum contaminant level for total trihalomethanes (TTHMs) is 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 be determined by a running annual average of the four (4) most recent quarterly samples.

Section 5. Reduction in Sampling Frequency. Upon receipt of a written request the requirement of a sampling frequency of four (4) samples-per-quarter per year for each treatment plant used by the system may be reduced by the cabinet to a minimum of one (1) sample for TTHMs per quarter. A reduction in frequency shall only be considered if, after one (1) full year of monitoring in accordance with the original schedule, it has been demonstrated that the water

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delivered to consumers is below the TTHM MCL of 0.10 mg/l. The minimum single sample for TTHM shall then be taken at a point in the distribution system that reflects maximum residence time. If a minimum single sample per quarter exceeds the MCL for TTHM, and is confirmed by at least one (1) check sample, the system shall comply with the four (4) samples-per-quarter sampling frequency for one (1) year before reduced frequency may again be requested. Significant changes in the water source or treatment program may be grounds for requiring four (4) samples per quarter.

Section 6. Increase in Sampling Frequency. If analytical results from quarterly sampling show a TTHM arithmetic sum above acceptable limits, the cabinet may place the system on a monthly monitoring schedule until acceptable levels are achieved for three (3) consecutive months.

Section 7. Sampling and Analytical Methods. (1) Approved methods. Sampling and analyses conducted pursuant to this administrative regulation shall be conducted in accordance with 40 CFR 141.24(e) and 141.30(e), in effect on July 1, 1995, ~~[(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 modification. A plan to modify a disinfection practice shall require the system, at a minimum, to:

(1) Evaluate the water system for sanitary defects and evaluate the source water for bacteriological quality;

(2) Evaluate its existing treatment practices, consider improvements that minimize disinfectant demand and optimize finished water quality throughout the distribution system;

(3) Provide baseline data from water quality surveys of the distribution system. The data shall include the monitoring results for:

(a) Total coliform and fecal coliform bacteria;

(b) Fecal streptococci;

(c) Standard plate counts at thirty-five (35) degrees Celsius and twenty (20) degrees Celsius;

(d) Phosphate;

(e) Ammonia nitrogen; and

(f) Total organic carbon;

(4) Provide additional similar monitoring to assure continued maintenance of optimal bacteriological quality in finished water after unit treatment or disinfection modifications;

(5) Demonstrate an active disinfectant residual throughout the distribution system during and after the modification; and

(6) Provide additional monitoring for chlorate, chlorite, and chlorine dioxide, if chlorine dioxide is used as a disinfectant.

Section 10. Self-monitoring Reporting Requirements. Each laboratory performing monitoring and TTHM analyses for drinking water systems shall hold a valid certification pursuant to 401 KAR 8:040. Public water systems shall submit results to the cabinet, within ten (10) days following the end of the compliance period for which the analysis was completed.

Section 11. Variance Procedures for Total Trihalomethanes. (1)

When considered. Applications for a variance from the maximum acceptable contaminant level (MCL) of 0.10 mg/l will be considered by the cabinet if the public water system making application presents evidence that:

(a) The best treatment technology, treatment techniques or other means generally available for achieving compliance with the MCL are not available;

(b) The best treatment method is not technically appropriate or technically feasible for that system; and

(c) Only marginal reduction in TTHM levels would be realized if the treatment methods specified in subsection (2) of this section were utilized.

(2) Best technology. The following technology, treatment techniques or other generally available means for achieving compliance with the MCL for total trihalomethanes are considered the best available:

(a) The use of chloramines as an alternate or supplemental disinfectant or oxidant;

(b) The use of chlorine dioxide as an alternate or supplemental disinfectant or oxidant;

(c) Improved clarification for THM precursor reduction;

(d) Moving the point of chlorination to reduce TTHM formation and, if necessary, substituting chloramines, chlorine dioxide or potassium permanganate for the use of chlorine as a preoxidant; and

(e) The use of powdered activated carbon for THM precursor or TTHM reduction seasonally or intermittently, at dosages not to exceed ten (10) mg/l on an annual average basis.

(3) When cabinet will grant variance. The cabinet, upon making a finding that information submitted by the applicant system supports a decision that best treatment technology or techniques are not available and effective, will consider a variance under the following conditions:

(a) Granting the variance will not result in an unreasonable risk to health; and

(b) The public water system proposes a compliance schedule, within one (1) year of the date the variance is granted, which examines the technological, economic and reduction feasibility of one (1) or more of the following treatment methods:

1. Introduction of off-line water storage for THM precursor reduction;

2. Aeration for TTHM reduction, where geographically and environmentally appropriate;

3. Introduction of clarification where not currently practiced;

4. Consideration of alternate sources of raw water; and

5. Use of ozone as an alternate or supplemental disinfectant or oxidant.

(c) The public water system implements quality control measures the cabinet may require during the period ending on the date it complies with this administrative regulation.

(d) If the cabinet determines that a treatment method identified in paragraph (b) of this subsection ~~[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 treatment method, the cabinet shall require the system to install and use that treatment method in connection with a compliance schedule. The cabinet's decision shall be based upon studies performed by the system and other information submitted to the cabinet by the system in accordance with 401 KAR 8:060.

(4) The cabinet shall not require a system to install or use a treatment method not described in this section to obtain or maintain a variance from the TTHM regulation or in connection with any variance compliance schedule.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: November 4, 1996

FILED WITH LRC: November 8, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this

proposed amended regulation is scheduled for December 23, 1996, at 1 p.m. (eastern time), in Room G-1 of the Capital Plaza Tower, Mero Street, Frankfort, Kentucky. Individuals interested in attending his hearing shall notify Jack A. Wilson in writing at the address noted below by December 16, 1996 of their intent to attend the hearing and be heard. 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 amended regulation. Persons testifying at the hearing are asked to provide the cabinet with a written copy of their testimony, if available. 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 amended regulation. Written comments must be received by Jack A. Wilson at the address below no later than 4:30 p.m. (eastern time) on December 23, 1996. 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. Wilson at the address below before December 16, 1996, between 8 a.m. and 4:30 p.m.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410 (Voice), (502) 564-4245 (Fax).

REGULATORY IMPACT ANALYSIS

Contact Person: Jack A. Wilson, Director

(1) Type and number of entities affected: This administrative regulation establishes requirements for monitoring, analyzing, and reporting certain disinfection by-products in drinking water furnished by public water systems. The amendments to this regulation update analytical methods approved by the Environmental Protection Agency. This regulation affects public water systems serving more than 10,000 people, including consecutive systems. Currently 130 public water systems monitor for disinfection by-products.

(2) Direct and indirect costs or savings on the affected entities: If a public water system or commercial laboratory choose to use new methods for analysis, some initial cost for equipment may be encountered. In addition, all methods require some ongoing replacement of used materials.

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received; however, the amendments to this regulation will not affect the cost of living.

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received; however, the amendments to this regulation will not affect the cost of doing business unless the business makes a decision to purchase new equipment.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the: No public comments were received.

1. First year following implementation: The amendments to this regulation will not affect compliance, reporting, or paperwork requirements. A public water system may make a business decision to purchase new equipment to use new analytical methods. The amendments will not affect competition.

2. Second and subsequent years: The amendments to this regulation will not affect compliance, reporting, or paperwork require-

ments. A public water system may make a business decision to purchase new equipment to use new analytical methods. The amendments will not affect competition.

(3) Effects on the promulgating administrative body: The amendments to this regulation will not affect the promulgating administrative body.

(a) Direct and indirect costs or savings: There will be no direct or 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: The amendments to this regulation will not affect reporting and paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: The amendments to this regulation will not affect state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The implementation and enforcement of 401 KAR Chapter 8, including this regulation, uses appropriations from state General Fund revenue as well as federal funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on: No public comments were received regarding the economic impact of this regulation.

(a) Geographical area in which administrative regulation will be implemented: The amendments to this regulation will have no economic impact.

(b) Kentucky: No impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Any alternative to this regulation would make the regulation either more stringent or less stringent than federal regulation.

(8) Assessment of expected benefits of the administrative regulation: The amendments to this regulation will allow public water systems and certified laboratories to use the most recently approved analytical methods.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The amendments to this regulation will not have an effect on public health and environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The amendments to this regulation would not result in a detrimental effect on environment and public health if not implemented.

(c) If detrimental effect would result, explain detrimental effect: N/A

(10) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation, or government policy is in conflict 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 administration regulation with conflicting provisions: No conflict exists.

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? The amendments to this regulation deal with analytical methods, and are not tiered. However, the regulation itself is tiered according to the population which receives the water (nontransient versus transient), as well as the source of the water.

FISCAL NOTE ON LOCAL GOVERNMENT

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

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2. State what unit, part or division of local government this administrative regulation will affect. This regulation affects public water systems, many of which are owned or controlled by local government.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation affects public water systems which provide drinking water to their customers.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the 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. There is no fiscal impact.

Revenues (+/-): None
Expenditures (+/-): None
Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USCA 300f, 300g, 300j, and 40 CFR Parts 141, 142, and 143 allow the Administrator of the United States Environmental Protection Agency to delegate primary enforcement authority to states where state statutes and regulations are no less stringent than federal regulations. Kentucky has received this delegation for the above statutes and regulations.

2. State compliance standards. This regulation sets out monitoring, reporting, and analytical requirements to evaluate certain disinfection by-products in water produced by public water systems.

3. Minimum or uniform standards contained in the federal mandate. Federal regulations set out monitoring reporting and analytical requirements to evaluate certain disinfection by-products in water produced by 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? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

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

401 KAR 8:600. Secondary standards.

RELATES TO: KRS Chapter 224, 40 CFR Part 143 (1995 [4993])

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 40 CFR Part 143 (1995 [4993]), 42 USCA 300f, 300g, 300j

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 directs the cabinet to enforce the ~~rules and~~ administrative 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 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". This administrative regulation conforms to, and is no more stringent than, federal regulations.

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 (H₂S) 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

(6) Sample collection and measurement technique. Samples shall be taken and analyzed in accordance with 40 CFR 141.23(k) and 143.4, in effect on July 1, 1995, hereby adopted without change.

(7) Secondary contaminants maximum limits exceeded. If any of the secondary contaminant maximum allowable levels limit as set forth in this administrative regulation, is 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.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: November 4, 1996

FILED WITH LRC: November 8, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed amended regulation is scheduled for December 23, 1996, at 1 p.m. (eastern time), in Room G-1 of the Capital Plaza Tower, Mero Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify Jack A. Wilson in writing at the address noted below by December 16, 1996 of their intent to attend the hearing and be heard. 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 amended regulation. Persons testifying at the hearing are asked to provide the cabinet with a written copy of their testimony, if available. 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 amended regulation. Written comments must be received by Jack A. Wilson at the address below no later than 4:30 p.m. (eastern time) on December 23, 1996. 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. Wilson at the address below before December 16, 1996, between 8 a.m. and 4:30 p.m.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410 (Voice), (502) 564-4245 (Fax).

REGULATORY IMPACT ANALYSIS

Contact Person: Jack A. Wilson, Director

(1) Type and number of entities affected: This administrative regulation establishes requirements for monitoring, analyzing, and reporting secondary contaminants in drinking water furnished by public water systems. The amendments to this regulation update analytical methods approved by the Environmental Protection Agency. This regulation affects about 761 public water systems.

(2) Direct and indirect costs or savings on the affected entities: If a public water system or commercial laboratory choose to use new methods for analysis, some initial cost for equipment may be encountered. In addition, all methods require some ongoing replacement of used materials.

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received; however, the amendments to this regulation will not affect the cost of living.

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received; however, the amendments to this regulation will not affect the cost of doing business unless the business makes a decision to purchase new equipment.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the: No public comments were received.

1. First year following implementation: The amendments to this regulation will not affect compliance, reporting, or paperwork requirements. A public water system may make a business decision to purchase new equipment to use new analytical methods. The amendments will not affect competition.

2. Second and subsequent years: The amendments to this regulation will not affect compliance, reporting, or paperwork requirements. A public water system may make a business decision to purchase new equipment to use new analytical methods. The amendments will not affect competition.

(3) Effects on the promulgating administrative body: The amendments to this regulation will not affect the promulgating administrative body.

(a) Direct and indirect costs or savings: There will be no direct or 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: The amendments to this regulation will not affect reporting and paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: The amendments to this regulation will not affect state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The implementation and enforcement of 401 KAR Chapter 8, including this regulation, uses appropriations from state General Fund revenue as well as federal funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on: No public comments were received regarding the economic impact of this regulation.

(a) Geographical area in which administrative regulation will be implemented: The amendments to this regulation will have no economic impact.

(b) Kentucky: No impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Any alternative to this regulation would make the regulation either more stringent or less stringent than federal regulation.

(8) Assessment of expected benefits of the administrative regulation: The amendments to this regulation will allow public water systems and certified laboratories to use the most recently approved analytical methods.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The amendments to this regulation will not have an effect on public health and environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The amendments to this regulation would not result in a detrimental effect on environment and public health if not implemented.

(c) If detrimental effect would result, explain detrimental effect: N/A

(10) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation, or government policy is in conflict 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 administration regulation with conflicting provisions: No conflict exists.

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? The amendments to this regulation deal with analytical methods, and are not tiered. However, the regulation itself is tiered according to the population which receives the water (nontransient versus transient), as well as the source of the water.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. This regulation affects public water systems, many of which are owned or controlled by local government.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation affects public water systems which provide drinking water to their customers.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the 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. There is no fiscal impact.

Revenues (+/-): None

Expenditures (+/-): None

Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USCA 300f, 300g, 300j, and 40 CFR Parts 141, 142, and 143 allow the Administrator of the United States Environmental Protection Agency to delegate primary enforcement authority to states where state statutes and regulations are no less stringent than federal regulations. Kentucky has received this delegation for the above statutes and regulations.

2. State compliance standards. This regulation sets out monitoring, reporting, and analytical requirements to evaluate secondary contaminants which may be in water produced by public water systems.

3. Minimum or uniform standards contained in the federal mandate. Federal regulations set out monitoring reporting and analytical requirements to evaluate secondary contaminants which may be in water produced by 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? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

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

401 KAR 8:700. Bottled water.

RELATES TO: KRS Chapter 224

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS ~~Chapter~~ 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 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 set out provisions to assure the purity of water, placed in bottles, that will be resold as a food for human consumption or other consumer use. The U.S. Environmental Protection Agency has no federal regulation relating to bottled water, therefore, this administrative regulation is not more stringent than federal requirements. The U.S. Food and Drug Administration regulates the labeling of bottled water and requires some testing but does not require reporting of the test results. This administrative regulation requires testing of bottled water and that those results be reported to the cabinet.

Section 1. All bottled water systems shall comply with the provisions of 401 KAR 8:010 through 8:700, inclusive, with the following exceptions and provisions:

(1) Distribution systems and free chlorine. Administrative regulations pertaining to distribution systems of a public water system, including provisions for a free chlorine residual, shall not apply. Administrative regulations for the packaging and distribution of water

after placement in a bottle may be found at 902 KAR Chapter 45 and in other applicable administrative regulations.

(2) Microbiological sampling. All bottled water systems shall conduct microbiological sampling and testing at least once a week. ~~[Such]~~ Tests shall otherwise conform to the administrative regulations relating to microbiological sampling and testing.

(3) Samples location. All samples shall be taken after the disinfection of the water and prior to the water being placed in the bottle, with no intervening stagnant storage. Water located in the line after bottling operations cease shall be flushed before bottling is resumed.

(4) Turbidity sampling. For all bottled water systems, regardless of source, turbidity sampling shall be conducted once every four (4) hours the system is in operation. The system may substitute continuous monitoring for grab sampling, with cabinet approval, and may use the turbidity value for every four (4) hours to determine compliance with the turbidity performance criterion. The turbidity level of the system's product water shall be less than or equal to five-tenths (0.5) nephelometric turbidity units (NTU) in at least ninety-five (95) percent of the measurements taken each month.

(5) Other sampling. All other sampling for maximum contaminant levels and unregulated contaminants shall be conducted on the same schedule as community water systems [annually on a calendar-year basis].

(6) Disinfection methods. Disinfection may be by chlorination, ultraviolet light, ozonation, or other method approved by the cabinet.

(7) Surface water treatment. Bottled water systems using surface water sources may, with cabinet approval, use treatment techniques that are different from other surface water users.

(8) Maximum contaminant level exception labeling. With approval of the cabinet, bottled water systems may exceed maximum contaminant levels for secondary contaminants for purposes of bottling "mineral water" or other water, provided consumers are informed by proper labeling.

(9) Water bottled outside Commonwealth. Water bottled outside Kentucky is not covered by this administrative regulation regardless of its source.

Section 2. Failure to Comply. Any bottled water system which fails to comply with any of these administrative regulations shall immediately cease operations, shall notify the cabinet, and shall not resume operation without the written approval of the cabinet.

~~[Section 3. Severability. If any provision of this administrative regulation is set aside by a court of competent jurisdiction, the remainder of this administrative regulation remains in effect.]~~

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: November 4, 1996

FILED WITH LRC: November 8, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed amended regulation is scheduled for December 23, 1996, at 1 p.m. (eastern time), in Room G-1 of the Capital Plaza Tower, Mero Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify Jack A. Wilson in writing at the address noted below by December 16, 1996 of their intent to attend the hearing and be heard. 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 amended regulation. Persons testifying at the hearing are asked to provide the cabinet with a written copy of their testimony, if available. 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 amended regulation. Written comments must be received by Jack A. Wilson at the address below no later than 4:30 p.m. (eastern time) on December 23, 1996. The Natural

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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. Wilson at the address below before December 16, 1996, between 8 a.m. and 4:30 p.m.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410 (Voice), (502) 564-4245 (Fax).

REGULATORY IMPACT ANALYSIS

Contact Person: Jack A. Wilson, Director

(1) Type and number of entities affected: This administrative regulation establishes requirements for monitoring, analyzing, and reporting contaminants in drinking water furnished to the public by water bottling companies. The amendments to this regulation place bottled water companies on the same schedule for chemical monitoring as community public water systems. This regulation affects about 12 bottled water companies.

(2) Direct and indirect costs or savings on the affected entities: The amendments to this regulation will save bottled water companies two-thirds of the costs for monitoring for chemicals. Currently, bottled water companies must test for all chemical contaminants four times a year. The amendments to this regulation will change that requirement to four quarterly samples every three years. Monitoring for all chemicals four times a year costs about \$8,000 to \$10,000.

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received; however, the amendments to this regulation will not affect the cost of living.

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received; however, the amendments to this regulation save bottled water systems about \$18,000 spread over three years.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the: No public comments were received.

1. First year following implementation: The amendments to this regulation will not affect compliance, reporting, or paperwork requirements. The amendments will decrease monitoring costs. The amendments will not affect competition.

2. Second and subsequent years: The amendments to this regulation will continue to lower monitoring costs.

(3) Effects on the promulgating administrative body: The amendments to this regulation will allow the promulgating administrative body to track bottled water systems on the same schedule as community public water systems.

(a) Direct and indirect costs or savings: There will be no direct or 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: The amendments to this regulation will not affect reporting and paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: The amendments to this regulation will not affect state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The implementation and enforcement of 401 KAR Chapter 8, uses appropriations from state

General Fund revenue as well as federal funds. This enforcement of this regulation, however, uses only state funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on: No public comments were received regarding the economic impact of this regulation.

(a) Geographical area in which administrative regulation will be implemented: The amendments to this regulation will have no economic impact.

(b) Kentucky: No impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative to the amendment to this regulation would be to not amend it, therefore causing unneeded expense for bottled water companies.

(8) Assessment of expected benefits of the administrative regulation: The amendments to this regulation will allow public water systems that bottle water to avoid unnecessary monitoring costs.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The amendments to this regulation will not have an effect on public health and environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The amendments to this regulation would not result in a detrimental effect on environment and public health if not implemented.

(c) If detrimental effect would result, explain detrimental effect: N/A

(10) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation, or government policy is in conflict 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 administration regulation with conflicting provisions: No conflict exists.

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? The amendments to this regulation deal with monitoring for chemical contaminants in water bottled by bottled water companies for sale to the public. This regulation is not tiered since all water used for bottling should be held to the same standards as for community public water systems, since the water will be distributed widely for sale as a high quality water.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

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

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

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. N/A

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other explanation: N/A

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The U.S. Environmental Protection Agency has no federal regulation relating to bottled water. The U.S. Food and Drug Administration regulates the labeling of bottled water and requires some testing, but

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does not require reporting of the test results. This administrative regulation requires testing of water to be bottled, and requires reporting of the test results.

2. State compliance standards. The U.S. Environmental Protection Agency has no federal regulation relating to bottled water.

3. Minimum or uniform standards contained in the federal mandate. The U.S. Environmental Protection Agency has no regulation relating to water to be bottled. The U.S. Food and Drug Administration sets out labeling requirements for bottled water and requires some testing, but does not require test results to be reported.

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 requirement for water to be bottled to monitor and report analytical results.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

JUSTICE CABINET Department of Corrections (Amendment)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to promulgate administrative regulations for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation conforms with those provisions.

Section 1. Incorporation by Reference. (1) "Department of Corrections Policies and Procedures", November 12 ~~(October 14)~~, 1996 Edition, Department of Corrections, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) Department of Corrections Policies and Procedures include:

- 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
- 4.7 Uniformed Employee Dress Code (Added 11/14/96)
- 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
- 9.5 Execution
- 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 [~~(Amended 10/14/96)~~]
- 11.3 Special Diet Procedures [~~(Amended 10/14/96)~~]
- 11.4 Alternative Diet [~~(Added 10/14/96)~~]
- 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
- 13.7 Involuntary Psychotropic Medication Policy
- 13.8 Substance Abuse Treatment Program (Added 11/14/96)
- 13.9 Dental Services
- 14.2 Personal Hygiene Items
- 14.3 Marriage of Inmates
- 14.4 Legal Services Program
- 14.6 Inmate Grievance Procedures [~~(Amended 10/14/96)~~]
- 15.1 Hair and Grooming Standards
- 15.2 Offenses and Penalties
- 15.3 Meritorious Good Time
- 15-05-01 Restoration of Forfeited Good Time
- 15.6 Adjustment Procedures and Programs
- 15.7 Inmate Account Restriction
- 15.8 Unauthorized Substance Abuse Testing
- 16.1 Inmate Visits
- 16.2 Inmate Correspondence [~~(Amended 10/14/96)~~]
- 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 Classification of the Inmate
- 18.5 Custody and Security Guidelines
- 18.7 Transfers
- 18.9 Out-of-state Transfers
- 18-10-01 Parole 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
- 18.17 Interstate Agreement on Transfers
- 18.18 International Transfer of Inmates
- 19.1 Government Services Projects
- 19.2 Community Services Projects
- 19.3 Inmate Wage Program
- 20.1 Educational Programs and Educational Good Time
- 21.1 Staffing Pattern for the First Incarceration Shock Treatment Program (FIST)
- 21.2 Phase I: Program Selection Assessment Criteria
- 21.3 Program Schedule - Phase II and Phase III
- 21.4 Platoon Size and Composition
- 21.5 Physical Conditions Program Component
- 21.6 Group and Individual Counseling
- 21.7 Drug and Alcohol Abuse Counseling and Treatment

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21.8 Work Programs Component
 21.9 Education and Life Management
 21.10 Auxiliary Services
 21.11 Offenses and Penalties
 22.1 Privilege Trips
 23.1 Religion
 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
 25.7 Expedient Release
 25.8 Extended Furloughs
 25.10 Administrative Release of Inmates
 25.11 Victim Notification
 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
 27-11-01 Intensive Supervision
 27-12-01 Supervision: Case Classification
 27-12-02 Risk 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.

DOUG SAPP, Commissioner

APPROVED BY AGENCY: November 12, 1996

FILED WITH LRC: November 13, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for December 23, 1996 at 9 a.m., in the 5th Floor Conference Room of the State Office Building. Those interested in attending this hearing shall notify in writing: Tamela Biggs, Staff Attorney Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, (502) 564-2024, facsimile (502) 564-6494.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Tamela Biggs

(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.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this

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1996-1998 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: N/A

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE CABINET Department of Corrections Division of Adult Institutions (Amendment)

501 KAR 6:040. Kentucky State Penitentiary.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Kentucky State Penitentiary.

Section 1. (1)(a) Kentucky State Penitentiary policies and procedures, November 13 ~~(October 14)~~, 1996 are incorporated by reference.

(b) They may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky, 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) Kentucky State Penitentiary policies and procedures include:

KSP 01-02-01	Public Information and Media Communications
KSP 020000-15	Legal Assistance
KSP 02-01-01	Inmate Commissary Program
KSP 02-08-01	Inventory Records and Control <u>(Amended 11/13/96)</u>
KSP 02-11-01	Requisition and Purchase of Supplies and Equip-

	ment
KSP 02-12-01	Inmate Personal Funds
KSP 05-02-01	Management Information System
KSP 06-01-01	Inmate Records <u>(Amended 11/13/96)</u>
KSP 09-08-01	Searches and Preservation of Evidence <u>(Amended 11/13/96)</u>
KSP 10-02-01	Special Management Units: Assignment, Classification Review and Release
KSP 10-02-05	Special Security Unit <u>(Amended 11/13/96)</u>
KSP 10-04-01	Special Needs Inmates
KSP 100000-03	Disposition of Unauthorized Property (Deleted 11/13/96)
KSP 100000-08	Behavioral Counseling Record (Deleted 11/13/96)
KSP 100000-21	Photocopies for Nonindigent Inmates with Special Court Deadlines
KSP 11-03-01	Therapeutic Diets
KSP 11-06-01	Food Service Inspections
KSP 120000-11	Religious Services - Staffing
KSP 120000-18	Religious Services - Religious Programming
KSP 120000-20	Marriage of Inmates
KSP 13-01-01	Pharmacy Procedures
KSP 13-02-01	Hospital Services
KSP 13-02-02	Sick Call
KSP 13-02-03	Health Evaluations
KSP 13-02-04	Emergency Medical Procedure
KSP 13-02-05	Consultations
KSP 13-02-08	Medical Records
KSP 13-02-09	Psychiatric and Psychological Services
KSP 13-02-11	Psychological and Psychiatric Treatment Upon Release
KSP 13-02-12	Dental Services for Special Management Units
KSP 13-02-13	Optometric Services
KSP 14-03-01	Marriage of Inmates
KSP 14-04-01	Legal Services <u>[(Added 10/14/96) (Renumbered from 100000-20)]</u>
KSP 14-06-01	Inmate Grievance Procedure
KSP 15-01-01	Inmate Grooming and Dress Code
KSP 15-03-01	Award of Meritorious Good Time
KSP 15-06-01	Due Process/Disciplinary Procedures
KSP 16-01-01	Visiting Program
KSP 16-02-01	Inmate Correspondence
KSP 16-03-02	Inmate Telephone Access
KSP 16-04-01	Inmate Packages
KSP 17-01-01	Inmate Personal Property <u>(Amended 11/13/96)</u>
<u>KSP 17-01-02</u>	<u>Disposition of Unauthorized Property (Amended 11/13/96) (Renumbered from 100000-03)</u>
KSP 17-01-03	Procedures for Providing Clothing, Linens and Other Personal Items
KSP 17-01-04	Property Room, Clothing Storage and Property Inventory Control <u>(Amended 11/13/96)</u>
KSP 18-01-01	General Guidelines and Functions of the Classification Committee <u>(Amended 11/13/96) [Decu-ment]</u>
KSP 18-01-02	Functions of the Classification Committee
KSP 18-06-01	Classification Document <u>(Amended 11/13/96)</u>
KSP 18-10-01	Parole Progress Report
KSP 18-11-01	Transfers to Kentucky Correctional Psychiatric Center (KCPC)
KSP 18-15-01	Protective Custody Unit <u>(Amended 11/13/96)</u>
KSP 19-04-01	Inmate Work Programs: Safety Inspections of Inmate Work Locations <u>(Amended 11/13/96)</u>
KSP 19-04-02	Unit Classification Committee: Inmate Work Assignments
KSP 19-05-01	Correctional Industries <u>(Amended 11/13/96)</u>
KSP 20-04-01	Educational Programs
KSP 22-04-01	Arts and Crafts Program

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KSP 25-04-01 Inmate Furloughs
KSP 25-08-01 Extended Furloughs
KSP 25-10-01 Discharge of Inmates by Shock Probation
[(Amended 10/14/96) (Renumbered from 15-10-04)]

DOUG SAPP, Commissioner

APPROVED BY AGENCY: November 8, 1996

FILED WITH LRC: November 13, 1996 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 23, 1996, at 9 a.m. in the State Office Building Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 1996, five (5) 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 this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to be heard at the public hearing, you may submit comments on the proposed administrative regulation. Send written notification to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, (502) 564-2204, FAX: (502) 564-6494.

REGULATORY IMPACT ANALYSIS

Contact person: Tamela Biggs

(1) Type and number of entities affected: 305 employees of the correctional institutions, 812 inmates, and all visitors to state correctional institutions.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1996-1998 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of

the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: N/A

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

LABOR CABINET Department of Workers' Claims (Amendment)

803 KAR 25:091. Workers' compensation hospital fee schedule.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS [Chapter 13A,] 342.020, 342.035, 342.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035 requires the Commissioner of the Department of Workers' Claims to promulgate administrative regulations to adopt a schedule of fees for the purpose of ensuring that all fees, charges and reimbursements under KRS 342.020 are fair, current, and reasonable and limited to charges that are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. The increased security of payment afforded by the Workers' Compensation Act may be considered in determining what fees are reasonable. KRS 342.020 requires the employer to pay for hospital treatment, including nursing, medical, and surgical supplies and appliances. The function of this administrative regulation is to regulate hospital fees for services and supplies provided to workers' compensation patients pursuant to KRS 342.020.

Section 1. Definitions. (1) "Hospital" means any facility, surgical center, or psychiatric, rehabilitative or other treatment or specialty center which is licensed pursuant to Kentucky Revised Statutes Chapter 216B.

(2) "Hospital-based practitioner" means any provider of medical services who is an employee of the hospital and who is paid by the hospital.

(3) "Independent practitioner" means any physician or other practitioner who performs services that are covered by the Workers' Compensation Medical Fee Schedule for Physicians on a contract basis and who is not a regular employee of the hospital.

(4) "Unbundling" means the practice of submitting separate bills for services to any payor pursuant to this administrative regulation which are billed to payers other than pursuant to this administrative regulation on a global basis.

(5) "Global basis" means the practice of submitting a bill for two (2) or more services as one (1) item only.

(6) "New hospital" means a hospital which has not completed its first fiscal year.

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Section 2. Applicability. This administrative regulation shall apply to all workers' compensation patient hospital fees for all hospitals as defined in Section 1(1) of this administrative regulation, for all compensable services and supplies provided on or after the effective date of this administrative regulation.

Section 3. Calculation of Hospital's Base and Adjusted Cost-to-charge Ratio; Reimbursement. (1) A hospital's base cost-to-charge ratio shall be based on the latest HCFA-2552 which has been supplied to the Cabinet for Health Services [~~Human Resources~~], Department of Medicaid Services, pursuant to 907 KAR 1:376 and 907 KAR 1:013 on file as of October 31 [~~November 30~~] of each calendar year. The base cost-to-charge ratio is determined by dividing the net expenses for allocation as reflected on Worksheet A, Column 7, Line 95, plus the costs of hospital-based physicians and nonphysician anesthetists reflected on lines 12, 13, and 35 of Worksheet A-8, by the total patient revenues as reflected on Worksheet G-2 of the HCFA-2552.

(2) The base cost-to-charge ratio shall be further modified to allow for a return to equity by the addition of twelve (12) percentile.

(3) A hospital's adjusted cost-to-charge ratio shall not exceed eighty-five (85) percentile, including the twelve (12) percentile addition, except for hospitals that service seventy (70) percentile or more patients covered and reimbursed by Medicaid or Medicare as reflected in the records of the Cabinet for Health Services [~~Human Resources~~], Department of Medicaid Services. The adjusted cost-to-charge ratio for hospitals that service seventy (70) percentile or more patients covered and reimbursed by Medicaid or Medicare shall not exceed ninety-seven (97) percentile.

(4) The reimbursement to a hospital for services or supplies furnished to an employee which are compensable under KRS 342.020 shall be calculated by multiplying the hospital's total allowable charges by its adjusted cost-to-charge ratio.

Section 4. Appeal of Assigned Ratio. (1) Each hospital subject to the provisions of this administrative regulation shall be notified of its proposed base cost-to-charge ratio by the Commissioner of the Department of Workers' Claims by U.S. mail within thirty (30) days of the date the base cost-to-charge ratio is assigned by the Commissioner of the Department of Workers' Claims.

(2) A hospital may request a review of its assigned ratio by filing a written appeal with the Commissioner of the Department of Workers' Claims no later than thirty (30) calendar days after the ratio has been assigned and hospital notified of its proposed cost-to-charge ratio.

Section 5. Revision of Hospital Cost-to-charge Ratio. (1) The Commissioner of the Department of Workers' Claims shall calculate cost-to-charge ratios and notify each hospital of its adjusted cost-to-charge ratio on or before February 1 of each calendar year. A new hospital shall be assigned a cost-to-charge ratio of eight (80) percentile until it has been in operation for one (1) full fiscal year. A "hospital", as defined in this administrative regulation, that does not file Worksheets A and G-2 of HCFA 2552 shall also be assigned a cost-to-charge ratio of eighty (80) percentile.

(2) Any assigned cost-to-charge ratio shall remain in full force and effect until a new cost-to-charge ratio is assigned by the Commissioner of the Department of Workers' Claims pursuant to this administrative regulation.

Section 6. Calculation for Hospitals Located Outside the Commonwealth of Kentucky. (1) A hospital located outside the boundaries of the Commonwealth of Kentucky shall be deemed to have agreed to be subject to the provisions of this administrative regulation if it accepts a patient for treatment who is covered under the Kentucky Workers' Compensation Act.

(2) The base cost-to-charge ratio for an out-of-state hospital shall

be calculated in the same manner as for in-state hospitals, using Worksheets A and G-2 of the HCFA 2552.

Section 7. Reports to be Filed by Hospitals. All bills submitted a hospital pursuant to this administrative regulation shall be submitted on a uniform billing form as prescribed by the Cabinet for Health Services [~~Kentucky Health Policy Board~~] pursuant to KRS Chapter 216.

Section 8. Billing and Audit Procedures. (1) Any hospital providing only the technical component of a procedure shall bill and be paid for the technical component only.

(2) Any independent practitioner providing only the professional component shall bill for and be paid the professional component only. An independent practitioner billing for the professional component shall submit the bill to the insurer on the appropriate billing form prescribed by the Cabinet for Health Services [~~Kentucky Health Policy Board~~] pursuant to KRS Chapter 216.

Section 9. Miscellaneous. (1) A new hospital shall be required to file a letter with the commissioner setting forth the start and end of its fiscal year within ninety (90) days of the date it commences operation.

(2) An independent practitioner who does not receive direct compensation from the contracting hospital shall use the forms prescribed by the Cabinet for Health Services [~~Kentucky Health Policy Board~~] pursuant to KRS Chapter 216 when billing for professional services and shall be compensated pursuant to the Kentucky Medical Fee Schedule for Physicians adopted pursuant to 803 KAR 25:089. An independent practitioner who is directly compensated for services by the contracting hospital shall not bill for the service, but shall be compensated pursuant to the practitioner's agreement with the hospital. The hospital may bill for the professional component of the service under the Workers' Compensation Medical Fee Schedule for Physicians in these circumstances.

(3) Any hospital-based practitioners performing services which are regulated pursuant to 803 KAR 25:089 [~~(Kentucky medical Fee Schedule for Physicians)~~] in a hospital as defined in Section 1 of this administrative regulation shall not bill for services rendered pursuant to 803 KAR 25:089, but shall receive their payment or salary directly from the hospital employing them.

(4) Kentucky law requires the employer or employer's insurer [~~for insured~~] to provide all medical care necessary to cure and relieve the effects of the employee's injury. Accordingly, under no circumstances should the employee be billed for medical treatment under KRS 342.020. This shall not prohibit the hospital from billing the employee for items or services not provided for under the Kentucky Workers' Compensation Act.

(5) The practice of "unbundling," as defined in Section 1(3) of this administrative regulation, is hereby prohibited.

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: November 13, 1996

FILED WITH LRC: November 13, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing will be held at the Department of Workers' Claims, 1270 Louisville Road, Kentucky 40601, 10 a.m., on December 27, 1996. Individuals interested in attending this hearing shall notify this agency in writing by December 18, 1996, 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 and prior arrangements for a transcript are made five days prior to the hearing. 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: Marcy D. Ches, Department of Workers' Claims, 1270 Louisville Road, Perimeter Park West, Building C, Frankfort, Kentucky 40601, (502) 564-5550.

REGULATORY IMPACT ANALYSIS

Contact Person: Marcy D. Ches

(1) Type and number of entities affected: Hospitals treating workers' compensation patients and the insurers or employers making payments to them. This is an amendment to the existing workers' compensation hospital fee schedule administrative regulation which took effect on February 9, 1995.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No public comments were made regarding the cost or savings relating to the cost of living and employment in the geographical area in which the regulation will be implemented.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. Medical fees in workers' compensation cases involving hospital care are reduced from the fees effective prior to the February 1995 version of the administrative regulation.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None anticipated.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Some additional costs from printing copies of the amended regulation for distribution to the public. These costs are expected to be less than \$1,000.

2. Continuing costs or savings: Minimal after the first year.

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: None anticipated.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Kentucky Workers' Compensation Funding Commission pursuant to KRS 342.122.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will be implemented throughout the state of Kentucky, and will affect the reimbursement for some out-of-state hospitals that render care to Kentucky workers' compensation patients.

(b) Kentucky: See (a) above.

(7) Assessment of alternative methods; Reasons why alternatives were rejected: KRS 342.035 requires the Commissioner of the Department of Workers Claims to promulgate administrative regulations to adopt a schedule of fees for the purpose of ensuring that all fees, charges and reimbursements under KRS 342.020 are fair, current, and reasonable and limited to charges that are fair current, and reasonable for similar treatment of injured workers in the same community for like services, where treatment is paid for by general health insurers. This method of calculating hospital charges for workers' compensation cases was deemed to be the most reasonable and effective.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky; No

effect.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No effect.

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

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

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

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes. Hospitals considered to be "new", i.e. which have not been in operation for one full year and have not therefore filed work sheets A and G-2 of the HCFA 2552 with the Cabinet for Health Services, cannot possibly have their cost-to-charge ratios calculated according to the same formula as all other hospitals. The method whereby cost-to-charge ratios are assigned to "new" hospitals is set forth in Section 5 of the administrative regulation. All other hospital, both in and out of state, have cost-to-charge ratios calculated according to the same formula, as prescribed by the regulation, and based upon data supplied by each hospital to the Cabinet for Health Services pursuant to the HCFA 2552.

PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction Division of Plumbing (Amendment)

815 KAR 20:090. Soil, waste and vent systems.

RELATES TO: KRS [Chapter] 318.010, 318.015, 318.130, 318.150, 318.200

STATUTORY AUTHORITY: KRS 318.130

NECESSITY, FUNCTION, AND CONFORMITY: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation identifies and publishes the manufacturer's specification number of the material accepted in the installation and design of soil, waste and vent systems in all types of plumbing systems. This amendment is necessary to provide for the addition of future plumbing fixtures without the cost of breaking up concrete, and to adjust the code requirements to reflect the reduction in water usage. (See Sections 6(2) and 7 of this administrative regulation.)

Section 1. Grades and Supports of Horizontal Piping. (1) Horizontal piping shall run in practical alignment and at a uniform grade of not less than one-eighth (1/8) inch per foot, and shall be supported or anchored in accordance with the manufacturer's recommendations but shall not exceed ten (10) feet in length.

(2) Stacks shall be supported at their bases and all pipes shall be rigidly secured.

(3) No-hub pipe and fittings shall be supported at each joint of pipe and fittings.

(4) Polyvinyl chloride and acrylonitrilebutadiene-styrene schedule forty (40) horizontal piping shall be supported at intervals not to exceed four (4) feet and at the base of all vertical stacks and at all trap branches as close to the trap as possible.

(5) Polyethylene pipe and fittings must be continuously supported with a V channel.

(6) Stacks shall be rigidly supported at their bases and at the floor level.

Section 2. Change in Direction. Changes in direction shall be made by the appropriate use of forty-five (45) degree wyes, half-wyes (1/2), quarter (1/4), sixth (1/6), eighth (1/8) or sixteenth (1/16) bends,

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except that a single sanitary tee may be used in a vertical stack, or a sanitary tee may be turned on its back or side at an angle of not more than forty-five (45) degrees. Double sanitary tees may be used on vertical soil, waste and vent lines.

Section 3. Prohibited Fittings. Double hub bends and double hub tees or inverted hubs shall not be used on sewers, soil or waste line. The drilling and tapping of house sewers or house drains, soil, waste or vent pipes, and the use of saddle hubs and bands shall be prohibited. Pipes shall be installed without hubs or restrictions that reduce the area or capacity of the pipe.

Section 4. Dead Ends. In the installation of a drainage system, dead ends shall not be used without special permission from the department.

Section 5. Protection of Material. Pipes passing under or through walls shall be protected from breakage. Pipes passing through or under cinder, concrete, or other corrosive material shall be protected against external corrosion.

Section 6. Materials. (1) Main or branch soil, waste and vent pipes and fittings within or underneath a building shall be hub and spigot extra heavy or service weight cast iron, no-hub service weight cast iron, aluminum, galvanized steel, galvanized wrought iron, lead, brass, Types K, L, M, DWV copper, standard high frequency welded tubing produced and labeled as ASTM B-586-73, Types R-K, R-L, R-DWV brass tubing, DWV brass tubing produced and labeled as ASTM B-587-73, seamless stainless steel tubing, Grade G or H produced and labeled as ASTM A-312, polyvinyl chloride schedule 40 or 80 produced and labeled as ASTM D-2665-76, D-1784-75 and F-891, coextruded composite PVC pipe produced and labeled ASTM F-1488, acrylonitrile-butadiene-styrene schedule 40 or 80 produced and labeled as ASTM D-2661-90, D-1788-73 or F-628, silicon iron or borosilicate.

(2) All mains or branch soil waste and vent pipe and fittings underground shall either be hub and spigot extra heavy or service weight cast iron, No-hub service weight cast iron, aluminum, Type K or L copper pipe, Type R-K, R-L brass tubing, lead, silicon iron or borosilicate pipe and fittings or plastics DWV identified in this section. Underground waste pipe installed beneath a concrete slab shall not be less than two (2) inches in diameter.

Section 7. Size of Soil and Waste Pipe per Fixture Unit on One Stack. The following table, based on the rate of discharge from a lavatory as a unit, shall be employed to determine fixture equivalents:

Pipe Size (In Inches)	Maximum Developed Length	Fixture Units
1 1/4	25 ft.	1
1 1/2	60 ft.	2
2	80 ft.	6
2 1/2	100 ft.	12
3	225 ft.	36
4		172
5		342
6		576
8		1600
10		2900
12		4600

Water closets shall be on a minimum of a three (3) inch waste with a maximum of three (3) water closets or soil discharging fixtures per three (3) inch line.

Section 8. Soil, and Vent Stacks. Building in which plumbing fixtures are installed shall have a soil or waste and vent stack, or stacks extending full size through the roof. Soil or waste and vent stacks shall be as direct as possible and free from sharp bends turns. The required size of the soil or waste and vent stack shall be determined from the total fixture units connected to the stack in accordance with Section 7 of this administrative regulation except that no more than three (3) water closets shall discharge into a three (3) inch stack.

Section 9. Future Openings. An existing opening or an opening installed in a plumbing system for future use shall be complete with its soil, waste and vent piping and shall comply with all other sections of this administrative regulation.

Section 10. House Drain. (1) The size of the house drain shall be determined by the total number of fixture units connecting to the house drain. The total area of vents through the roof shall be equal to that of the house drain with a minimum of one (1) three (3) inch stack.

(2) If a three (3) inch house drain enters a building, it shall be attached to a three (3) inch stack. One (1) floor drain shall be added to the house drain with a three (3) inch trap if it conforms with the requirements of Section 24 of this administrative regulation, without counting toward the fixture units of the system.

Section 11. Soil and Waste Stacks, Fixture Connections. Soil and waste stacks and branches shall have correctly faced inlets for fixture connections. Each fixture shall be independently connected to the soil or waste system. Fixture connections to water closets, floor outlet pedestal sinks, pedestal urinals, or other similar plumbing fixtures shall be either cast iron, lead, brass, copper, or plastic closet bends. Three (3) inch closet bends shall have a four (4) inch by three (3) inch flange.

Section 12. Changing Soil and Vent Pipes in an Existing Building. In an existing building where the soil, waste and vent piping is not extended undiminished through the roof or where there is sheet metal soil or waste piping and the fixtures are to be changed or replaced, the piping shall be replaced with appropriate sizes and materials as prescribed for new work.

Section 13. Prohibited Connections. Fixture connections shall not be made to a lead bend or a branch of a water closet or a similar fixture. Vent pipes above the highest installed fixture on a branch or main shall not be used as a soil or waste pipe.

Section 14. Soil, Waste and Vent Pipe Protected. Soil, waste, or vent pipe shall not be installed or permitted outside a building unless adequate provision shall be made to protect it from frost. The piping shall be wrapped with one (1) layer of heavy hair felt and at least two (2) layers of two (2) ply tar paper, properly bound with copper wire, or the vent shall be increased to full size, the size of the increaser required as if it were passing through the roof.

Section 15. Roof Extensions. Roof extensions of soil and waste stacks shall run full size at least one (1) foot above the roof. If the roof is used for purposes other than weather protection, the extensions shall not be less than five (5) feet above the roof. Stacks of less than three (3) inches in diameter shall be increased to a minimum of three (3) inches in diameter before passing through a roof. If a change in diameter is made, the fitting shall be placed at least one (1) foot below the roof.

Section 16. Terminals. If a roof terminus of a stack or vent within ten (10) feet of the top, bottom, face or side edge of a door, window, scuttle, or air shaft, and not screened from the opening by

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a projecting roof or building wall, it shall extend at least two (2) feet above the top edge of the window or opening.

Section 17. Terminals Adjoining High Buildings. Soil, waste or vent pipe extension of a new or existing building shall not run or shall not be placed on an outside wall, but shall be installed inside the building unless the piping is protected from freezing. If the new building is built higher than the existing building, the owner of the new building shall not locate windows within ten (10) feet of an existing vent stack on the lower building.

Section 18. Traps, Protected; Vents. Fixture traps shall be protected against siphonage and backpressure. Air circulation shall be assured by means of an individual vent. Crown vents shall not be permitted.

Section 19. Distance of Trap from Vent. (1) The distance between the vent and the fixture trap shall be measured along the center line of the waste or soil pipe from the vertical inlet of the trap to the vent opening. The fixture trap vent, except for water closets and similar fixtures, shall not be below the dip of the trap, and all ninety (90) degree turns in the waste line of the main waste, soil, or vent pipes shall be washed. Fixture traps shall have a vent located with a developed length not greater than that set forth in the table below:

Size of Fixture Drain (In Inches)	Distance Trap to Vent
1 1/4	2 ft. 6 in.
1 1/2	3 ft. 6 in.
2	5 ft.
3	6 ft.
4	10 ft.

(2) A fixture branch on a water closet shall not be more than three (3) feet.

Section 20. Main Vents to Connect at Base. When a main vent or vent stack is used, it shall connect full size at the base of the main soil or waste pipe at or below the lowest fixture branch and shall extend undiminished in size through the roof or shall be reconnected with the main soil or vent stack at least six (6) inches above the rim of the highest fixture. This section shall not apply to one (1) and two (2) story installations. If it becomes necessary to increase a vertical vent stack, it becomes a main vent and shall comply with other sections of this administrative regulation.

Section 21. Vents; Required Sizes. (1) The required size of a vent or vent stacks shall be determined by the total number of fixture units it serves and the developed length of the vent, interpolating, when necessary, between permissible length of vent given in the following table:

MAXIMUM PERMISSIBLE LENGTHS OF VENTS

Pipe Size (In Inches)	Maximum Length (In Feet)	Fixture Units
1 1/4	30	2
1 1/2	150	10
2	200	24
2 1/2	250	36
3	300	72
4	400	240
5	800	720

(2) Except for residential installations, if a fixture opening is

installed more than twenty-five (25) feet of developed length from the point where it is connected to the main soil or waste systems, or, if more than ten (10) feet of vertical piping is used, the vent shall be continued full size through the roof or returned full size to the main vent.

Section 22. Branch and Individual Vents. A branch or individual vent shall not be less than one and one-fourth (1 1/4) inches in diameter and shall not exceed the maximum length permitted for a main vent.

Section 23. Vent Pipes Grades and Connections. Vent and branch vent pipes shall be free from drops or sags and be so graded and connected as to drip back to the soil or waste pipe by gravity. Where vent pipes connect to a horizontal soil or waste pipe, the vent branch shall be taken off above the center line of the pipe, and the vent pipe must rise vertically at an angle of forty-five (45) degrees to the vertical, to a point six (6) inches above the fixture it is venting before offsetting horizontally or connecting to the branch, main, waste, soil or vent.

Section 24. Vents not Required; Backwater Traps, Subsoil Catch Basin and Basement Floor Drains. Vents shall not be required on a backwater trap, subsoil catch basin trap or a basement floor drain if the basement floor drain branches into the house drain so that measuring along the flow line from the center of the stack, the floor drain shall not be closer than five (5) feet of the stack, nor farther than twenty (20) feet. A basement floor drain shall not require an individual vent if it branches into the house drain so that measuring along the flow line from the center of the house drain the basement floor drain shall not be farther than ten (10) feet from the house drain.

Section 25. When Common Vent Permissible. Where two (2) water closets, two (2) lavatories or two (2) fixtures of identical purpose are located on opposite sides of a wall or partition, or directly adjacent to each other within the prescribed distance as set forth in Section 19 of this administrative regulation measured along the center line of the flow of water, the fixtures may have a common soil or waste pipe and a common vent. It shall be vented in accordance with the other sections of this administrative regulation.

Section 26. Floor Drain Individual Vent not Required. Manufacturers' floor drains shall not require individual vents when placed on a waste line for floor drains only within the prescribed distance of ten (10) feet from the main waste line, or stack, if the base of the stack is washed and the stack or stacks are undiminished through the roof, or connected to a main vent stack. Open receptacles may be connected to floor drain lines without being vented if the waste line discharges into a four (4) inch master trap before entering the sanitary sewer system.

Section 27. Floor drains and service sinks installed on the operational floor level of sewage and water treatment plant facilities which discharge into an open sump and are not connected directly to the sanitary sewage system shall not be required to be trapped or vented.

Section 28. House Drain Material. House drains shall be either extra heavy cast iron, service weight cast iron, brass Type (K) or (L) copper, lead, ABS or PVC plastic, or duriron.

Section 29. Indirect Waste Connections. Waste pipe from a refrigerator drain or other receptacle where food is stored or waste water from a water cooled compressor, shall connect indirectly with the house drain, soil or waste pipe. The drain shall be vented to the outside air. The waste pipes shall discharge into an open sink or another approved open receptacle that is properly supplied with water

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in accordance with other sections of this administrative regulation. The connections shall not be located in an inaccessible or unventilated area.

Section 30. Bar and Soda Fountain Wastes. Bar and soda fountain wastes, sinks and receptacles shall have a one and one-half (1 1/2) inch P trap and branches. The main shall not be less than two (2) inches. The fresh air pipe shall not be less than one and one-half (1 1/2) inches. The main waste line shall discharge into a properly vented and trapped open receptacle inside or outside a building. Food storage compartment drains shall be indirectly connected through a trapped receptacle whose upper edge is raised at least one (1) inch above the finished floor line. Floor receptors or floor sinks installed specifically for the indirect wastes from tilting braising pans, tilting kettles and other similar equipment may be installed level with or slightly recessed in the floor if the receptor is equipped with a proper strainer and receives no other indirect waste.

Section 31. Open Receptacles. Soil or waste piping receiving the discharge from an open receptacle shall be at least six (6) inches above the surface of the ground when it discharges into a septic system.

Section 32. Refrigerator Wastes. Refrigerator waste pipes shall not be less than one and one-half (1 1/2) inches for one (1) to three (3) openings, and at least two (2) inches for four (4) to eight (8) openings. Each opening shall be trapped. The waste piping shall be equipped with sufficient cleanouts to allow for thorough cleaning.

Section 33. Overflow Pipes. Waste from a water supply tank or exhaust from a water lift shall not be directly connected to a house drain, soil, or waste pipe. The waste pipe shall discharge upon a roof or into a trapped open receptacle.

Section 34. Acid and Chemical Wastes. Corrosive liquids shall not be permitted to discharge into the soil, waste or sewer system unless otherwise permitted by this administrative regulation. The waste shall be thoroughly diluted or neutralized by passing through a properly constructed and acceptable dilution or neutralizing pit before entering the house sewer.

Section 35. Laboratory Waste Piping. (1) Laboratory waste piping shall be sized in accordance with the other sections of this administrative regulation and all fixtures shall be individually trapped.

(2) A continuous waste and vent pipe system may be used, if the waste discharges into a vented dilution pit outside the building with a vent equal to the size of the drain. The vent may be eliminated when a pit has a ventilated cover.

(3) If under certain conditions a dilution pit is not required and is not used, the fixtures shall be individually vented.

(4) If construction conditions permit, the base of the stack of the continuous waste and vent system shall be washed by the last fixture opening, and continue full size independently through the roof.

(5) Fixture branches exceeding more than the distance specified in the table in Section 19 of this administrative regulation from the main shall be revented and the distance shall be measured from the center of the main to the center of the vertical riser.

(6) Fixture connections shall rise vertically to a height so that the trap shall not be lower than twelve (12) inches from the bottom of the sink and two (2) or more sinks may be connected into a common waste before entering the riser of the continuous waste and vent system, if the fixtures are not more than five (5) feet from the center of one (1) fixture to the center of the other.

Section 36. Acid Waste Piping. Underground piping for acid wastes shall be extra heavy salt glazed vitrified pipe, silicon iron, lead, polyethylene pipe and fittings produced and labeled as ASTM

D-1204-62T, polypropylene pipe produced and labeled as ASTM D-4101-85, or other materials approved by the department. Piping for acid wastes and vents above ground shall be of silicon iron, lead, borosilicate, or polyethylene pipe produced and labeled as ASTM D-1204-62T, polypropylene pipe produced and labeled as ASTM D-4101-85, or filament-wound reinforced thermosetting resin pipe produced and labeled as ASTM D-2996 (green or poly thread).

Section 37. Special Vents. Flat or wet vents serving a plumbing fixture shall be constructed only with special permission from the department when a plumbing system is being remodeled or when additions are added to an original system; except that flat vents in new construction may also be allowed in commercial buildings when the design of the building prohibits the type of venting required by other sections of this administrative regulation.

Section 38. Basement Floor Drains and Sanitary Sewage Systems. Basement floor drains shall be connected to the house sewer and properly trapped and vented as set forth in this administrative regulation. EXEMPTION: Basement floor drains, in single family dwellings, shall not be connected to the house sewer and shall be exempt from this section if, prior to the installation, the local health department or sanitary sewage system board, plant, district, or treatment plant owner notifies the Division of Plumbing, in writing, that connection is detrimental to the functioning of the sanitary sewer system or subsurface system. If the drain is not to be connected to the house sewer, the installation is also exempt from the waste, trap and venting provisions of the State Plumbing Code.

This is to certify that the State Plumbing Code Committee has reviewed and approved this administrative regulation, prior to its filing by the Department of Housing, Buildings and Construction with the Legislative Research Commission, as required by KRS 318.130.

Frank Phieffer, Chairman

CHARLES A. COTTON, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: October 31, 1996

FILED WITH LRC: November 15, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, December 23, 1996 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 December 16, 1996, (five work days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. 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 by the above date to the contact person.

Contact person: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.

REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden

(1) Type and number of entities affected: All licensed master and

journeyman plumbers; users of the State Plumbing Code.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: No effect on cost of living or employment with the implementation of this amendment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No change in the cost of doing business with the implementation of this amendment.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: Not applicable.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: None beyond requirements of updating the State Plumbing Code with approved amendments to regulations.

(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: Preparing amendment to Code and distributing the information to users.

(4) Assessment of anticipated effect on state and local revenues: State or local revenues will not be affected by implementing this amendment.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Division of Plumbing's revenue will not be affected by the enforcement of this amendment.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: The administrative regulation is implemented statewide; however, its implementation should have no economic impact to the area or statewide.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The State Plumbing Code Committee and the Board of Housing review all proposed amendments and accept on basis within limits defined. This amendment has been approved by the Plumbing Code Committee and the Board of Housing.

(8) Assessment of expected benefits: Not applicable with this amendment.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky:

(b) State whether a detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Tiering was used in that each product presented for approval is considered separately for compliance with generally recognized safety and workable standards.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Amendment)

815 KAR 20:130. House sewers and storm water piping; methods of installation.

RELATES TO: KRS [Chapter] 318.010, 318.015, 318.130, 318.150, 310.200

STATUTORY AUTHORITY: KRS [43A-420-] 318.130

NECESSITY, FUNCTION, AND CONFORMITY: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation identifies the materials that may be used in the construction of house sewers, storm water piping as well as the methods of installation. This administrative regulation is being amended to address the flooding of new buildings by combination sanitary/storm sewers and eliminate flood damage by overflowing combined sewers (Section 12 of this administrative regulation), and to reduce inconvenience during pump service and repair during electrical outages (Section 18 of this administrative regulation).

Section 1. Independent System. The drainage and plumbing system of new building and of new work installed in an existing building shall be separate and independent of other buildings except as outlined in this administrative regulation. A building shall have an independent connection with either a public or private sewer or sewer system.

Section 2. Exception. If a building stands in the rear of other buildings or on an interior lot and a sewer connection cannot be made available to the rear building through an adjoining alley, court, yard or driveway, the sewer from the front building may be extended to the rear building and it shall be considered as one (1) sewer. This exception shall not apply to corner lots if a sewer connection is available from the street or alley or to a new or existing building which abuts a street or alley.

Section 3. Connection with Private Sewage Disposal System. If a sewer is not available, the house drain from a building shall connect with an approved private sewage disposal system.

Section 4. Excavations. Excavations made for the installation of a house sewer shall be open trench work, and the trenches shall be kept open until the piping has been inspected, tested and approved.

Section 5. Depth of Sewer at the Property Line. (1) If possible, the sewer at the property line shall be at a sufficient depth to properly serve a plumbing connection installed in the basement of a building.

(2) House sewers shall be laid on a grade of not less than one-eighth (1/8) inch nor more than one-fourth (1/4) inch per foot. Sewers shall have at least an eighteen (18) inch cover. Sewer piping installed under property subject to vehicular traffic (e.g., driveways, parking lots and similar locations shall have at least a three (3) foot cover unless constructed of cast iron piping. If less than a three (3) foot cover is available, sewer piping shall be encased in a minimum of six (6) inches of concrete on all sides and the top. Sewers shall be backfilled by hand and tamped six (6) inches above the piping, or filled with six (6) inches grillage above the piping. All joints in cast iron and vitrified clay pipe shall be made in conformance with the State Plumbing Code.

Section 6. New House Sewer Connections. House sewers installed where a private sewerage system has been discarded may connect to the house drain, if the existing plumbing system meets the State Plumbing Code.

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Section 7. Materials for House Sewers. House sewers or combined sewers, beginning two (2) feet outside the foundation wall of a building, shall be made of either extra heavy cast iron pipe, service weight cast iron, aluminum, vitrified clay, concrete, coextruded composite PVC pipe produced and labeled ASTM F-1488, PVC or ABS plastic pipe schedules 40 and 80 and cellular core PVC produced and labeled as ASTM F-891, cellular core ABS produced and labeled as ASTM 628, truss pipe and extra heavy SDR 35 pipe and Type PS-46, Poly(Vinyl Chloride) (PVC) in sizes four (4) inches through fifteen (15) inches produced and labeled as ASTM F 789-82 or PVC ribbed pipe produced and labeled as ASTM 795, polyethylene pipe produced and labeled as ASTM F-714.

Section 8. Material for Storm Sewers Inside Buildings. Material for storm sewers inside of buildings to a point two (2) feet outside a building in sizes eight (8) inches and smaller shall be cast iron pipe, aluminum or Schedule 40 ABS or PVC DWV pipe or PVC pipe produced and labeled as ASTM F-1488. Storm sewers in sizes of ten (10) inches and larger shall be either cast iron, aluminum, Schedule 40 ABS or PVC DWV pipe, SDR 35, vitrified clay or concrete conforming to appropriate commercial specifications with approved joints, or polyethylene pipe produced and labeled as ASTM F-714.

Section 9. Change of Direction. Change in direction of a sewer shall be made with long curves, one-eighth (1/8) bends or Y's.

Section 10. Size of House Sewers and Horizontal Branches. The minimum size of a house sewer shall not be less than four (4) inches nor less than that of the house drain. House sewers receiving branches shall be sized in the same manner as house drains (see 815 KAR 20:090).

Section 11. Size of Storm Systems. The required sizes of storm sewers shall be determined on the basis of the total drained areas in horizontal projection in accordance with the following table. A storm sewer shall not be laid parallel to or within two (2) feet of a bearing wall. The storm sewer shall be laid at a sufficient depth to protect it from freezing.

Diameter of pipe - inches	Maximum drained roof area square feet*	
	Slope 1/8 in. fall to 1 ft.	Slope 1/4 in. fall to 1 ft.
3		1,160
4	1,880	2,650
5	3,340	4,720
6	5,350	7,550
8	11,500	6,300
10	20,700	29,200
12	33,300	47,000
15	59,500	84,000

*The calculations in this table are based on a rate of rainfall of four (4) inches per hour.

Section 12. Combined Storm and Sanitary Sewer System. If a combined sewer system is used, the required size of the house drain or house sewer shall be determined by multiplying the total number of fixture units carried by the drain or sewer by the conversion factor corresponding to the drained area and the total fixture units, adding the product to the drained area and applying the sum of the preceding table for storm water sewers. A combined house drain or house sewer shall not be less than four (4) inches in diameter, and a combined house drain or house sewer shall not be smaller in size than that required for the same number of fixture units or for the same roof area in separate systems.

CONVERSION FACTORS FOR COMBINED STORM AND SANITARY SYSTEM

Number of fixture units on sanitary system

Drained roof area in square feet	Up to 6	7 to 18	19 to 36	37 to 60	61 to 96	97 to 144	145 to 216	217 to 324
Up to 120	180	105	60	45	30	22	18	15
121 to 240	160	98	57	43	29	21	17.6	14.7
241 to 480	120	75	50	39	27	20	16.9	14.3
481 to 720	75	62	42	35	24	18	15.4	13.2
721 to 1,080	54	42	33	29	20	15	13.6	12.1
1,081 to 1,620	30	18	16	15	12	11.5	11.1	10.4
1,621 to 2,430	15	12	11	10.5	9.1	8.8	8.6	8.3
2,431 to 3,645	7.5	7.2	7.0	6.9	6.6	6.5	6.4	6.3
3,646 to 5,460	2.0	2.4	3.0	3.3	4.1	4.2	4.3	4.4
5,461 to 8,190	0	2.0	2.1	2.2	2.3	2.4	2.5	2.6
8,191 to 12,285	0	0	2.0	2.1	2.1	2.2	2.3	2.3
12,286 to 18,420	0	0	0	2.1	2.1	2.1	2.2	2.2
18,421 to 27,630	0	0	0	0	2.0	2.1	2.2	2.2
27,631 to 40,945	0	0	0	0	0	2.0	2.1	2.2
40,946 to 61,520	0	0	0	0	0	0	2.0	2.1
Over 61,520	0	0	0	0	0	0	0	2.0

Number of fixture units on sanitary system

Drained roof area in square feet	325 to 486	487 to 732	733 to 1,098	1,099 to 1,645	1,646 to 2,467	2,468 to 3,703	3,704 to 5,556	Over 5,556
Up to 120	12	10.2	9.2	8.4	8.2	8.0	7.9	7.8
121 to 240	11.8	9.9	9.1	8.3	8.1	8.0	7.9	7.8
241 to 480	11.5	9.7	8.8	8.2	8.0	7.9	7.8	7.7
481 to 720	10.8	9.2	8.6	8.1	7.9	7.9	7.8	7.7
721 - 1,080	10.1	8.7	8.3	8.0	7.8	7.8	7.7	7.6
1,081 - 1,620	9.8	8.4	8.1	7.9	7.7	7.7	7.6	7.5
1,621 - 2,430	8.0	7.9	7.8	7.7	7.6	7.5	7.4	7.4
2,431 - 3,645	6.2	6.3	6.4	6.4	6.8	7.0	7.1	7.2
3,646 - 5,460	4.5	4.7	5.0	5.1	6.1	6.4	6.9	6.9
5,461 - 8,190	2.8	3.2	3.7	4.6	5.0	5.6	6.2	6.4
8,191 - 12,285	2.4	2.5	2.6	2.7	3.5	4.5	5.2	5.6
12,286 - 18,420	2.3	2.3	2.4	2.4	2.6	3.2	4.2	4.7
18,421 - 27,630	2.2	2.3	2.3	2.3	2.4	2.5	2.8	3.1
27,631 - 40,945	2.2	2.2	2.2	2.2	2.2	2.2	2.3	2.4
40,946 - 61,520	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
Over 61,520	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0

(2) For buildings constructed after the effective date of this administrative regulation, all plumbing fixtures and openings connecting to a combination sanitary/storm sewer system shall either be installed above the elevation of the cover of the nearest manhole serving the main or they shall discharge through a sewage ejector to the combined sewer system at an elevation high enough to prevent flooding the building.

Section 13. House Sewer in Undisturbed or Filled Ground. House sewers laid in undisturbed ground shall be laid on at least four (4) inches of pea gravel, sand or other approved grillage. House sewers laid in filled ground shall be embedded to the lower quadrant with at least a four (4) inch concrete pad below the invert, or other support that shall be approved by the department. Supports in filled ground shall be on ten (10) feet centers to a solid footing, either undisturbed earth or rock. House sewers constructed of flexible thermoplasti sewer piping shall be installed with at least six (6) inches of gravel on the bottom, top and sides of the piping.

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Section 14. Storm Sewers in Undisturbed or Filled Ground. Storm sewers laid in undisturbed ground shall not require grillage. Storm sewers laid in filled ground shall be embedded to the lower quadrant with at least a four (4) inch concrete pad below the invert or other support that shall be approved by the department. Supports in filled ground shall be on ten (10) feet centers to a solid footing, either undisturbed earth or rock.

Section 15. Drainage Below Sewer Level (Public). In public buildings in which the whole or part of the building drain and plumbing system lies below the level of the main sewer, sewage and waste shall be lifted by an approved artificial means and discharged into the house sewer.

Section 16. Drainage Below Sewer Level (Residential). In homes where the house sewer level is above the basement floor, waste water shall be lifted by means of an approved sump pump. The sump pit shall be constructed of either poured or precast concrete, approved fiberglass or polyethylene material with a tight fitting cover. The sump pit shall be provided with a two (2) inch vent which may also act as a waste and vent for a laundry tray. The pump discharge piping shall discharge into a two (2) inch waste pipe extended inside the building to a height at least twelve (12) inches above the outside grade. The sump pit shall be provided with a tight-fitting concrete cover. On the outside of the building this waste piping shall connect into a four (4) inch by two (2) inch sanitary tee which shall connect into a four (4) inch P trap and then into the sanitary sewer. The four (4) inch by two (2) inch sanitary tee shall be extended at least two (2) inches above the finished grade and shall be provided with a ventilated cap.

Section 17. Sumps and Receiving Tanks. All subsoil drains shall discharge into an air tight sump or receiving tank located to receive the sewage by gravity. The sewage shall be lifted and discharged into the house sewer by a pump, ejector or any equally efficient method. The sumps shall automatically discharge.

Section 18. Ejectors, Vented. Sewage ejectors serving residential installations shall be vented with a two (2) inch vent. Ejectors serving commercial or industrial installations shall be vented with a three (3) inch vent except when a three (3) inch vent stack is serving a fixture that empties into the ejector pit and is located within twenty-five (25) feet of the pit, the ejector may be revented with a two (2) inch vent back to the three (3) inch vent stack. In no instance shall the ejector vent be smaller than that recommended by the manufacturer of the pump. Any portion of the building drainage system that is above the cover of the manhole serving the main that can flow by gravity to a sewer shall be installed for gravity flow to the combined/sanitary sewer, except for systems designed otherwise by a licensed professional engineer.

Section 19. Ejector Power: Motors, Compressors, Etc. Motors, air compressors and air tanks shall be located where they are open for inspection and repair at all times. The air tanks shall be proportioned to furnish sufficient air at suitable pressure to the ejector to completely empty the sump or storage tank with the compressor not operating. The end pressure in the tank shall not be less than two (2) pounds for each foot of height through which sewage is raised.

Section 20. Ejectors for Subsoil Drainage. If subsoil catch basins are installed below the sewer level, an approved automatic ejectors shall be used. The ejector or any device raising subsoil water shall discharge into a properly trapped fixture or into a storm-water drain.

Section 21. Drainage of Yards, Areas and Roofs. (1) Roofs, paved areas, courts, and courtyards shall be drained into one (1) of the following:

- (a) A storm water system;
- (b) A combined sewerage system;
- (c) A surface drainage area unless prohibited by the local health department or sewer district.

(2) These areas shall not be drained into sewers intended for sewage only.

(3) Traps.

(a) If drains are connected to a combined sewerage system, they shall be trapped.

(b) If roof leaders, conductors, or gutter openings are located more than ten (10) feet from a window, scuttle, or air shaft, a trap shall not be required.

(c) Traps shall be set below the frost line or on the inside of the building.

(d) If the drains are not connected to a combined sewer, a trap shall not be required.

Section 22. Size of Rain Water Leader. An inside leader shall not be less size than the following:

Area of Roof (In Square Feet)	Leader, Diameter (Inches)
Up to 90	1 1/2
91 to 270	2
271 to 810	3
811 to 1,800	3 1/2
1,801 to 3,600	4
3,601 to 5,500	5
5,501 to 9,600	6

Section 23. Inside Conductors or Roof Leaders. If conductors and roof leaders are placed within the walls of a building, or in an interior court or ventilating pipe shaft, they shall be constructed of cast iron pipe, galvanized wrought iron, galvanized steel, copper, aluminum, schedule 40 ABS/PVC DMV pipe or reinforced thermosetting resin pipe produced and labeled as ASTM D-2996 (red and silver thread). The vertical distance of PVC or ABS conductors shall not exceed forty-five (45) feet from the base to the penetration through the roof. Provisions shall be made for the expansion and contraction of plastic pipe.

Section 24. Outside Conductors. If outside sheet metal conductors or downspouts are connected to a house drain, they shall be connected by means of a cast iron pipe extending vertically at least one (1) foot above the grade line. Where the downspouts run along public driveways without sidewalks, they shall be placed in niches in the walls, protected by wheel guards, or enter the building through the wall at a forty-five (45) degree slope at least twelve (12) inches above the grade.

Section 25. Defective Conductor Pipes. If an existing sheet metal conductor pipe within the walls of a building becomes defective, the conductor shall be replaced by one which conforms to this administrative regulation.

Section 26. Vent Connections with Conductors Prohibited. A conductor pipe shall not be used as a soil, waste or vent pipe. A soil, waste, or vent pipe shall not be used as a conductor.

Section 27. Overflow Pipes. Overflow pipes from cisterns, supply tanks, expansion tanks, or drip pans shall connect only indirectly with any house sewer, house drain, soil or waste pipe.

Section 28. Subsoil Drains, Below Sewer Level. Subsoil drains shall discharge into a sump or receiving tank and shall be automatically lifted and discharged into the storm drainage system or upon the

ground outside the building it serves.

Section 29. Approvals of New Sewer Connections to Existing Buildings. In areas where the local health department or sanitary sewage system board, plant, district or treatment plant owner prohibits the discharge of basement floor drains or other apparatus into the sanitary sewer system, existing basement floor drains and sump pump apparatuses shall comply with the new construction requirements of this code and be inspected prior to the approval of connections for a new sewer line.

This is to certify that the State Plumbing Code Committee has reviewed and approved this administrative regulation, prior to its filing by the Department of Housing, Buildings and Construction with the Legislative Research Commission, as required by KRS 318.130.

Frank Phieffer, Chairman

CHARLES A. COTTON, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: October 31, 1996

FILED WITH LRC: November 15, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, December 23, 1996 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 December 16, 1996, (five work days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. 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 by the above date to the contact person.

Contact person: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.

REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden

(1) Type and number of entities affected: Licensed master and journeyman plumbers; users of the State Plumbing Code.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: No effect on cost of living or employment with the implementation of this amendment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No change in the cost of doing business with the implementation of this amendment.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No reporting or paperwork required by users of the State Plumbing Code.

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No cost or savings on the administrative agency involved in this amendment.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Preparing amendment to Code and distributing the information to users.

(4) Assessment of anticipated effect on state and local revenues: No effect on state or local revenue with the implementation of this amendment.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Division of Plumbing's revenue will not be affected by the enforcement of this amendment.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: The administrative regulation is implemented statewide; however, its implementation should have no economic impact to the area or statewide.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: State Plumbing Code Committee and the Board of Housing review proposed amendments and accept on basis within limits defined.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Not applicable with this amendment.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Not applicable with this amendment.

(c) If detrimental effect would result, explain detrimental effect:

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

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

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Tiering was used in that each product presented for approval is considered separately for compliance with generally recognized safety and workable standards.

CABINET FOR HEALTH SERVICES

Department for Public Health

Division of Epidemiology

(Amendment)

902 KAR 2:060. Immunization schedules.

RELATES TO: KRS 158.035, 211.180, 214.032, 214.034, 214.036

STATUTORY AUTHORITY: KRS 194.050, 211.090, 214.034, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and all its programs under the Cabinet for Health Services. KRS 211.180 mandates the Cabinet for Health Services [~~Human Resources~~] to implement a statewide program for the detection, prevention and control of communicable diseases. KRS 214.034 requires the establishment of immunization schedules by the Cabinet for Health Services. This [~~Human Resources. The~~ administrative regulation specifies the recommended schedule for mandatory immunization and is in keeping with the latest scientific information on the topic.

Section 1. ~~[2-]~~ Definitions. ~~[As used in this administrative regulation:]~~

(1) "Dose" means a measured quantity, as recommended by the Advisory Council on Immunization Practices of the U.S. Public Health Services or the American Academy of Pediatrics, of an immunizing agent, administered at a frequency not less than the shortest interval between doses recommended by the Advisory Council of the U.S. Public Health Service or the American Academy of Pediatrics. Partial, split, half or fractionated quantities are not acceptable for certification.

(2) "DPT" means diphtheria and tetanus toxoids combined with pertussis vaccine;

(3) "DTaP" means diphtheria and tetanus toxoids combined with acellular pertussis vaccine;

(4) "HepB" means hepatitis B vaccine;

(5) "Hib" means haemophilus influenzae type b conjugate vaccine;

(6) "IPV" means inactivated polio virus vaccine;

(7) "MMR" means measles, mumps, and rubella vaccines combined;

(8) ~~[(2)]~~ "OPV" means trivalent oral poliovirus vaccine (Sabin);

(9) ~~[(3)]~~ "Td" means combined tetanus and diphtheria toxoids (adult type).

Section 2. ~~[4-]~~ Schedule for ~~[Required]~~ Immunizations. The ~~[recommended]~~ schedule established by the Cabinet for Health Services for active immunization of normal infants and children against diphtheria, tetanus, pertussis, poliomyelitis, ~~[measles, mumps, and]~~ rubella, hepatitis B, and haemophilus influenza type b shall be as follows:

(1) Zero to two (2) months of age: dose one (1), HepB;

(2) One (1) to four (4) months of age: dose two (2), HepB;

(3) Two (2) months of age: dose one (1), DTP or DTaP, Hib, OPV or IPV;

(4) ~~[(2)]~~ Four (4) months of age: dose two (2), DTP or DTaP, Hib, OPV or IPV;

(5) ~~[(3)]~~ Six (6) months of age: dose three (3), DTP or DTaP;

(6) Six (6) to eighteen (18) months of age: dose three (3), HepB, OPV or IPV;

(7) Twelve (12) to ~~[(4)]~~ fifteen (15) months of age: dose one (1) MMR; dose three (3), Hib ~~[measles, rubella, DTP, OPV];~~

(8) Twelve (12) to eighteen (18) months of age: dose four (4), DTP or DTaP;

(9) Between four (4) years of age and entry to school, preschool programs, day care centers, certified family child care homes, or other licensed facilities which care for children: dose five (5), DTP or DTaP; dose four (4), OPV or IPV; dose two (2), MMR;

~~[(6)] Before school entry: DTP, OPV;~~

(10) ~~[(6)]~~ Before sixth grade entry: dose two (2), MMR, unless two (2) doses of MMR were previously received ~~[measles, rubella];~~

(11) Eleven (11) ~~[(7)] Fourteen (14)]~~ to sixteen (16) years of age: Td.

Section 3. ~~[2-]~~ Immunizations Required for Attendance at Day Care Centers, Certified Family Child Care Homes, Other Licensed Facilities which Care for Children, Preschool Programs, School, and when Ten (10) Years have Elapsed from the Last Dose of DTP, DTaP, or Td. ~~[School Entry:]~~ The following schedule ~~[list below]~~ gives the number of doses required, according to age: ~~[for school entry:]~~

(1) Less than three (3) months of age: none;

(2) At least three (3) months of age and less than five (5) months of age:

(a) One (1) dose of DTP or DTaP;

(b) One (1) dose of OPV or IPV;

(c) One (1) dose of Hib;

(3) At least five (5) months of age and less than seven (7) months of age:

(a) Two (2) doses of DTP or DTaP or combinations thereof;

(b) Two (2) doses of OPV or IPV or combinations thereof;

(c) Two (2) doses of Hib;

(4) At least seven (7) months of age and less than twelve (12) months of age:

(a) Three (3) doses of DTP or DTaP or combinations thereof;

(b) Two (2) doses of OPV or IPV or combinations thereof;

(c) Three (3) doses of Hib;

(5) At least twelve (12) months of age and less than sixteen (16) months of age:

(a) Three (3) doses of DTP or DTaP or combinations thereof;

(b) Two (2) doses of OPV or IPV or combinations thereof;

(c) Three (3) doses of Hib or two (2) doses at twelve (12) months of age or older of Hib or one (1) dose at fifteen (15) months or older of Hib;

(6) At least sixteen (16) months of age and less than nineteen (19) months of age:

(a) Four (4) doses of DTP or DTaP or combinations thereof;

(b) Two (2) doses of OPV or IPV or combinations thereof;

(c) Four (4) doses of Hib, including one (1) dose at age twelve (12) months or older, or two (2) doses at age twelve (12) months or older of Hib or one (1) dose at age fifteen (15) months of Hib;

(d) One (1) dose of MMR at age twelve (12) months or older;

(7) At least nineteen (19) months of age and less than forty-nine (49) months of age:

(a) Four (4) doses of DTP or DTaP or combinations thereof;

(b) Three (3) doses of OPV or IPV or combinations thereof;

(c) Four (4) doses of Hib, including one (1) dose at age twelve (12) months or older, or two (2) doses at age twelve (12) months or older of Hib or one (1) dose at age fifteen (15) months of Hib;

(d) One (1) dose of MMR at age twelve (12) months or older;

(8) At least forty-nine (49) months of age and less than five (5) years of age:

(a) Four (4) doses of DTP or DTaP or combinations thereof, including one (1) at four (4) years of age;

(b) Three (3) doses of OPV or IPV or combinations thereof, including one (1) at four (4) years of age;

(c) Four (4) doses of Hib, including one (1) dose at age twelve (12) months or older, or two (2) doses at age twelve (12) months or older of Hib or one (1) dose at age fifteen (15) months of Hib;

(d) One (1) dose of MMR at twelve (12) months of age or older, and a second dose of measles vaccine, preferably administered as MMR;

(e) Effective August 1, 1998, for children born October 1, 1992, or later, three (3) doses of HepB;

(9) At least five (5) years of age and less than seven (7) years of age:

(a) Four (4) doses of DTP or DTaP or combinations thereof including one (1) at four (4) years of age or older;

(b) Three (3) doses of OPV or IPV or combinations thereof, including one (1) at four (4) years of age or older;

(c) One (1) dose of MMR at twelve (12) months of age or older, and a second dose of measles vaccine, preferably administered as MMR;

(d) Effective August 1, 1998, for children born October 1, 1992, or later, three (3) doses of HepB;

(10) At least seven (7) years of age:

(a) Four (4) doses of DTP or DTaP or combinations thereof, including one (1) at age four (4) years of age or older, or a dose of Td at seven (7) years of age or older, preceded by two (2) doses of DTP or DTaP or Td or combinations thereof;

(b) Three (3) doses of OPV or IPV or combinations thereof, including one (1) at four (4) years of age or older;

(c) One (1) dose of MMR at twelve (12) months of age or older, and, for children born October 1, 1990 or later, a second dose of measles vaccine, preferably administered as MMR.

(d) Effective August 1, 1998, for children born October 1, 1992 or later, three (3) doses of HepB.

(11) At sixth grade entry: one (1) dose of MMR at twelve (12) months of age or older and a second dose of measles vaccine, preferably administered as MMR;

(12) When ten (10) years have elapsed from the last dose of DTP, DTaP, or Td: one (1) dose of Td.

[DTP: a minimum of four (4) doses; if the fourth dose is received before the fourth birthday, a fifth is required on or after the fourth birthday but before school entry.

OPV: a minimum of three (3) doses; if the third is received before the fourth birthday, a fourth is required on or after the fourth birthday but before school entry.

Measles and Rubella: one (1) dose given on or after the first birthday is required for school entry. Students entering the sixth grade require a total of two (2) doses, one (1) of which was received during or after 1980. (NOTE: Measles and rubella vaccines are normally administered in combination with mumps virus vaccine as MMR.)

Td: students for whom ten (10) or more years have elapsed since the preschool DTP booster, one (1) dose of Td vaccine.]

Section 4. In Sections 2 and 3 of this administrative regulation, if the first two (2) doses of Hib vaccine were meningococcal protein conjugate, the third dose may be omitted, and the child counted for regulatory purposes as having received three (3) doses.

Section 5. The immunization certificate which shall be on file for each child enrolled in public or private primary or secondary schools and preschool programs or cared for in a day care center, certified family child care home, or other licensed facility which cares for children, shall be approved or provided by the Cabinet for Health Services. The certificates will be available at the offices or clinics of private providers and at all local health departments. The certificate may be either hard copy or electronically produced with information in a format approved by the Immunization Program, Cabinet for Health Services.

Section 6. Variance from Immunization Schedule. (1) The individual physician or local health department shall have the authority to alter the immunization schedule when indicated for any unusual clinical circumstance in a given patient. The local health department, in consultation with the Immunization Program, Cabinet [Department] for Health Services, shall have the authority to alter the immunization schedule when indicated because of any unusual epidemiological circumstance in the community.

(2) A child who has not yet reached the required minimum interval for the only doses remaining for the completion of his immunization schedule required under KRS 214.034 may be issued a provisional immunization certificate. This certificate shall permit the child to attend schools, preschool programs, day care centers, family child care homes, or other licensed facilities that care for children for a time period sufficient to allow the elapse of the minimum interval between doses necessary for the completion of the immunization schedule. This provisional certificate shall expire at the time the next dose of vaccine is due. [A school age child who has begun but not completed the immunization schedule required by KRS 159.035 may be permitted to attend classes for a limited period of time specified by the individual physician or local health department as necessary for the completion of the immunization schedule.]

RICE C. LEACH, M.D., Commissioner

JOHN MORSE, Secretary

APPROVED BY AGENCY: November 1, 1996

FILED WITH LRC: November 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held December 23, 1996, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by December 16, 1996, of their

intent to attend. If no notification of intent to attend the hearing is received by that date the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. 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 K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Reginald Finger, M.D./Joyce Bothe

(1) Type and number of entities affected: This administrative regulation updates the schedule of immunizations against vaccine preventable diseases for all children in Kentucky and adds immunization certificate requirements for additional facilities where children are congregated.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments were received. However, this administrative regulation will have no impact on cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments were received. However, this administrative regulation will not increase the cost of doing business in Kentucky.

(c) Compliance reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The immunization certificate required by this regulation is currently available at all local health departments and is provided to other public and private providers who immunize children.

2. Second and subsequent years: See (c)1.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: Most of the increased cost will be funded by the federal immunization initiative. There will be some increased cost to the administrative body for vaccine and the electronic tracking system; however this cost has been planned and funded by the governor and the General Assembly. The savings will be seen in the decreased cost of health care for treatment of vaccine preventable diseases and their sequelae.

2. Continuing cost or savings: See (a)1.

3. Additional factors increasing or decreasing costs: See (a)1.

(b) Reporting and paperwork requirements: Minimal increase to the cabinet.

(4) Assessment of anticipated effect on state and local revenues: The change in the immunization schedule will not have an effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal immunization funds and approved General Fund dollars.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments were received. However, this administrative regulation does not impact the economic activities in the areas.

(b) Kentucky: See (6)a.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 214.034 requires the cabinet to establish immunization schedules by administrative regulation.

(8) Assessment of expected benefits:

(a) Identify affects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The prevention of vaccine preventable diseases by administration of age-appropriate immunization is the single most effective public health measure. Through this practice, children in all areas and in the state are protected from diseases which can be devastating to the child and to society.

(b) State whether a detrimental effect on environment and public health would result if not implemented: See (8)a.

(c) If detrimental effect would result, explain detrimental effect: See (8)a.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: There is no known conflict with relation to this administrative regulation.

(a) Necessity of proposed regulation if in conflict.

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

(10) Any additional information or comments: No additional comments.

(11) TIERING: Is tiering applied? No. Tiering was not applied because all entities are regulated in the same manner.

**CABINET FOR HEALTH SERVICES
Department for Medicaid Services
(Amendment)**

907 KAR 1:160. Home and community based waiver services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.180, 42 USC 1396a, b, d, n, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services ~~(Human Resources)~~ has responsibility to administer the Medicaid Program ~~(of Medical Assistance)~~. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the coverage provisions applicable to home and community based waiver services provided to eligible recipients as an alternative to nursing facility services. These services are provided pursuant to a waiver granted by the United States Department of Health and Human Services.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services and its designated agents or representatives.

(2) "HCB" means home and community based waiver.

(3) "NF" means nursing facility.

Section 2. [4-] General Coverage Provisions. The [home and community based (HCB)] services shall be provided only to [those] individuals eligible for Medicaid;

(a) Who meet patient status criteria for nursing facility care in accordance with [as set forth in] 907 KAR 1:022;

(b) Who are []. The HCB services are designed to prevent or reduce institutionalization at the nursing facility care level. HCB services shall be provided only to individuals] in community residence living situations who would be admitted to a nursing facility if HCB

services were not available;

(c) [Individuals requiring only minor home adaptations or minor home adaptations and case management shall not be considered HCB services eligible. These services are provided pursuant to a waiver granted by the United States Department of Health and Human Services. Excluded from coverage shall be those individuals for whom the cost of HCB services would reasonably be expected (on an overall basis) to exceed the cost of the appropriate level of institutional services, and inpatients of hospitals, nursing facilities and intermediate care facilities for the mentally retarded. HCB services shall be provided only to those individuals] For whom the HCB services are an appropriate alternative to institutionalization, and who meet appropriate patient status; [] and

(d) Who choose the HCB services option.

(2) Excluded from coverage shall be those individuals:

(a) Requiring only minor home adaptations or minor home adaptations and case management;

(b) Inpatients of hospitals, nursing facilities, and facilities for the mentally retarded.

(3) The state reserves the right to exclude from coverage those individuals for whom the cost of HCB services would reasonably be expected (on an overall basis) to exceed the cost of the appropriate level of institutional services; and

(4) The home and community based services agency [(provider)] shall be responsible for securing appropriate physician recommendations [and orders] relating to the need for HCB services [care], and for having a team composed of a qualified social worker with a degree in social work, sociology or a related field and a registered nurse or two (2) registered nurses to perform [performing] the required comprehensive assessment and care planning.

(5) The designated peer review organization shall make the level of care determination as the agent or representative of the cabinet.

(6) HCB services shall be prior authorized by the department. [cabinet. The assessment shall not be completed and billed for any Medicaid recipient who does not receive other waiver services.]

Section 3. [2-] Provider Participation. (1) Participating HCB providers shall meet all applicable certification and licensure requirements for providing in-home and community based services and home health services in accordance [under the Kentucky Medicaid Program, and shall be required to comply] with 907 KAR 1:030, 907 KAR 1:671, 907 KAR 1:672, and 907 KAR 1:673.

(2) Adult day health care centers shall meet all applicable licensure requirements for adult day health care services and comply with 907 KAR 1:671, 907 KAR 1:672, and 907 KAR 1:673. [the provider participation agreement providing for services in accordance with the terms and conditions specified in this administrative regulation.]

Section 4. [3-] Covered Services. The following services shall be covered HCB services:

(1) Assessment. The assessment includes the collection of data necessary to determine the appropriateness of HCB service for the client, and care [case] planning (a patient care plan to include services required, duration and frequency, [and estimated cost]). For each assessment [or reassessment], the attending physician shall certify that if HCB services were not available, he would order NF [nursing facility] services and the individual recipient could [would] be admitted in the immediate future if he so desired.

(2) Case management. This is the process of locating, coordinating and monitoring a group of services with responsibility resting with a designated person. Each recipient shall have a designated case manager.

(a) A case manager shall be a registered nurse, licensed practical nurse, or a social worker with a degree in social work, sociology or related field.

(b) Each recipient shall have at least one (1) case management

contact per month [~~thirty (30) to thirty-one (31) days~~] to assess the service delivery.

1. The contact may be by telephone or face-to-face.

2. ~~[However,]~~ A face-to-face contact with the recipient shall be made at least every other month.

3. The face-to-face contact with the adult day health care recipient may be made while the recipient is at the adult day health care center.

(3) Homemaker services. Homemaker services are services relating to general household activities, such as meal preparation and routine household care, and shall be provided by a trained homemaker ~~if (when)~~ the recipient ~~[client]~~ is functionally unable to perform these tasks and the individual regularly responsible for these activities is temporarily absent or functionally unable to manage the home and care and arrangements cannot be made with relatives or friends for the performance of the service.

(4) Personal care services. Personal care services are medically oriented services relating to the patient's physical requirements that are prescribed by a physician in accordance with the recipient's plan of treatment and provided by an individual who is qualified, supervised by a registered nurse and not a member of the recipient's ~~[client's]~~ family. Personal care services may include bathing, assistance with clothing, assisting with medications customarily self-administered, assistance with ambulation, etc.

(5) Respite care services.

(a) Respite care services include [are] homemaker, personal care aide, or nursing ~~[or home health aid]~~ level services provided on a temporary basis due to the absence or need for relief of the informal caregiver. Respite care shall be:

1. In accordance with the ~~[orders of a physician and the]~~ plan of care;

2. Provided at a level that safely meets the medical needs of the patient;

3. Provided by an individual with appropriate training and qualifications, who is not a family member; and

4. Provided only when an appropriate alternative informal caregiver is not available to provide the necessary services.

(b) Respite care may be provided by the HCB provider or the adult day health care center at the center.

(c) The total value of respite care services covered shall not exceed \$4,000 ~~[\$2,000]~~ in any calendar year, and shall not exceed \$2,000 ~~[\$1,000]~~ per six (6) month period (January 1 through June 30 or July 1 through December 31) within that calendar year.

(6) Minor home adaptations. This is the addition to or modification of the patient's home environment when the patient's condition necessitates a modification of the existing home situation, and may include such items as rails, ramps, grab bars, etc., including labor and necessary supplies. Prior approval for minor home adaptations is required. ~~[Major]~~ Home repairs shall not be covered.

(7) Adult day health care services.

(a) Adult day health care services are adult day health care services provided in an appropriately licensed facility. Basic services include at least the following: one (1) meal per day (including special diets); snacks, as appropriate; registered nurse and other supervision; regularly scheduled daily activities; routine services required to meet daily personal and health care needs; incidental supplies necessary to provide adult day health care services; and equipment essential to the provision of adult day health care services.

(b) Ancillary services shall include: physical, speech and occupational therapy ~~[evaluations as indicated for the purpose of developing a plan of treatment which may be carried out by center staff; and necessary ongoing supervision and follow-up of the maintenance program by the therapist]~~.

(c) Respite care may also be provided by the adult day health care center. The respite care limitations apply regardless of the provider.

(d) Transportation shall not be covered under the service element,

but is a separately reimbursable service pursuant to 907 KAR 1:060 and 907 KAR 1:061.

~~[(8) Respiratory therapy services. The service shall be available only for ventilator dependent recipients who are receiving home health agency services and shall be in accordance with the physician's written plan of treatment.]~~

Section 5. ~~[4.]~~ Prior Authorization for Services; Hearing Rights. The department [cabinet] shall prior authorize HCB services to ensure that patient status is met, and that HCB services are adequate for the needs of the client. The state reserves the right to exclude from coverage those individuals for whom the cost of HCB services would reasonably be expected (on an overall basis) to exceed the cost of the appropriate level of institutional services. [and that HCB services would not reasonably be expected to exceed the cost of institutional care (on an overall basis).] A client found unsuitable for failure to meet the specified criteria shall be denied HCB services. An individual, if eligible for HCB services, shall be given the option of HCB services or traditional nursing facility services. Any denial of service may be appealed pursuant to 907 KAR 1:560. [904 KAR 2:055.]

Section 6. ~~[5.]~~ Contracting and Subcontracting. All HCB services, whether provided directly by the participating provider or through contract or subcontract, shall be in accordance with 907 KAR 1:671, 907 KAR 1:672, and 907 KAR 1:673. [the terms and conditions specified herein, and the contractor or subcontractor shall meet applicable requirements of law and administrative regulations governing the performance of the service.]

Section 6. Auditing and Reporting. All participating providers, contractors and subcontractors shall be required to maintain fiscal and service records and to provide the reports determined necessary by the cabinet for the effective functioning and administration of the program. ~~The providers, contractors and subcontractors shall be required to make available upon request all service and financial records (including records of ownership, home office costs, etc.) to the Cabinet for Human Resources, the United States Department of Health and Human Services, and the Comptroller General, and their representatives or designees, for auditing and monitoring purposes.]~~

Section 7. Material Incorporated by Reference. (1) The "Home and Community Based Waiver Manual", dated March 1997 shall be incorporated by reference in this administrative regulation.

(2) The manual shall be on file in the Office of the Commissioner, Department for Medicaid Services, Cabinet for Health Services, 275 East Main Street, Third Floor East, Frankfort, Kentucky, 40621.

(3) The manual shall be available for review during the normal business week, Monday through Friday, 8 a.m. through 4:30 p.m. (eastern standard time), excluding state holidays.

(4) Each participating provider shall be provided one (1) copy of the manual and appropriate manual updates following their incorporation by reference. Additional copies may be obtained from the Department for Medicaid Services upon payment of an appropriate fee which approximates cost in accordance with KRS 61.872.

JOHN H. MORSE, Commissioner and Secretary

APPROVED BY AGENCY: November 12, 1996

FILED WITH LRC: November 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 23, 1996 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 1996 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the

proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: 502-564-7900, Fax Number: 502-564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick or Karen Doyle

(1) Type and number of entities affected: 96 Home and community based waiver providers and 9,120 recipients participating in the Medicaid Program.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: As shown in companion regulation 907 KAR 1:170.

2. Continuing costs or savings: As shown in companion regulation 907 KAR 1:170.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Will expedite the efficiency of the prior authorization process and increase home and community based waiver services, such as respite care for Medicaid recipients and the caregivers.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: This administrative regulation would be in conflict with the Health Care Financing Administration approved home and community based services waiver.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in

this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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.

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.

CABINET FOR HEALTH SERVICES Department for Medicaid Services (Amendment)

907 KAR 1:170. Payments for home and community based services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, ~~(Human Resources)~~ has responsibility to administer the Medicaid Program ~~(of Medicaid Assistance in accordance with Title XIX of the Social Security Act)~~. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 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 sets forth the methods of payment for home and community based services provided as an alternative to ~~skilled~~ nursing facility ~~(and intermediate) care (facility care)~~.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designated agents or representatives.

(2) "Home and community based (HCB) services" means services not usually covered by traditional Medicaid but covered through the Home and Community Based (HCB) Waiver Program for individuals who would otherwise qualify for nursing facility (NF) care.

(3) "Home and community based (HCB) services agency" means a certified and licensed home health agency participating as a home health provider with Medicaid and also an HCB services provider.

Section 2. Coverage. (1) The ~~department~~ ~~Cabinet for Human Resources~~ shall reimburse participating providers (including coordinating agencies) of home and community based (HCB) services for

services rendered to eligible Medicaid recipients ~~(medical assistance recipients)~~ who meet patient status criteria for ~~(skilled)~~ nursing ~~(or intermediate care)~~ facility care, and who are prior authorized for the HCB service.

(2) Coverage provisions shall be ~~(are)~~ contained in 907 KAR 1:160.

Section 3. ~~(2.)~~ Payments for HCB Covered Services. Payment amounts for HCB services shall be determined in accordance with the provisions and principles contained in this administrative regulation.

(1) Providers ~~(Assessment, case management, homemaker services, personal care services, respiratory therapy)~~ shall be paid using an interim payment method with a year-end settlement to the lower of actual reasonable costs or ~~(reasonable)~~ charges utilizing Medicare principles of reimbursement, as follows:

(a) Adult day health care services;

(b) Assessment/reassessment;

(c) Case management;

(d) Homemaker services;

(e) Minor home adaptation services;

(f) Personal care services; and

(g) Respite care services.

(2) ~~(In addition, these services,)~~ Except for respite care, and minor home adaptations, HCB services ~~(case management and respiratory therapy,)~~ shall:

(a) Be subject to a prospectively set upper limit with the upper limit set at 130 percent of the weighted median of the array of services using the most recent cost report available as of May 31 with the upper limits updated each July 1; this limit shall not apply until a provider has participated in the program for two (2) full agency ~~(facility)~~ fiscal years.

(b) The interim rate shall be ~~(is)~~ derived by applying a reduction factor to current charges based on the difference between prior year allowable cost and charges. ~~If (When)~~ prior year costs and charges are not available, the interim rate shall ~~(will)~~ be set at the department's ~~(cabinet's)~~ best estimate of current costs ~~(not to exceed charges, (b) based on payments made for similar services.~~

(3) ~~(2)~~ Respite care covered services shall be:

(a) Reimbursed, except the cost of those services shall not ~~(paid on the basis of billed charges, with reimbursement for an individual (beginning with the first billed HCB service) not to) exceed:~~

1. \$4,000 ~~(\$2,000)~~ per calendar year; or

2. \$2,000 per ~~(\$1,000 in any)~~ six (6) month period within that calendar year for the period beginning January 1 through June 30 or July 1 through December 31;

(b) ~~(The billed charge should include)~~ Only the actual cost of the respite care services plus actual overhead costs incurred by the provider;

(c) Subject to ~~(There will be)~~ a year-end settlement to actual cost, or charges if lower, not to exceed the upper limits; and

(d) Payable to the adult day health care center subject to the above limitations per recipient.

(4) ~~(3)~~ Minor home adaptations shall be:

(a) Paid on the basis of actual billed charges;

(b) Paid at ~~(with reimbursement for an individual for a calendar year limited to)~~ a maximum of \$500 per calendar year for all modifications;

(c) ~~(The service shall have been)~~ Appropriately prior authorized and have been provided;

(d) Paid for ~~(The billed charge shall include)~~ only the actual cost of the minor home adaptations plus actual overhead costs incurred by the provider; and

(e) Subject to ~~(There will be)~~ a year-end settlement to actual costs, or charges if lower, not to exceed the upper limit.

(5) ~~(4)~~ Payments for adult day health care services

(a) Payments shall be made directly to licensed participation adult day health care centers on the basis of an interim rate with a year-

end cost settlement to the lower of actual reasonable allowable costs or charges for adult day health care services.

(b) The maximum daily reimbursement rate for an adult day health basic daily service unit shall be set at thirty-seven and one-half (37 1/2) ~~(The basic rate shall not exceed eighty (80))~~ percent of the average nursing facility ~~(maximum intermediate care)~~ reimbursement rate for routine services as set on July 1 of each year.

(c) Payments shall ~~(Reimbursement for ancillary services shall)~~ not exceed eighty (80) percent of the approved maximum reimbursement rate for therapy services under the home health program ~~(element).~~

Section 3. Audits shall be performed as necessary to ensure that final payments are in accordance with the payment provisions contained in this administrative regulation.

Section 4. Home health agencies providing HCB ~~(home and community based)~~ services to eligible Kentucky Medicaid clients ~~(medical assistance recipients)~~ shall also comply with the provisions contained in 907 KAR 1:030 and 907 KAR 1:031.

Section 5. Audits shall be performed as necessary to ensure that final payments are made in accordance with the payment provisions contained in this administrative regulation.

Section 6. Material Incorporated by Reference. (1) The "Home and Community Based Manual", dated March 1997 shall be incorporated by reference in this administrative regulation.

(2) The manual shall be on file in the Office of the Commissioner, Department for Medicaid Services, Cabinet for Health Services, 275 East Main Street, Third Floor East, Frankfort, Kentucky, 40621.

(3) The manual shall be available for review during the normal business week, Monday through Friday, 8 a.m. through 4:30 p.m. (eastern standard time), excluding state holidays.

(4) Each participating provider shall be provided one (1) copy of the manual and appropriate manual updates following their incorporation by reference. Additional copies may be obtained from the Department for Medicaid Services upon payment of an appropriate fee which approximates cost in accordance with KRS 61.872.

JOHN H. MORSE, Commissioner and Secretary

APPROVED BY AGENCY: November 12, 1996

FILED WITH LRC: November 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 23, 1996 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 1996 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: 502-564-7900, Fax Number: 502-564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick or Karen Doyle

(1) Type and number of entities affected: All recipients and providers of home and community based waiver services participating

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in the Medicaid Program.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$200,000 (cost)

2. Continuing costs or savings: \$200,000 (cost)

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Encourage family to keep ill family member in the home as opposed to a nursing facility by supplying the caretakers with additional respite.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: If not implemented would encourage the placement of recipient into a nursing facility.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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.

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.

PROPOSED NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, NOVEMBER 15, 1996

**KENTUCKY HIGHER EDUCATION
ASSISTANCE AUTHORITY
(New Administrative Regulation)**

11 KAR 13:010. National Guard Tuition Award Program.

RELATES TO: KRS 164.516 through 164.5169

STATUTORY AUTHORITY: KRS 164.746(6), 164.748(4), 164.5161(2)

NECESSITY, FUNCTION, AND CONFORMITY: The 1996 regular session of the General Assembly enacted the Kentucky National Guard Tuition Award Program, and directed that the Kentucky Higher Educational Assistance Authority adopt administrative regulations pertaining to the financial management of the program, including the disbursement of funds. This administrative regulation is necessary to prescribe procedures for the disbursement of funds. The administrative regulation provides that the authority shall transfer funds to educational institutions upon receipt of an enrollment verification roster provided by the Department of Military Affairs identifying eligible participants and the amounts to be awarded.

Section 1. Definitions. The terms listed below shall have the following meanings:

(1) "Academic year" means a period of time, usually eight (8) or nine (9) months, during which a full-time student would normally be expected to complete the equivalent of two (2) semesters, two (2) trimesters, three (3) quarters, 900 clock hours, twenty-four (24) semester hours, or thirty-six (36) quarter hours of instruction.

(2) The definition of "authority" is governed by KRS 164.740(1).

(3) The definition of "educational institution" is governed by KRS 164.516(1).

(4) "Overaward" means receipt of student financial assistance from all sources in excess of a student's need.

(5) "Participating educational institution" means an educational institution that has a contract in force with the authority on such terms as the authority may deem necessary or appropriate to the administration of the Kentucky National Guard Tuition Award Program and other programs administered by the authority.

(6) "Semester" means a period of about eighteen (18) weeks, which usually makes up one-half (1/2) of a school year or one-half (1/2) of a participating educational institution's academic year.

(7) "Summer term" means an academic period consisting of one (1) or more sessions of instruction between a spring and a fall semester.

Section 2. Prior to the beginning of each semester and summer session, the Department of Military Affairs shall prepare enrollment verification rosters which identify the participating educational institution, the names and Social Security numbers of eligible students planning to attend each participating educational institution, the award amount for each eligible student to be disbursed by the authority, the period of enrollment for each eligible student, the academic year, and the total number of eligible students and total amount of awards. The enrollment verification rosters shall be transmitted by the Department of Military Affairs to the financial aid director at each participating educational institution.

Section 3. Following enrollment of students listed on the enrollment verification roster, the financial aid director or his designee at each participating educational institution that receives an enrollment verification roster shall verify each student's enrollment status and return the properly certified enrollment verification roster to the Department of Military Affairs.

Section 4. The Department of Military Affairs shall transmit the certified enrollment verification rosters to the authority with a request to transfer funds to the participating educational institutions. Upon receipt, the authority shall begin the necessary procedures to disburse funds to the appropriate educational institution.

Section 5. (1) A student who withdraws, changes enrollment status, or for any other reason is charged less than the amount certified on the enrollment verification roster may be due a refund of monies paid to the institution or owe a repayment to one (1) or more student financial assistance programs. If the student received student financial assistance, a portion of any refund shall be due to the student financial assistance programs. The amount of any refund or repayment shall be determined in accordance with the participating educational institution's refund and repayment policies relative to student financial assistance funds, except that if a Kentucky National Guard Tuition Award Program recipient officially or unofficially withdraws from or is expelled by an institution before the first day of classes of the award period, the award shall be cancelled as an overaward and a full refund or repayment of the Kentucky National Guard Tuition Award shall be required, notwithstanding any institutional policy to the contrary. These policies shall be consistently administered and published or otherwise made publicly available by the participating educational institution. The authority shall be notified in writing of any changes in such policies.

(2) In cases of unofficial withdrawal, the institution shall use the last recorded date of class attendance by the student as the end of the student's enrollment. If the institution is unable to document the student's last date of attendance, any Kentucky National Guard Tuition Award Program disbursement for that award period shall be subject to full refund and repayment. If, at any time, a Kentucky National Guard Tuition Award Program recipient's enrollment is terminated with no assessment of tuition and fees by the institution, then the full Kentucky National Guard Tuition Award shall be subject to cancellation, if not yet disbursed, or refund and repayment if the award has already been disbursed.

(3) Any refunds or repayments due on funds disbursed as Kentucky National Guard Tuition Award Program funds shall be paid to the authority. The authority shall deposit the refunds and repayments to an account to be used for other awards made pursuant to the program.

(4) Refunds by institutions and notifications of student repayments due transmitted to the authority shall be accompanied by the student's name and Social Security number, the reason for the refund or repayment, date of enrollment status change, the semester and year, and the calculation used for determining each refund or repayment.

Section 6. All documentation and correspondence relating to the cancellation, disbursement, and refund of awards shall be retained by the authority for audit purposes for a period of five (5) years from the date that the award was certified. Documentation may be retained in any format used by the authority for storage of its records in the normal course of business.

MARY JO YOUNG, Chairman

APPROVED BY AGENCY: June 25, 1996

FILED WITH LRC: November 4, 1996

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, December 30, 1996 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 19, 1996, five working days prior to the hearing, of their intent to

attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: It is anticipated that up to 1,000 students will receive awards to attend 8 state universities, 14 community colleges, and 81 Kentucky technical regional centers and Kentucky area vocational/technical schools.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments have been received. This administrative regulation only sets forth the requirements pertaining to the financial management of the program, including the disbursement and refund of funds. There is no anticipated impact of this particular administrative regulation upon the cost of living or employment in the state. The program however, will reduce the direct out-of-pocket expenditure by members of the Kentucky National Guard for tuition at state supported postsecondary educational institutions to the extent of awards of funds to pay those educational expenses.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: This administrative regulation only sets forth the requirements pertaining to the financial management of the program, including the disbursement and refund of funds. There is no anticipated impact of this particular administrative regulation upon the cost of doing business in the state.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing cost (note any effects upon competition) for the:

1. First year following implementation There is no anticipated impact upon competition among any of the postsecondary institutions. Compliance with this administrative regulation and reporting requirements are intended to follow established practices for other student financial assistance programs. Therefore, there is minimal increase in paperwork requirements. On the other hand, to the extent that a single disbursement of funds is made by the authority to a particular institution for several recipients of awards under this program, the paperwork involved in billing several students is reduced for the institution.

2. Second and subsequent years: Same as first year noted above.

(3) Effects on the promulgating body: This administrative regulation only sets forth the requirements pertaining to the financial management of the program, including the disbursement and refund of funds, and sets forth requirements already applicable to other programs of student financial assistance, such as state grants. Therefore, the impact on the promulgating body is anticipated to be minimal.

(4) Direct and indirect costs or savings:

1. First year: This administrative regulation only sets forth the requirements pertaining to the financial management of the program, including the disbursement and refund of funds, and sets forth requirements already applicable to other programs of student financial

assistance, such as state grants. Therefore, the impact on the promulgating body is anticipated to be minimal. No extra staff has been employed to administer the authority's functions with respect to this program. Costs of administering the program will be borne out of agency receipts.

2. Continuing costs or savings: Same as first year above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The only additional paperwork required of the authority is the processing of payment vouchers and disbursement of funds, which is anticipated to be minimal additional activity.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Awards for the first year of the biennium will be disbursed from \$250,000 appropriated from the General Fund and \$500,000 of agency receipts. Awards for the second year of the biennium will be disbursed from \$1,000,000 appropriated from the General Fund and \$500,000 of agency receipts. Administrative expenses will be borne entirely from agency receipts.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: No public comments have been received. This administrative regulation only sets forth the requirements pertaining to the financial management of the program, including the disbursement and refund of funds. There is no anticipated economic impact of this particular administrative regulation. The program, as a whole, however, is anticipated to have a positive, but unquantified, economic impact upon the particular communities where the award recipients attend school, resulting from a flow of funds disbursed to the recipients to meet educational costs at the educational institution.

(b) Kentucky: No public comments have been received. This administrative regulation only sets forth the requirements pertaining to the financial management of the program, including the disbursement and refund of funds. There is no anticipated economic impact of this particular administrative regulation. The program, as a whole, however, is anticipated to have a positive, but unquantified, economic impact upon the state, resulting from a flow of funds disbursed to the recipients to meet educational costs at the educational institution. Enrollment at state supported postsecondary institutions may be slightly increased to the extent of an undetermined number of award recipients that would otherwise not have enrolled absent the tuition award.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods for disbursement were considered. The requirements outlined in the administrative regulation are consistent with procedures familiar to both the participating institutions and the authority for administration of other student financial assistance programs and are, therefore, anticipated to facilitate administration of this program for all concerned.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation only sets forth the requirements pertaining to the financial management of the program, including the disbursement and refund of funds. There is no anticipated impact of this particular administrative regulation upon public health and environmental welfare.

(b) State whether a detrimental effect on the environmental or public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: There is no anticipated impact of this particular administrative regulation upon public health and environmental welfare.

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

(a) Necessity of proposed regulation if in conflict: There is no known conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no known conflict.

(10) Any additional information or comments: None

(11) Tiering: Was tiering applied? No. The concept of tiering is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute and, consequently, does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by 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. The regulation provides equal treatment and opportunity for all applicants and recipients.

OFFICE OF THE GOVERNOR
Department for Local Government
Division of County and Municipal Accounting
(New Administrative Regulation)

100 KAR 7:020. Energy conservation projects.

RELATES TO: KRS 45A.343, 45A.345 to 45A.353, 58.600 to 58.615

STATUTORY AUTHORITY: KRS 58.615

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.351 provides that it shall be the policy of the Commonwealth to maximize the use of energy efficiency measures in the construction, renovation, and maintenance of buildings owned by local public agencies defined in KRS 45A.345(9). This administrative regulation is necessary to establish procedures to be used by cities, counties, urban-county governments, charter county governments, and special districts for conducting and approving guaranteed energy savings contracts and energy conservation revenue bonds.

Section 1. Approval or Report to State Local Debt Officer Required for Energy Conservation Revenue Bonds. A county, urban-county government, charter county government, city or special district shall:

(1) Receive approval of the state local debt officer pursuant to KRS 58.610(2) prior to issuance of proposed energy conservation revenue bonds in excess of \$500,000; and

(2) Report the issuance of all energy conservation revenue bonds to the state local debt officer pursuant to KRS 58.610(3).

Section 2. Local Governments to Comply with Provisions of KRS Chapter 45A Relating to Guaranteed Energy Savings. Prior to entering into a guaranteed energy savings contract, a county, urban-county government, charter county government, city or special district shall:

(1) Comply with applicable local government procurement procedures; and

(2) Adopt the provisions of KRS 45A.345, 45A.351, 45A.352, and 45A.353 relating to guaranteed energy savings contracts as required by KRS 45A.343(1).

Section 3. Energy Audits and Cost-benefit Analyses for Guaranteed Energy Savings Contracts and Energy Conservation Revenue Bonds to Meet Protocol Requirements. Determining energy savings measurements for guaranteed energy savings contracts, energy conservation revenue bonds, energy audits and cost-benefit analyses

shall comply with the:

(1) Data reporting requirements set forth in the Institutional Conservation Program, Technical Assistance Report issued by the Division of Energy, Natural Resources and Environmental Protection Cabinet incorporated by reference in Section 5 of this administrative regulation; and

(2) North America Energy Measurement and Verification Protocol, United States Department of Energy incorporated by reference in Section 5 of this administrative regulation.

Section 4. Technical Assistance from Division of Energy. Technical assistance regarding the accuracy of energy savings measurements and calculations in proposed guaranteed energy savings contracts and energy conservation revenue bonds may be requested from The Division of Energy, Natural Resources and Environmental Protection Cabinet, 663 Teton Trail, Frankfort, Kentucky 40601, (502) 564-7192, (800) 282-0868, Fax (502) 564-7484.

Section 5. Incorporation by Reference. (1) The following documents are incorporated by reference:

(a) The Institutional Conservation Program Technical Assistance Report, Natural Resources and Environmental Protection Cabinet, Division of Energy, 663 Teton Trail, Frankfort, Kentucky 40601 (November 1996 edition);

(b) The North American Energy Measurement and Verification Protocol, United States Department of Energy (March 1996 edition);

(2) Copies of the documents in subsection (1)(a) and (b) of this section may be inspected, copied or obtained at the Offices of the Department for Local Government, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601 between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

BOB ARNOLD, Commissioner

APPROVED BY AGENCY: November 15, 1996

FILED WITH LRC: November 15, 1996 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 23, 1996 at 10 a.m. in Conference Room A, Department for Local Government, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 4:30 p.m., December 16, 1996, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Thomas M. Troth, Counsel, Department for Local Government, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601, (502) 573-2382 ext. 243, FAX (502) 573-2512.

REGULATORY IMPACT ANALYSIS

Contact person: Tom Troth

(1) Type and number of entities affected: Counties, urban county governments, charter counties, cities and special districts.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There should be no cost of living and employment costs associated with these programs.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Inapplicable at this time because the notice of intent hearing was cancelled because there was no public comment received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Local governments may have to develop requests for proposals relating to energy conservation measures. Local governments will need to adopt the relevant provisions of KRS Chapter 45A if they wish to enter into guaranteed energy savings contracts.

2. Second and subsequent years: Little if any additional reporting or paperwork requirements after initial start up.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The promulgating may need to consult other agencies of government, like the division of energy and others to find expertise in guaranteed energy saving contracts.

2. Continuing costs or savings: It is impossible to estimate at this time.

3. Additional factors increasing or decreasing costs: No other known factors known at this time.

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: If guaranteed energy savings contracts work as they have been portrayed the savings in energy costs by implementing energy savings procedures will pay for any additional costs.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Third party financing, or revenue bonds authorized by KRS 58.610.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments received because the notice of intent hearing was cancelled.

(b) Kentucky: No public comments received because the notice of intent hearing was cancelled.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The statute mandates the method chosen for guaranteed energy savings contracts and issuance of energy conservation revenue bonds.

(8) Assessment of expected benefits: It is anticipated that there will be significant energy savings by the implementation of the guaranteed energy savings procedures.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Local government building will become much more energy efficient.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There will be no detrimental effect.

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, KRS 58.615 provides that this administrative regulation be consistent with the Kentucky Department of Education administrative regulation to the extent practical.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was not applied to this administrative regulation because it was intended that these administrative regulations apply equally to all local governments. Failure to

apply this administrative regulation equally and fairly might lead to accusations of equal protection and due process violations.

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. Cities, counties, urban-county governments, charter county governments and special districts.

3. State the aspect or service of local government to which this administrative regulation relates. Providing energy conservation savings for public buildings.

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 has been filed to implement the provisions of KRS 58.600 to 58.615 and 45A.345 to 45A.353 which provides a method for local governments to finance energy conservation measures for the government buildings. It is anticipated that these measures will save significant moneys in reduced energy costs. It is hoped that the savings in energy costs will be used to fund the energy conservation measures, with no net change in debt position of the local government. We cannot know for sure what these saving or costs will be until the program has been in place for a period of time.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is not federal mandate for this program.

2. State compliance standards. KRS 58.600 to 58.615, 45A.345 to 45A.353.

3. Minimum or uniform standards contained in the federal mandate. Not applicable, see 1 above.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Not applicable, see 1 above.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable, see 1 above.

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Driver Licensing (New Administrative Regulation)

601 KAR 13:110. Driver education programs.

RELATES TO: KRS 186.018, 186.410, 186.535, 186.574

STATUTORY AUTHORITY: KRS 186.400, 186.410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.410 requires each motor vehicle operator who obtains an operator's license prior to his 18th birthday to attend a driver education course. This course can be a driver's education course administered by a school district, state traffic school, or a course offered at a driver training school licensed pursuant to KRS Chapter 332 if the course meets or exceeds the minimum standards established by the Transportation Cabinet. KRS 186.574 requires the Transportation Cabinet to establish a state traffic school for new drivers and traffic offenders. This administrative regulation establishes the minimum

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standards for the approved driver training schools licensed pursuant to KRS Chapter 332. It establishes how the Transportation Cabinet is to be notified of completion of any of the three (3) types of courses allowed by KRS 186.410. It further clarifies who is required by KRS 186.410 to attend the driver education course.

Section 1. State Traffic School. (1) The Transportation Cabinet shall establish separate curriculums and classes for the new driver state traffic school (graduated driver licensing education) and the traffic offender state traffic school.

(2) The Transportation Cabinet or its contractor shall secure instructors and classroom locations for both of the state traffic schools.

(3) The Transportation Cabinet's contractor shall notify the Transportation Cabinet of the name, address, Social Security or operator's license number of all persons successfully completing either of the state traffic schools. The notification shall include the date of completion and whether it was the graduated driver licensing education or the traffic offender state traffic school.

(4) The Transportation Cabinet's contractor shall conduct at least two (2) new driver state traffic schools in every county every calendar year.

(5)(a) A person under the age of eighteen (18) years who obtained an operator's license prior to October 1, 1996 shall not be required to attend one (1) of the KRS 186.410(4) driver education courses.

(b) If a person under the age of eighteen (18) years who obtained an operator's license prior to October 1, 1996 chooses to do so, he shall be allowed to attend a new driver state traffic school free of charge.

Section 2. High School Driver Education Course. If a high school in Kentucky offers a driver education course for credit to its students, the school shall notify the Transportation Cabinet of each student who receives credit for successfully completing the course. The notice shall contain the following information:

- (1) Student's name;
- (2) Student's Social security or operator's license number;
- (3) School district;
- (4) Name of high school;
- (5) Certification of course completion and credit given;
- (6) Date of course completion; and
- (7) Name and telephone number of person at school to contact.

Section 3. KRS Chapter 332 Licensed Driver Training Schools. A driver training school licensed under KRS Chapter 332 may apply to the Transportation Cabinet for approval to conduct a driver training program pursuant to KRS 186.410 if it:

- (1) Has been licensed by the Kentucky State Police for the prior two (2) calendar years;
- (2) Has at least twenty (20) hours of office hours each week routinely staffed by a person familiar with the school's curriculum and requirements;
- (3) Agrees to purchase and follow the curriculum established by the Transportation Cabinet; and
- (4) Agrees to only use instructors in the KRS 186.410 classes who have been approved and trained by the Transportation Cabinet or the cabinet's contractor.

Section 4. Class Requirements. (1) Each class offered pursuant to KRS 186.410(4)(b) or (c) shall be limited to a maximum of twenty-five (25) students.

(2) The classes offered pursuant to KRS 186.410(4)(b) or (c) shall contain four (4) hours of classroom highway safety training.

(3) A Transportation Cabinet approved preclass and postclass test shall be administered to all students and the results tabulated for each class taught.

(4) The Transportation Cabinet approved curriculum shall be taught to each class. The curriculum shall consist of the following sections:

- (a) The dangers of alcohol, drugs, excessive speed;
- (b) Defensive driving;
- (c) Seatbelt usage;
- (d) Driver attitude and behavior; and
- (e) Rules of the road.

Section 5. Instructor Requirements. (1) Each instructor shall be approved by the Transportation Cabinet prior to teaching the class authorized by KRS 186.410(4)(b) or (c). To be approved each instructor shall meet the following requirements:

- (a) Be at least twenty-one (21) years of age;
- (b) Have a four (4) year college degree. Experience as a professional driver education instructor may substitute year for year for the college education;
- (c) Never have been convicted of a felony;
- (d) Never have been convicted of a violation of KRS 189A.010 or its equivalent from another jurisdiction;
- (e) Never have been convicted or administratively found guilty of refusing to submit to a test to determine blood alcohol content or drugs in system;
- (f) Have fewer than six (6) points assigned pursuant to 601 KAR 13:025 on his driving history record;
- (g) Not have had his driving privilege withdrawn for any reason in the past five (5) years;
- (h) Successfully enroll in and complete the instructor training course offered by the Transportation Cabinet's contractor;
- (i) Have good communication skills as indicated during an interview; and
- (j) Be of good moral character.

(2) Each approved instructor shall annually successfully enroll in and complete the instructor refresher course offered by the Transportation Cabinet's contractor.

(3) An instructor shall be removed from the approved list if:

- (a) He fails to continue to comply with the provisions of subsection (1) of this section; or
- (b) The evaluation of an instructor's preclass and postclass tests do not show significant improvement in his students' understanding of highway safety.

Section 6. Evaluations. (1) The Transportation Cabinet or its contractor shall perform both random and routine audits of the approved schools and all instructors.

(2) A school shall be notified in writing of any deficiency discovered in an audit. The deficiency shall be immediately corrected or the school's approval shall be withdrawn by the Transportation Cabinet.

ED LOGSDON, Commissioner

JAMES C. CODELL III, Secretary

APPROVED BY AGENCY: November 15, 1996

FILED WITH LRC: November 15, 1996 at 10 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on December 23, 1996 at 11 a.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, Room 1003, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by December 16, 1996 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public 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 December 16, 1996. 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 December 23, 1996. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra Pullen Davis, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890, Fax: (502) 564-4809.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra Pullen Davis

(1) Type and number of entities affected: All of the licensed drivers in Kentucky under the age of 21, Eastern Kentucky University as the Transportation Cabinet's current contractor for state traffic school, and all of the driver education programs licensed by the Kentucky State Police.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments were received on the cost of living or employment, however, no costs or savings is anticipated from the implementation of this regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments were received on the cost of living or employment, however, no costs or savings is anticipated from the implementation of this regulation.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Any school which wishes to offer a graduated license driver education state traffic school will have to apply to the Transportation Cabinet for permission to do so. Further, the schools which are approved and Eastern Kentucky University will have to maintain, and routinely submit to the Transportation Cabinet, records of the students who successfully complete the graduated license driver education state traffic school.

2. Second and subsequent years: Same as in the first year.

(3) Effects on the promulgating administrative body: The Transportation Cabinet will have to evaluate all applications for permission to participate in the state traffic school. The cabinet will have to constantly reevaluate the courses being offered to ensure that the students are getting the most benefit possible from the 4-hour course. The cabinet will have to maintain proof of completion of the course on the driving history record of each student.

(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:

(4) Assessment of anticipated effect on state and local revenues:

None anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Kentucky Road Fund as appropriated to the Transportation Cabinet, Department of Vehicle Regulation, Division of Driver Licensing.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: The administrative regulation itself should have minimal economic impact since the Transportation Cabinet was required by HB 400 passed in 1996 to implement this program. The program once implemented should improve highway safety and therefore result in some savings to the traveling public.

(b) Kentucky: The administrative regulation itself should have

minimal economic impact since the Transportation Cabinet was required by HB 400 passed in 1996 to implement this program. The program once implemented should improve highway safety and therefore result in some savings to the traveling public.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Transportation Cabinet rejected the idea of allowing the KSP-approved schools to set the curriculum offered and also rejected allowing newly approved schools to participate in the program because of the problems state government encountered when the alcohol driver education program was privatized.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The administrative regulation itself should have minimal impact since the Transportation Cabinet was required by HB 400 passed in 1996 to implement this program. The program once implemented should improve highway safety and therefore result in a positive effect in the health of the traveling public.

(b) State whether a detrimental effect on environment and public health would result if not implemented: If not implemented in this format, the Transportation Cabinet does not believe that there would be as much positive benefit to the traveling public as is anticipated from the implementation of this administrative regulation.

(c) If detrimental effect would result, explain detrimental effect:

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. The Transportation Cabinet firmly believes that all students should be offered the same basic program.

TRANSPORTATION CABINET

Department of Highways

Division of Traffic

Division of Construction

Division of Operations

Permits Branch

(New Administrative Regulation)

603 KAR 5:320. Safety in highway work zones.

RELATES TO: KRS 189.232, 189.2325, 189.390(4)(b), 189.394(6)

STATUTORY AUTHORITY: KRS 189.2325

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.2325 requires the Transportation Cabinet to promulgate administrative regulations governing the posting of signs advising motorists that penalties are increased for speeding violations occurring on state-maintained streets or highways in a highway work zone. KRS 189.390(4)(b) authorizes the Transportation Cabinet to temporarily reduce established speed limits in a highway work zone without an engineering or traffic investigation. This administrative regulation establishes guidelines for the posting of signs in highway work zones and addresses the maximum reduction in speed limit the Transportation Cabinet may be able to effect without an engineering or traffic investigation.

Section 1. Definitions. The definition of "highway work zone" shall be governed by KRS 189.232.

Section 2. Double Fine Signs. (1) At the beginning of that portion of a highway work zone where the fines for conviction of speeding are to be doubled, the Department of Highways shall cause to be placed

a sign with the following message: "FINE DOUBLED IN WORK ZONE".

(2) At the end of that portion of a highway work zone where the fines for conviction of speeding are to be doubled, the Department of Highways shall cause to be placed a sign with the following message: "END DOUBLE FINE".

(3) The construction or manufacture of double fine signs shall be governed by the criteria set forth in the Department of Highways document "Double Fine Signs Specifications".

(4) The signs required by subsections (1) and (2) of this section shall be removed or covered so that the required message is not visible or legible to the traveling public or a law enforcement officer when the highway work zone does not have a worker present for more than a two (2)-hour period of time.

Section 3. Placement of Double Fine Signs. (1) A highway work zone shall be eligible for placement of the double fine signs if:

(a) A worker is not routinely protected by a barrier wall; or

(b) A condition exists which exposes a worker to traffic hazards.

(2) The double fine signs shall only be placed to affect that portion of the highway work zone where a worker is exposed to traffic hazards.

(3) The double fine signs may be relocated as the project taking place in the highway work zone progresses.

(4)(a) If the highway on which the "double fine signs" are to be placed is not a divided highway, the fine shall be doubled for both directions of travel.

(b) The "double fine signs" specified in Section 2 of this administrative regulation shall be placed facing the on-coming traffic at both ends of the work zone on a highway which is not divided.

(5) If the highway on which the "double fine signs" are to be placed is a divided highway, the fine shall be doubled only for a direction of traffic which is signed pursuant to this administrative regulation.

Section 4. State Forces. The Department of Highways engineer overseeing a construction or maintenance project which is being accomplished with state forces may place double fine signs in accordance with the provisions of this administrative regulation.

Section 5. Encroachment Permit Holders and Contractors for the Department. (1) An applicant for an encroachment permit pursuant to 603 KAR 5:150 or a contractor for the department who will have workers exposed to traffic hazards may request permission to place double fine signs in accordance with the provisions of this administrative regulation.

(2) The Department of Highways engineer who approves the encroachment permit or serves as engineer for the project shall grant or deny the request to place double fine signs at a highway work zone.

(3) The Department of Highways engineer who approves an encroachment permit or oversees a construction project request for work on a highway which has hazardous conditions may require the permit holder to place double fine signs at the highway work zone.

(4) The placement of a double fine sign in a work zone shall not relieve a permit holder or contractor from his duty to have an approved traffic control plan for each work location.

(5) The double fine signs placed by the permit holder or contractor shall meet the requirements of the "Double Fine Sign Specifications".

(6) A permit holder or contractor shall notify the Transportation Cabinet of the times and locations of the placement of the double fine signs.

Section 6. Reduced Speed Limits. (1) The Department of Highways may temporarily reduce the speed limit in a highway work zone.

(2) The Department of Highways shall not reduce the speed limit in a highway work zone by more than ten (10) miles per hour without an engineering or traffic investigation.

(3) A temporarily reduced speed limit in a highway work zone shall be signed with a black on white regulatory sign.

(4) A black on orange sign recommending a speed shall be advisory.

(5) The Department of Highways engineer in charge of a maintenance or construction project may temporarily reduce the speed limit in a highway work zone without placing double fine signs in the zone.

Section 7. Incorporation by Reference. (1) "Double Fine Sign Specifications", (October 1996 Edition), Department of Highways is incorporated by reference.

(2) It may be inspected, copied, or obtained free of charge from the Transportation Cabinet, Department of Highways, Division of Traffic. The address is First Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-3020.

J. M. YOWELL, State Highway Engineer

JAMES C. CODELL, III, Secretary

APPROVED BY AGENCY: November 8, 1996

FILED WITH LRC: November 15, 1996 at 10 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on December 23, 1996 at 3 p.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, 4th Floor Hearing Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by December 16, 1996 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public 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 December 16, 1996. 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 December 23, 1996. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra Pullen Davis, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890, Fax: (502) 564-4809.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra Pullen Davis

(1) Type and number of entities affected: All operators of motor vehicles on the public highways of Kentucky and all of the persons working in a highway work zone.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There should be no impact on the cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There should be no impact on the cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: The Transportation Cabinet will have to make many new signs regarding the double fines. Each sign will cost approximately \$300. However, the effect of the signs on the traveling public should be to make them operate their motor vehicles in a more careful manner in the highway work zones. This should, in turn, reduce the danger to the workers, most of whom are either state employees or persons under contract to the state.

(a) Direct and indirect costs or savings:

1. First year: \$10,000 but the savings resulting from enhanced safety is indeterminable.

2. Continuing costs or savings: Indeterminable

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The cabinet will have to maintain records indicating time and location of all "double fine" signed areas.

(4) Assessment of anticipated effect on state and local revenues: The doubled speeding fines will accrue to the Transportation Cabinet to pay for enhanced police enforcement of highway work zones. The initial guess of the Administrative Office of the Courts is that very little funds will be generated as a result of the passage of HB 271.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The doubled speeding fines assessed pursuant to HB 271 will be used to enforce safety in highway work zones. The funds for implementing the bill and administrative regulation will be made available from the Road Fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No anticipated impact on the economy of any geographical region of Kentucky.

(b) Kentucky: No anticipated impact on the economy of Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Transportation Cabinet considered, but rejected, the concept of allowing a greater than 10 mph reduction in the speed limit without an engineering study. It was rejected because speed differential between vehicles on the highway is one of the most common causes of crashes.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Implementation of HB 271 and this administrative regulation will improve the safety for persons in highway work zones.

(b) State whether a detrimental effect on environment and public health would result if not implemented: If not implemented, the unsafe conditions in highway work zones will continue unabated.

(c) If detrimental effect would result, explain detrimental effect: Highway work zones are very unsafe because of motorist inattention and speeding. Without this bill and administrative regulation, there would be nothing in place to encourage persons to operate their motor vehicles in a more safe manner.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes, tiering was applied in the selection of sites to be posted for double fines. The size of the double fine signs is a variable depending on the type of highway on which it is to be used.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Office of State Fire Marshal
(New Administrative Regulation)

815 KAR 7:101. Repeal of 815 KAR 7:100.

RELATES TO: KRS Chapter 198B

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to repeal administrative regulation 815 KAR 7:100, the 1994 Edition of the Kentucky Building Code.

Section 1. Administrative regulation, 815 KAR 7:100, is repealed.

CHARLES A. COTTON, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: November 14, 1996

FILED WITH LRC: November 15, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, December 23, 1996 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 December 16, 1996, (five work 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 in which case the person requesting the transcript shall have the responsibility of paying for same. 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 by the above date to the contact person.

Contact person: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.

REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden

(1) Type and number of entities affected: This administrative regulation repeals 815 KAR 7:100 because the department will promulgate a new administrative regulation, 815 KAR 7:105 with the latest edition of the Kentucky Building Code. Therefore, the regulatory impact to this repealer regulation is not applicable.

(2) Direct and indirect costs or savings on the: N/A

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented:

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented:

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation:

2. Second and subsequent years:

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

(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:

(4) Assessment of anticipated effect on state and local revenues:

N/A

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: N/A

(6) Economic impact, including effects of economic activities arising from administrative regulation, on: N/A

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(8) Assessment of expected benefits: N/A

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky:

(b) State whether a detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. Tiering not applicable because administrative regulation is being repealed.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Building Codes Enforcement
(New Administrative Regulation)

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

RELATES TO: KRS Chapter 198B

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 198B.040(7), the Kentucky Board of Housing, Buildings and Construction promulgated and adopted a uniform state building code establishing standards for construction of buildings in the state and set forth in administrative regulation 815 KAR 7:100, which was repealed by administrative regulation 815 KAR 7:101. This administrative regulation incorporates by reference the 1997 Kentucky Building Code.

Section 1. Adoption of Code. (1) The Kentucky Building Code/1997, Seventh Edition, as adopted by the Kentucky Board of Housing, Buildings and Construction, is incorporated by reference.

(2) The Code is published by Building Officials and Code Administrators International, Inc., 4051 W. Flossmoor Road, Country Club Hills, Illinois 60477.

(3) The Code is updated by and available from the Kentucky Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(4) A copy of the Code book is available to be inspected at the Department of Housing, Buildings and Construction at the above address Monday through Friday between 8 a.m. to 4:30 p.m.

CHARLES A. COTTON, Commissioner
 LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: November 14, 1996

FILED WITH LRC: November 15, 1996 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, December 23, 1996 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 December 16, 1996, (five work 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 in which case the person requesting the transcript shall have the responsibility of paying for same. 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 by the above date to the contact person.

Contact person: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.

REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden

(1) Type and number of entities affected: Contractors, architects, engineers, design professionals.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: No costs or savings involved because administrative regulation only establishes acceptability and sets standards.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No costs or savings involved as stated above.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None to users of KBC.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Cost of printing KBC but this is recouped by the sale of the Code books.

2. Continuing costs or savings: Cost of printing revised or updated pages.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Paperwork requirements to agency involve updating code by reprinting and distributing to purchasers.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Plan review fees, pursuant to 815 KAR 7:013.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Kentucky Building Code is used and enforced statewide.

(b) Kentucky: Statewide

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative option available; Board of Housing adopts or amends material within defined limits.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Public safety concerns.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Without a building code, construction would not conform to the latest

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safety standards listed and confusion over some provisions would make design more difficult.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: No known conflict of statute or policy.

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Tiering was applied in that the mandatory requirements for buildings are different depending upon the occupancy type and number of persons occupying a building; building size and construction type.

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? If yes, complete questions 2-4. Yes

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

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation will affect local government where there is a local building inspection program. KRS 198B.060 requires local government to provide for building officials to enforce the Kentucky Building Code.

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: There is no increased fiscal impact created by this regulation, nor does it increase the number of persons needed by local government. State revenues are neither increased nor decreased by this administrative regulation.

CABINET FOR HEALTH SERVICES Office Of Inspector General (New Administrative Regulation)

902 KAR 20:275. Mobile health services.

RELATES TO: KRS 216B.010 through 216B.131, 216B.990

STATUTORY AUTHORITY: KRS 216B.042, 314.011(8), EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The administrative regulation establishing standards for mobile health services, 902 KAR 20:270, was found deficient by the Interim Joint Committee on Health and Welfare at its November 15, 1995, meeting. The finding of deficiency resulted from the lack of guidelines to coordinate the relationship between home IV therapy service and home health agencies. Legislation to establish such guidelines was not enacted during the 1996 Regular Session of the General Assembly. Therefore, pursuant to KRS 13A.333(1), 902 KAR 20:270 expired. KRS 216B.042 requires the cabinet to establish standards for health facilities and services, and authorizes it to promulgate administrative regulations. Without an administrative regulation establishing standards for mobile health services, the cabinet would be in violation of the legislative mandate expressed in KRS 216B.042. KRS 13A.333(6) prohibits an administrative body from promulgating an administrative regulation that is identical to or substantially the same as an administrative regulation that has expired. This administrative regulation is not identical to or substantially the same as 902 KAR

20:270, because:

(1) Only the lack of guidelines to coordinate the relationship between home IV therapy services and home health services was found deficient;

(2) This administrative regulation includes guidelines to coordinate the relationship between home IV therapy service and home health agencies; and

(3) It is required by the legislative mandate of KRS 216B.042.

Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.

Section 1. Definitions. (1) "Certified radiation operator" means a person who has been certified pursuant to KRS 211:870 and 902 KAR 105:010 to 105:070 as an operator of sources or radiation.

(2) "Computed tomography (CT) scanning" means a radiological diagnostic imaging procedure that shows cross sectional images of internal body structures.

(3) "Governing authority" or "licensee" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested.

(4) "IV therapy" means the administration, by a registered nurse under the supervision of a licensed physician, of various pharmaceutical and nutritional products by intravenous, subcutaneous or epidural routes.

(5) "IV therapy service" means pharmaceutical and nursing services, including direct hands-on care, limited to and necessary for the:

(a) Preparation, dispensing and delivery of pharmaceutical and nutritional products and equipment; and

(b) Related clinical consultation, training, and assessment or care incidental to initial start-up of IV therapy.

(6) "License" means an authorization issued by the cabinet for the purpose of operating mobile health services.

(7) "Lithotripter" means a noninvasive treatment technique that utilizes shock waves to shatter kidney stones.

(8) "Magnetic resonance imaging (MRI)" means a diagnostic imaging modality which utilizes magnetic resonance, an interaction between atoms and electromagnetic fields, to project images of internal body structures.

(9) "Other diagnostic and treatment services" means those health services which are determined to require licensure pursuant to KRS 216B.042 as a mobile health service.

(10) "Qualified anesthesiologist" means a person who is a doctor of medicine or a doctor of osteopathy licensed to practice medicine and surgery and who is board certified or in the process of being certified by the American Board of Anesthesiology or the American Osteopathic Board of Surgery and who otherwise meets the criteria established by the mobile health service's governing authority.

(11) "Qualified urologist" means a person who is a doctor of medicine or a doctor of osteopathy licensed to practice medicine and surgery and who is board certified or is in the process of being certified by the American Board of Urology or the American Osteopathic Board of Surgery and who otherwise meets criteria established by the mobile health service's governing authority.

(12) "Registered nurse" means a nurse who is licensed to engage in registered nursing practice pursuant to KRS 314.041.

Section 2. Scope of Operation and Services. Mobile health services provide medical services in various locations and 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.

Section 3. Administration. (1) Licensee.

(a) The licensee shall be legally responsible for the service and for compliance with federal, state and local laws and regulations pertaining to the operation of the service, limited to the scope of the service's certificate of need.

(b) The licensee shall establish lines of authority and designate an administrator who will be principally responsible for the daily operation of the service. In the case of a service whose governing authority is comprised of more than one (1) licensed hospital, a separate administrator may be designated from each hospital to serve as the administrator of the service when it is being provided at the hospital where the designee is employed.

(2) Policies. There shall be written administrative policies which the service follows covering all aspects of operation, including:

(a) A description of organizational structure, staffing and allocation of responsibility and accountability;

(b) A description of linkages with inpatient facilities and other providers;

(c) Policies and procedures for the guidance and control of personnel performances;

(d) A written program narrative describing in detail the service(s) offered, methods and protocols for service delivery, qualifications of personnel involved in the delivery of the services, and goals of the service(s);

(e) A description of the administrative and patient care records and reports; and

(f) Procedures to be followed in the storage, handling and administration of drugs and biologicals.

(3) Personnel.

(a) Medical director. The service shall have a medical director. The medical director shall be a licensed physician or dentist with specialized training and experience in, and responsibility for, all medical aspects of the service. In the case of a service whose governing authority is comprised of more than one (1) licensed hospital, a separate medical director may be designated from each hospital's medical staff to serve as the medical director of the service when it is being provided at the hospital where the physician is on staff. If a service operates only diagnostic examination equipment, and if the service is offered only to licensed hospitals, and if the employees of the service makes no medical assessment of the diagnostic patient data collected, then the service shall be exempt from the requirements of this paragraph.

(b) The service shall employ, or provide for through a written contractual agreement, sufficient number of qualified personnel to provide effective patient care and all other related services. The licensee shall provide written personnel policies which shall be available to all employees, reviewed on an annual basis, and revised as necessary. If the staff-to-patient ratio does not meet the needs of the patients, the Division of Licensing and Regulation shall determine and inform the program administrator in writing how many additional personnel are to be added and of what job classification, and shall give the basis for this determination.

(c) There shall be a written job description for each position which shall be reviewed and revised as necessary.

(d) There shall be an employee health program for mutual protection of employees and patients including provisions for preemployment and periodic health examination, tuberculin test, and other appropriate tests.

(e) Current personnel records shall be maintained for each employee which include the following:

1. Name, address and Social Security number;

2. Evidence of current registration, certification or licensure of personnel;

3. Records of training and experience; and

4. Records of performance evaluation.

(4) In-service training. All personnel shall participate in ongoing in-service training programs relating to their respective job activities including thorough job orientation for new employees.

(5) Medical records.

(a) The service shall maintain medical records which contain at least the following:

1. Medical and social history relevant to the service(s) provided, including data obtainable from other providers;

2. Names of referring physician, if any, and physician's orders for special diagnostic services such as x-ray or CT scans;

3. Description of each medical visit or contact, to include condition or reason necessitating visit or contact, assessment diagnosis, services provided, medications and treatments prescribed, and disposition made;

4. Reports of all physical examinations, laboratory, x-ray, and other test findings relevant to the service(s) provided; and

5. Documentation of all referrals made, including reason for referral, to whom patient was referred, and any information obtained from referral source.

(b) Confidentiality of all patient records shall be maintained at all times.

(c) Transfer of records. The service shall establish systematic procedures to assist in continuity of care where the patient moves to another source of care, and the service shall, upon proper release, transfer medical records or an abstract thereof when requested.

(d) Retention of records. After patient's death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is longer. Mammography and other radiology records shall be retained in accordance with federal requirements.

(e) A specific location shall be designated by the mobile health service for the maintenance and storage of the service's medical records.

(f) Provisions for storage of medical records in the event the mobile health service ceases to operate because of disaster, or for any other reason. The licensee shall safeguard the record and its content against loss, defacement and tampering.

Section 4. Vehicle Requirements. (1) All vehicles used in the provision of a health service, as provided by the service's certificate of need, shall be kept, in optimum order with clean interiors and equipment.

(2) The following standards shall apply only to those vehicles which the patient enters.

(a) There shall be adequate heating and air-conditioning capability in both the driver and patient compartments.

(b) There shall be a minimum of two (2) potential power sources for the vehicle. To insure an immediately available source of power in the event of a power failure, one (1) must be self-contained on the vehicle. The other source must be an exterior source of power hookup.

(c) The vehicle shall be accessible to users with disabilities either through the use of a wheelchair lift or a ramp which complies with applicable American National Standards Institute (ANSI) requirements.

(d) The vehicle shall have adequate and safe space for staff and examination procedures, as determined by the cabinet.

(e) Equipment. Vehicles used in the provision of a health service, as provided by the service's certificate of need, shall have the following essential equipment:

1. One (1) five (5) pound dry chemical fire extinguisher;

2. One (1) first aid kit;

3. Suction apparatus;

4. Oxygen equipment (portable) including:

a. One (1) "D" size oxygen cylinder;

b. One (1) pressure gauge and flow rate regulator;

c. Adaptor and tubing; and

d. Transparent masks for adults and children. Nasal cannulas may be substituted.

(f) Personnel. Each mobile health service vehicle shall at a minimum be staffed by one (1) person, who may also be the driver of the vehicle, who shall have the following qualifications:

1. Red Cross Advanced and Emergency Care Certification, each with supplemental CPR instruction certified by the American Red Cross or the American Heart Association; or
2. EMT-first responder certification; or
3. EMT-A certification; or
4. Licensure as a registered nurse, physician or dentist.

Section 5. Requirements for Provision of Services. A licensed mobile health service shall comply with the requirements listed in Sections 3, 4, and 6 of this administrative regulation, the service's program narrative, and the additional requirements of this section which relate to the particular service(s) offered by the licensee.

(1) Diagnostic services. Diagnostic services are those services which are performed to ascertain and assess an individual's physical health condition.

(a) Diagnostic services, except for mammography services, shall be performed only on the order of a physician or advanced registered nurse practitioner as authorized in KRS 314.011(8).

(b) The service shall prepare a record for each patient to include the date of the procedure, name of the patient, description of the procedures ordered and performed, the referring physician, the name of the person performing the procedure, the date and the name of the physician to whom the results were sent.

(c) Diagnostic imaging services.

1. Diagnostic imaging services are those services which produce an image, either through film or computer generated video, of the internal structures of a patient. These services include:

- a. X-ray;
- b. MRI;
- c. CT scanning;
- d. Ultrasound;
- e. Mammography;
- f. Fluoroscopy; and

g. Other modalities using directed energy to gain statistical, physiological or biological diagnostic imaging information.

2. Any mobile health service which provides diagnostic imaging services shall comply with the following:

a. Equipment used for direct patient care shall be fully approved by the Federal Food and Drug Administration (FDA) for clinical use;

b. There shall be a written preventive maintenance program which the service follows to ensure that imaging equipment is operative, properly calibrated, and shielded to protect the operator, patient, environment, and the integrity of the images produced. Recalibration of radiation producing and nonradiation producing instrumentation shall occur at least every six (6) months by biomedical service personnel and radiation producing instrumentation shall be recalibrated annually by a consulting health physicist.

c. Diagnostic imaging services shall be provided under the supervision of a physician who is qualified by advanced training and experience in the use of the specific imaging technique for diagnostic purposes;

d. Imaging services shall have a current license or registration pursuant to applicable Kentucky statutes and any administrative regulations promulgated thereunder;

e. All personnel engaged in the operation of imaging equipment shall be currently licensed or certified in accordance with applicable Kentucky statutes and administrative regulations;

f. There shall be a written training plan for personnel in the safe and proper usage of the mobile imaging equipment and system;

g. There shall be a physician's signed order which specifies the reason the procedure is required, the area of the body to be examined, and a statement concerning the condition of the patient which indicates why mobile imaging services are necessary; and

h. There shall be sufficiently trained on-duty personnel with

adequate equipment to provide emergency resuscitation services in the event of a patient emergency.

(d) Other diagnostic services.

1. Other diagnostic services are those services which are provided through the use of diagnostic equipment, and physical examination. These services include:

- a. Electrocardiogram services;
- b. Electroencephalogram services;
- c. Holter monitor services;
- d. Disability determination services;
- e. Pulmonary function services;
- f. Aphresis services;
- g. Blood gas analysis services;
- h. Echsonography services; and
- i. Doppler services.

2. Equipment used for direct patient care shall comply with the following:

a. The licensee shall establish and follow a written preventive maintenance program to ensure that equipment shall be operative and properly calibrated;

b. All personnel engaged in the operation of diagnostic equipment shall have adequate training and be currently licensed or certified in accordance with applicable Kentucky statutes and administrative regulations; and

c. There shall be a written training plan for the adequate training of personnel in the safe and proper usage of the equipment.

3. Physical examination services shall be nonabusive and provided in a manner which ensures the greatest amount of safety and security for the patient.

a. Protocols for diagnostic examinations shall be developed by the medical director.

b. Personnel performing physical examinations shall have adequate training and be currently licensed or certified in accordance with applicable Kentucky statutes and administrative regulations.

c. Personnel performing physical examinations shall be limited by the relevant scope of practice of Kentucky licensure.

(2) Treatment services. Treatment services are those services provided to an individual who, because of a physical health condition, is in need of medical assistance for the attainment of their maximum level of physical function.

(a) Mobile health clinic. A mobile health clinic is a health service providing both diagnostic and treatment services through the use of a mobile vehicle. A mobile health clinic may provide a wide range of diagnostic and treatment services on an outpatient basis for a variety of physical health conditions.

1. Policies. The licensee shall develop patient care policies with the advice of a group of professional personnel that includes one (1) or more physicians and one (1) or more advanced registered nurse practitioners. At least one (1) member shall not be a member of the mobile health clinic staff. The policies shall include:

a. A description of the services the mobile health clinic provides directly and those provided through agreement;

b. Guidelines for the medical management of health problems which include the conditions requiring medical consultation and/or patient referral, and the maintenance of health records; and

c. Procedures for review and evaluation of the services provided by the clinic at least annually.

2. Personnel. The mobile health clinic shall have a staff that includes at least one (1) physician and at least one (1) advanced registered nurse practitioner. The clinic shall employ such other staff or ancillary personnel that are necessary to provide the services essential to the clinic's operation.

a. The physician shall:

(i) Be responsible for all medical aspects of the clinic and shall provide direct medical services in accordance with the Medical Practice Act, KRS Chapter 311. In addition, the physician shall provide medical direction, supervision, and consultation to the staff;

(ii) In conjunction with the advanced registered nurse practitioner(s), participate in developing, executing, and periodically reviewing the mobile health clinic's written policies and services;

(iii) Periodically review the mobile health clinic's patient records, provide medical orders, and provide medical care services to patients of the mobile health clinic; and

(iv) Be present for consultation weekly, and be available within one (1) hour, through direct telecommunication for consultation, assistance with medical emergencies, or patient referral.

b. The advanced registered nurse practitioner shall:

(i) Participate in the development, execution and periodic review of the written policies governing the services the mobile health clinic provides;

(ii) Participate with the physician in periodic review of patient health records;

(iii) Provide services in accordance with mobile health clinic policies, established protocols, the Nurse Practice Act (KRS Chapter 314), and with administrative regulations promulgated thereunder;

(iv) Arrange for, or refer patients to needed services not provided at the mobile health clinic; and

(v) Assure that adequate patient health records are maintained and transferred when patients are referred.

3. The mobile health clinic shall have linkage agreements or arrangements with each of the following:

a. Inpatient hospital care;

b. Physician services in a hospital, patient's home, or long-term care facility;

c. Additional and specialized diagnostic and laboratory services that are not available at the mobile health clinic;

d. Home health agency;

e. Emergency medical services;

f. Pharmacy services; and

g. Local health department.

4. The mobile health clinic shall carry out, or arrange for an annual evaluation of its total program, shall consider the findings of the evaluation, and take corrective action, if necessary. The evaluation shall include:

a. The utilization of clinic services including at least the number of patients served and the volume of services;

b. A representative sample of both active and closed clinical records; and

c. The mobile health clinic's health care policies.

5. The mobile health clinic shall develop and maintain written protocols, i.e., standing orders, rules of practice, and medical directives, which apply to services provided by the clinic and which explicitly direct the step-by-step collection of subjective and objective data from the patient. The protocols shall further direct data analysis, direct explicit medical action depending upon the data collected, and include rationale for each decision made. The protocols shall be signed by the staff physician.

6. The mobile health clinic staff shall furnish those diagnostic and therapeutic services and supplies that are commonly furnished in a physician's office or at the entry point into the health care delivery system. These include medical history, physical examination, assessment of health status, and treatment for a variety of medical conditions.

7. The mobile health clinic shall provide basic laboratory services essential to the immediate diagnosis and treatment of the patient, including:

a. Chemical examinations of urine by stick or tablet methods or both (including urine ketones);

b. Microscopic examinations of urine sediment;

c. Hemoglobin or hematocrit;

d. Blood sugar;

e. Gram stain;

f. Examination of stool specimens for occult blood;

g. Pregnancy tests;

h. Primary culturing for transmittal to a hospital laboratory or licensed laboratory; and

i. Test for pinworms.

8. The mobile health clinic shall provide medical emergency procedures as a first response to common life-threatening injuries and acute illness, and have available the drugs and biologicals commonly used in lifesaving procedures, such as analgesics, anesthetics (local), antibiotics, anticonvulsants, antidotes and emetics, serums and toxoids.

9. The clinic shall post in a conspicuous area at the entrance, visible from the outside of the clinic, the hours that emergency medical services will be available in the clinic, the clinic's next scheduled visit, and where emergency medical services not provided by the clinic can be obtained during and after the clinic's regular scheduled visits and hours of operation.

(b) Mobile dental clinic. A mobile dental clinic is a health service providing both diagnostic and dental treatment services at different locations through the use of a mobile vehicle or equipment.

1. Policies. The licensee shall develop patient care policies with the advice of a group of professional personnel that includes at least one (1) licensed dentist. These policies shall include:

a. Guidelines which identify the dental problems which may not be performed in the mobile unit, and provisions for patient referral;

b. Guidelines for the review and evaluation of the services provided by the clinic at least annually; and

c. Guidelines for procedures to be followed in the event a patient has a medical emergency.

2. Personnel. The mobile dental clinic shall have a staff that includes at least one (1) licensed dentist and at least one (1) dental assistant.

a. The dentist shall:

(i) Be responsible for all aspects of patient care in accordance with KRS Chapter 313 and any administrative regulations promulgated thereunder;

(ii) Be present in the clinic at all times that a patient is receiving dental care; and

(iii) Provide direct supervision to all staff involved in the delivery of services.

b. The dental assistant shall:

(i) Provide services in accordance with the mobile dental clinic policies and established protocols, KRS Chapter 313, and any administrative regulations promulgated thereunder; and

(ii) Provide services only under the direct supervision of a licensed dentist.

3. Equipment. The mobile dental clinics shall have the following equipment:

a. X-ray units;

b. Sterilizer;

c. High-speed suction;

d. Dental lights; and

e. Emergency kit with the following drug types:

(i) Antiallergenic;

(ii) Vasodilators;

(iii) Anticonvulsives; and

(iv) Vasopressors.

(c) Mobile lithotripter service. A mobile lithotripter service is a health service which provides for a noninvasive technique for removing kidney or ureteral stones through the use of a lithotripter at various hospital locations.

1. Mobile lithotripter services may only be delivered on the grounds of the hospital utilizing the mobile lithotripter service.

2. Lithotripsy services shall be performed only on the order of a physician.

3. Lithotripsy services shall be provided under the supervision of a physician who is qualified by advanced training and experience in the use of lithotripsy treatment.

4. The service shall prepare a record for each patient to include

the date of the procedure, name of the patient, description of the procedures ordered and performed, the referring physician, and the name of the person performing the procedure.

5. There shall be a physician's signed order which specifies the reason the procedure is required, the area of the body to be exposed, and the anticipated outcome of treatment.

6. Policies. A mobile lithotripter service shall develop patient care policies with the advice of a group of professional personnel that includes at least one (1) qualified urologist and one (1) qualified anesthetist. At least one (1) member shall not be a member of the mobile lithotripter service staff. The policies shall include:

a. A description of how a patient will be transported between the hospital and the mobile lithotripter service;

b. Procedures to be followed in the event a patient has a medical emergency;

c. Guidelines for the review and evaluation of the service on an annual basis; and

d. Policies and protocols governing the utilization and responsibilities of hospital staff in the delivery of lithotripter services.

7. Personnel. The mobile lithotripter service shall employ at least one (1) lithotripter technician, and shall employ or make arrangements with the hospital utilizing the service for at least one (1) registered nurse, one (1) qualified urologist to be present in the unit during the delivery of lithotripsy services, and (1) qualified anesthetist to be available for procedures requiring anesthesia.

8. Lithotripsy equipment used for direct patient care shall comply with the following:

a. Lithotripsy equipment shall be fully approved by the Federal Food and Drug Administration (FDA) for clinical use;

b. The licensee shall establish and follow a written preventive maintenance program to ensure that equipment shall be operative, properly calibrated, properly shielded, and safe for the patient, operator, and environment;

c. All personnel engaged in the operation of diagnostic equipment shall have adequate training and be currently licensed, certified or registered in accordance with applicable Kentucky statutes and administrative regulations; and

d. There shall be a written training plan for the adequate training of personnel in the safe and proper usage of the equipment; and

e. There shall be sufficiently trained on-duty personnel with adequate equipment to provide emergency resuscitation in the event of a patient emergency.

(d) Other treatment services, including IV therapy services, shall be performed only on the order of a physician.

1. IV therapy shall only be performed by a registered nurse and shall be limited to nursing services which are required for the initial start-up and administration of an IV therapy program.

2. If nursing services are required which exceed the initial start-up of IV therapy, they shall be provided by an appropriately licensed agency to provide care under a physician's plan of care.

3. All services provided shall be under the supervision of a licensed physician.

4. Policies. The licensee shall develop patient care policies with the advice of a group of professional personnel that includes one (1) or more physician(s) and one (1) or more registered nurse(s). At least one (1) member shall not be a member of the service's staff. The policies shall include:

a. A description of the services provided;

b. A requirement to inform patients of other in-home services which can be provided only by other appropriately licensed agencies;

c. A requirement for a written common plan for treatment and coordination of treatment with other licensed health care providers servicing the patient, and immediate verbal communication between providers of revisions in the common plan shall be documented in the plan of treatment;

d. Guidelines for the medical management of health problems which include the conditions requiring medical consultation or patient

referral, and the maintenance of health records;

e. Procedures for review and evaluation of the services provided at least annually; and

f. Guidelines for patient and environment assessment.

5. Personnel. The service shall have a staff that includes at least one (1) registered nurse. The service shall employ such other staff or ancillary personnel that are necessary and essential to the service's operation. The registered nurse shall:

a. Participate in the development, execution and period review of the written policies governing the services provided;

b. Participate with the physician in periodic review of patient health records;

c. Provide services in accordance with established policies, protocols, the Nurse Practice Act (KRS Chapter 314), and with administrative regulations promulgated thereunder;

(i) Arrange for or refer patients to needed services that cannot be provided by the service; and

(ii) Assure that adequate patient health records are maintained and transferred when patients are referred.

6. In-service training programs shall include instruction in:

a. Use of equipment;

b. Side effects and precautions of drugs and biologicals; and

c. Infection control measures.

7. The service shall carry out, or arrange for an annual evaluation of its total program, shall consider the findings of the evaluation, and take corrective action, if necessary. The evaluation shall include:

a. The utilization of the service including at least the number of patients served and the volume of services;

b. A representative sample of both active and closed records; and

c. The service's health care policies.

Section 6. Waste Processing. (1) Sharp wastes, such as broken glass, scalpel blades, and hypodermic needles, shall be segregated from other wastes and aggregated in rigid disposable containers immediately after use. Needles and syringes shall not be cut, dismantled, or destroyed after use, but shall be placed intact into a rigid container. The rigid containers of sharp wastes shall either be incinerated or disposed of in a sanitary landfill approved pursuant to 401 KAR 47:020.

(2) The mobile health service shall establish a written policy for the handling and disposal of all pathological and microbiologic laboratory waste. Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 or 401 KAR 61:010.

(a) Pathological and microbiologic laboratory waste shall be placed in double impervious plastic bags and each bag shall be two (2) mils in thickness. A bag, when full, shall not exceed twenty-five (25) pounds. All bags shall be securely closed and a tag, which reads "INFECTIOUS WASTE" and identifies the mobile health service from which the waste is being removed, shall be attached to the bag in a conspicuous manner. These wastes shall be sterilized before disposal or be disposed of by incineration if they are combustible.

(b) All unpreserved tissue specimens shall be incinerated off site.

(3) The following liquids shall be disposed of by incineration or by sanitary sewer:

(a) Blood;

(b) Vaginal or cervical secretions or exudates;

(c) Semen;

(d) Cerebrospinal, synovial, pleural, pericardial, peritoneal or amniotic fluids;

(e) Saliva in dental procedures;

(f) Fluids visibly contaminated with blood; and

(g) Mixed fluids where any of the above may be involved.

TIMOTHY L. VENO, Inspector General

JOHN MORSE, Secretary

APPROVED BY AGENCY: November 12, 1996

FILED WITH LRC: November 14, 1996 at 11 a.m.

ADMINISTRATIVE REGISTER - 2650

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 23, 1996, at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 1996, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. 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 K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: Mobile health services provide medical services in various locations and in some instances utilize a specially equipped vehicle. There are presently sixty-five (65) licensed mobile health services.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments addressing this issue were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments addressing this issue were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No additional reporting requirements imposed.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No direct or indirect costs should be associated with this program beyond printing this new regulation.

1. First year: \$500 for printing regulation.

2. Continuing costs or savings: No additional costs or savings, since reprinting of regulations is provided for in the continuing budget.

3. Additional factors increasing or decreasing costs: No additional factors.

(b) Reporting and paperwork requirements: No additional paperwork.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments addressing this issue were received.

(b) Kentucky: No public comments addressing this issue were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation will replace 902 KAR 20:275E which will expire February 18, 1997. No alternatives were

considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: These are minimum health care standards intended to protect the public.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Mobile Health Services would be unregulated after February 18, 1997.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication. No conflict.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. This is a licensure program and, as such, applies to all licensed services.

CABINET FOR HEALTH SERVICES Department for Medicaid Services (New Administrative Regulation)

907 KAR 1:423. Repeal of 907 KAR 1:422.

RELATES TO: KRS 13A.310, 205.520

STATUTORY AUTHORITY: KRS 13A.310, 194.050, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirements that may be imposed, or opportunity presented, by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This administrative regulation acts specifically to repeal 907 KAR 1:422 which is no longer needed.

Section 1. 907 KAR 1:422, Incorporation by reference of the Early and Periodic Screening, Diagnosis and Treatment Services Manual, is hereby repealed.

JOHN H. MORSE, Commissioner, Secretary

APPROVED BY AGENCY: November 7, 1996

FILED WITH LRC: November 14, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 23, 1996 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 1996 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900, Fax Number: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick (564-5020) or Karen Doyle (564-4321)

(1) Type and number of entities affected: None. This administrative regulation repeals material no longer needed.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

3. Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Budget neutral.

2. Continuing costs or savings: Budget neutral.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) 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.

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.

CABINET FOR HEALTH SERVICES Department for Medicaid Services (New Administrative Regulation)

907 KAR 1:705. Demonstration project: services provided through regional managed care partnerships (1115 Waiver).

RELATES TO: KRS 205.520, 205.6334

STATUTORY AUTHORITY: KRS Chapter 47, Appendix A, Part 1, Sec. G, 50c, 194.025, 194.050, 205.520, 205.560, 205.6320, 205.6336, 42 USC 1315, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has the responsibility to administer the Medicaid Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 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 sets forth the terms and conditions under which the Department for Medicaid Services shall provide Medicaid services pursuant to a waiver granted by the Secretary, United States Department of Health and Human Services and authorized under KRS 205.6334. The waiver provides for the development of a statewide system of capitated, comprehensive risk managed care partnerships and establishes standards for access and quality in accordance with KRS 205.6320.

Section 1. Definitions. (1) "Behavioral health services" means clinical, rehabilitative, and support services in inpatient and outpatient settings to treat a mental illness, emotional disability, or substance abuse disorder.

(2) "Capitation payment" means the total per member, per month payment amount.

(3) "Department" means the Department for Medicaid Services or its designee.

(4) "Emergency care" means care for a condition as defined in 42 USC 1395dd.

(5) "Encounter" means a health care contact or service delivered by a health care provider in a partnership to a member.

(6) "Family planning services" means counseling services, medical services, and pharmaceutical supplies and devices to aid those who decide to prevent or delay pregnancy.

(7) "Medical detoxification" means management of symptoms during the withdrawal phase from a substance to which the individual has been addicted.

(8) "Medically necessary health services" means age appropriate services reasonable and necessary to diagnose and provide preventive, palliative, curative or restorative treatment for physical or mental conditions in accordance with professionally recognized standards of health care generally accepted at the time services are provided, including services for children authorized under 42 USC 1396d(r).

(9) "Member" means a Medicaid recipient who is enrolled in a partnership plan.

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(10) "Partnership" means a single legal entity established within a region that, under contract with the department, agrees to provide, or arrange for the provision of, health services to members, on the basis of prepaid capitation payments.

(11) "Primary care provider" means a licensed or certified health care practitioner, including a doctor of medicine, doctor of osteopathy, advanced registered nurse practitioner, including a nurse practitioner, nurse midwife and clinical specialist, and physician assistant, or clinic, including a primary care center and rural health clinic, that functions within the scope of licensure or certification, has admitting privileges at a hospital or a formal referral agreement with a provider possessing admitting privileges, and agrees to provide twenty-four (24) hour primary health care services to individuals.

(12) "Recipient" means an individual who is eligible to receive Medicaid services.

(13) "Region" means a geographical area in Kentucky that is designated by the department for partnership services.

(14) "Traditional Medicaid providers" means providers who currently characterize their encounters with Medicaid recipients to be thirty (30) percent of their practice or business within a partnership region.

(15) "Urgent care" means care for a condition not likely to cause death or lasting harm but for which treatment should not wait for a normally scheduled appointment.

Section 2. General. (1) The department shall implement, within the Medicaid Program, a prepaid capitation managed care system to be known as the Kentucky Health Care Partnership Program. Partnerships shall be implemented and administered in accordance with the terms and conditions of the waiver granted by the Secretary, United States Department of Health and Human Services under the authority granted by 42 USC 1315.

(2) As partnerships are established within specified regions, the Kentucky Health Care Partnership Program shall be phased in all regions statewide.

Section 3. Recipient Participation. (1) Recipients required to participate in partnerships, unless excluded as in Section 4 of this administrative regulation, shall include individuals who would have been eligible to receive Aid to Families with Dependent Children (AFDC) and Medicaid using AFDC requirements as in effect as of July 16, 1996, as subsequently amended in accordance with Section 1931 of the Social Security Act, and individuals who are eligible to receive Medicaid under the following Medicaid categories:

- (a) Children and family related;
- (b) Aged, blind, and disabled Medicaid only;
- (c) Pass through in accordance with 907 KAR 1:011;
- (d) Poverty level pregnant women and children;
- (e) State supplementation for aged, blind, and disabled;
- (f) Supplemental security income (SSI);

(g) Under the age of twenty-one (21) years and in a psychiatric residential treatment facility (PRTF); and

(h) Under the age of eighteen (18) years, placed in foster care and under supervision of a Kentucky public or private child welfare agency.

(2) A member shall be allowed to select, from at least two (2) primary care providers, including a physician:

(a) A primary care provider who participates in the partnership and is located in the member's county of residence or an adjoining county; or

(b) If there are no participating primary care providers in the member's county of residence or an adjoining county, and until the partnership enrolls a primary care provider that meets this criteria, a primary care provider who:

1. Participates in the partnership and is located within the partnership region; or

2. Does not participate in the partnership, but is located within the

partnership region.

(3) If voluntary selection of a primary care provider is not made by the member or the member refuses to select a primary care provider:

(a) The partnership shall assign a primary care provider, who is within thirty (30) miles or thirty (30) minutes from the member's residence or place of employment in an urban area or within forty-five (45) miles or forty-five (45) minutes from the member's residence or place of employment in a rural area, if possible; or

(b) If there is no participating primary care provider that meets the criteria listed in paragraph (a) of this subsection, the partnership shall assign a participating primary care provider from any participating primary care providers in the member's county of residence or an adjoining county; or

(c) If there is no participating primary care provider meeting the criteria of paragraph (a) or (b) of this subsection, the partnership shall assign the nearest participating primary care provider.

(4) A member shall have six (6) months guaranteed eligibility to receive partnership services provided the member resides in a partnership region and is not an inmate in a penal institution in accordance with 907 KAR 1:011. A new six (6) month eligibility period shall not begin until the individual has been ineligible for Medicaid for ninety (90) consecutive days.

(5) Upon enrollment in a partnership, a member shall have the right to change the primary care provider after the initial visit and once a year regardless of reason, or at any time as approved by the department.

(6) A member who seeks health services from providers outside the member's partnership without prior approval of the partnership, or the department, shall be responsible for expenses incurred except as shown in Section 7(2) of this administrative regulation.

(7) The department shall be responsible for disenrollment of members from partnerships.

Section 4. Recipient Exclusions. Excluded from participation in partnerships shall be individuals who must spend down to meet eligibility income criteria or individuals who are:

(1) Currently Medicaid eligible and have been in a nursing facility for more than thirty-one (31) days;

(2) Determined eligible for Medicaid due to a nursing facility admission;

(3) Served under the alternate intermediate services mental retardation (AIS-MR), home and community based, or other Medicaid waivers;

(4) Adopted and have special needs;

(5) Qualified medicare beneficiaries (QMBs), specified low income medicare beneficiaries (SLMBs) or qualified disabled working individuals (QDWIs);

(6) In an intermediate care facility for mentally retarded (ICF-MR);

(7) Under the age of twenty-one (21) years and eligible solely due to psychiatric facility admission, excluding a PRTF admission; or

(8) Made exempt from the partnership program by the department.

Section 5. Partnership Requirements. Each partnership shall:

(1) Be licensed, or contain an entity that shall be licensed with, and meet requirements of the Kentucky Department of Insurance as a provider sponsored integrated health delivery network in accordance with KRS 304.17A-300, or a health maintenance organization in accordance with KRS 304.38, to the extent not in conflict with the expressed provisions of this administrative regulation.

(2) Meet specified requirements pertaining to fiscal solvency and accessibility in accordance with 42 USC 1396b, including maintenance of an adequate number of health care providers to provide covered services to its members as set forth in the terms and conditions of the partnership contract;

(3) Agree to meet all nonnegotiable terms, conditions, and

standards when contracting with the department. If health care financing administration's standards are more stringent than Kentucky contracting standards, Health Care Financing Administration's contract guidelines shall take precedence in accordance with the approved provisions of the 1115 Waiver; and

(4) Establish a governance body, or board of directors, that shall:

(a) Assume responsibility for establishing and implementing policies and procedures regarding health services delivery to members of the partnership;

(b) Broadly represent the partnership region's health services providers, including traditional Medicaid providers, hospitals, primary care providers, specialty providers, nonphysician health professionals, dentists, primary care centers, health departments, and the University of Louisville and University of Kentucky medical centers for regions in which they are located;

(c) Include at least two (2) consumer representatives, one (1) of whom shall be a member; and

(d) Be approved, in terms of composition, by the department.

(5) Demonstrate adequate protection against insolvency by:

(a) Providing the department, within thirty (30) days of the partnership contract, a performance bond that equals one (1) month of projected capitation payments and names the department as obligee;

(b) Sustaining a capital reserve equal to \$100,000, or an amount equal to one (1) percent of the anticipated annual premiums paid under the contract, whichever is greater; and

(c) Establishing a solvency reserve equal to one (1) month's capitation per member to be held by a regulated financial institution and available to the department for paying partnership providers if a partnership becomes insolvent.

(6) Be required to:

(a) Submit monthly financial statements to the department within thirty (30) days of the end of each month during the first year of operation and on a quarterly basis, or as designated by the department, thereafter;

(b) File a financial disclosure report, as approved by the Health Care Financing Administration, with the department within thirty (30) days of the end of the contract year and within thirty (30) days of entering into, renewing, or terminating any transaction with an affiliated party in accordance with 42 CFR 455;

(c) Make available all books, records, and information related to member services and financial transactions of the partnership for review, inspection, auditing, and photocopying by authorized federal and department reviewers. The books, records, information, and partnership staff shall be available upon request of the department during routine business hours at the place of operations;

(d) Maintain all books, records, and information related to partnership providers, member services and financial transactions for a minimum of five (5) years, and for any additional time period as designated by the department; and

(e) Immediately notify the department of partnership financial insolvency.

Section 6. Partnership Payments. (1) The department shall provide each partnership a per month, per member capitation payment, except as shown in subsection (2) of this section, whether or not the member receives services during the period covered by the payment. The payment shall be based on a standard rate setting methodology that complies with the Health Care Financing Administration's upper payment limit requirements. The department's rate development shall use actuarial principles and be based on appropriate actuarial factors which may include category of aid, geographic area, category of service and other demographic and administrative factors such as age, gender, and service trends. The payment shall be adjusted by the department if additional Medicaid services are mandated by Health Care Financing Administration.

(2) The department may also contract with a partnership for

payment of services to recipients prior to enrollment of these individuals in the partnership on a capitated or other basis as part of the partnership contract, or for other Medicaid services as designated by the department.

(3) If a member's total inpatient costs exceed \$75,000 in one (1) year, the department may provide upon request of the responsible partnership seventy-five (75) percent of the costs over this threshold, and the partnership shall provide the remaining twenty-five (25) percent of the costs.

(4) The department shall provide financial incentive payments to partnerships based on the achievement of established benchmarks related to improved health status outcomes measured by key performance indicators designated by the department.

(5) Payment provisions shown in Medicaid payment regulations which apply to Medicaid provider payments for services provided under the regular Medicaid Program shall not be applicable for partnership services.

Section 7. Covered and Noncovered Services Under Partnerships. (1) Each partnership shall provide, or arrange for the provision of, medically necessary health services, including emergency and urgent care services as shown in subsection (2) of this section, to the extent the services are covered as of January 1, 1997, for recipients under the Kentucky State Medicaid Plan and in accordance with 42 CFR 431.52. The department shall provide a listing of these services, including services of federally qualified health centers (FQHCs), public health departments and the Commission for Children with Special Health Care Needs, to each partnership.

(2) Emergency or urgent care services provided to members shall be covered by each partnership even though the services may be received outside the member's regional partnership in accordance with 42 CFR 431.52.

(3) Medical detoxification services shall be covered by partnerships for members.

(4) Partnerships shall not be required to provide, or arrange for the provision, of:

(a) Health care services to any member who resides in a nursing facility after disenrollment from the partnership.

(b) Behavioral health services except for those psychiatric services covered for nonpsychiatrist Medicaid physicians as of January 1, 1997, and as shown in subsection (3) of this section;

(c) School-based health services for members aged three (3) to twenty-one (21) years, as determined eligible under provisions of 20 USC Chapter 33, and in accordance with 707 KAR Chapter 1; and

(d) Early intervention program services for members age birth to three (3) years as determined eligible under the provisions of Part H, 20 USC 1471-1485 and 34 CFR 303.

(5) The following covered services within a member's partnership, and others as designated by individual partnerships or the department, shall be accessible to a member without referral from the primary care provider:

(a) Immunizations to members under twenty-one (21) years of age;

(b) Maternity care for adolescent members;

(c) Primary care dental and oral surgery services, and evaluations by orthodontists and prosthodontists;

(d) Primary care vision services and fitting of eyeglasses provided by ophthalmologists, optometrists, and opticians;

(e) Screening, evaluation, and treatment for sexually transmitted diseases, tuberculosis, and other communicable diseases as defined by 902 KAR 2:020;

(f) Testing for Human Immunodeficiency Virus (HIV) and other HIV related conditions; and

(g) Voluntary family planning.

(6) Partnerships shall make services, service locations, and services sites available and accessible in terms of timeliness, amount, duration, and personnel sufficient to provide, or arrange for the

provision of, all covered services on an emergency or urgent care basis, twenty-four (24) hours a day, seven (7) days a week. This shall include:

(a) Primary care delivery sites:

1. That are no more than thirty (30) miles or thirty (30) minutes from members in urban areas, and for members in rural areas, no more than forty-five (45) minutes or forty-five (45) miles from residence or place of employment.

2. With member to primary care provider ratios not to exceed 1500:1. The department may approve exceptions to this standard with approval of Health Care Financing Administration.

3. With appointment and waiting times, not to exceed thirty (30) days from date of a member's request for routine and preventive evaluation and management services and forty-eight (48) hours for urgent care.

(b) Specialty care. Referral appointments to specialists, except for specialists providing behavioral health services, shall not exceed thirty (30) days for routine care or forty-eight (48) hours for urgent care.

(c) Emergency care. All emergency care shall be provided immediately, at the nearest appropriate health care facility, regardless of contracts.

(d) Hospitals. Transport time shall not exceed thirty (30) minutes, except in rural areas where access time may be greater, and for behavioral health and physical rehabilitative services where access shall not exceed sixty (60) minutes. If greater, the community standard for accessing care shall be utilized, and exceptions shall be justified and documented by the partnership on the basis of community standards.

(e) General dental services. Transport time shall not exceed one (1) hour, except in rural areas where community standards and documentation shall apply. Appointment and waiting times shall not exceed three (3) weeks for regular appointments and forty-eight (48) hours for urgent care.

(f) General vision, laboratory and radiology services. Transport time shall not exceed one (1) hour, except in rural areas where community standards and documentation shall apply. Appointment and waiting times shall not exceed thirty (30) days for regular appointments and forty-eight (48) hours for urgent care.

(g) Pharmacy services. Transport time shall not exceed one (1) hour, except in rural areas where community standards and documentation shall apply.

(h) Other services. All covered services not specified in paragraphs (a) through (g) of this subsection shall be available in partnerships according to community standards.

(7) If a partnership fails to meet access standards as shown in subsection (6) of this section, the partnership shall be required to submit a corrective action plan for approval by the department prior to implementation of the plan.

Section 8. Partnership Grievance Procedure. The partnership shall have an internal grievance procedure in place to resolve members' complaints with respect to health care services provided to them.

Section 9. Complaint, Grievance and Appeal Rights. (1) If dissatisfied with any actions taken with respect to:

(a) Health care services, involving denial, reduction or termination of partnership services, members shall be entitled to a complaint, grievance or appeal with either their respective partnerships, or the department, to be conducted in accordance with 907 KAR 1:560.

(b) Actions of the department, partnerships, or participating providers, members shall be entitled to a complaint, grievance and appeal with either their respective partnerships, or the department, to be conducted in accordance with 907 KAR 1:560.

(2) Members shall be informed of their rights and procedures for due process at the time of enrollment, upon change in status, following action upon any claim, and at other times as determined by

the department.

(3) The department shall establish and maintain a toll-free telephone number for members who seek prompt responses to questions regarding Medicaid services and resolution of informal complaints about partnership services.

Section 10. Quality Improvement. (1) The department shall:

(a) Establish a quality improvement program which evaluates access, continuity of care, health care outcomes, and services provided, or arranged for, by partnerships to members.

(b) Establish a quality and access advisory committee, composed of individuals who represent:

1. Behavioral health providers;

2. Kentucky Commission for Children with Special Health Care Needs;

3. Consumers;

4. Health care practitioners;

5. Health care researchers;

6. Hospitals;

7. Public health departments;

8. Quality assurance experts; and

9. Rural health centers.

(c) Collect reports and encounter data from partnerships for quality improvement in the Medicaid population and subpopulations pursuant to terms and conditions of the partnership contract. These reports and data shall include at least the following:

1. Health status outcomes;

2. Member and partnership provider satisfaction information, including number, type and resolution of complaints, grievances and appeals; and

3. Utilization of services.

(2) The department's quality and access advisory committee shall:

(a) Advise the department about and recommend standards for the department's quality improvement and access plan;

(b) Advise the department about the selection of quality indicators, benchmarks and health care outcomes to monitor in partnerships;

(c) Review and make recommendations to the department about trends related to utilization of and access to services, findings from quality improvement studies, and member and partnership provider grievances; and

(d) Advise partnerships on quality improvement initiatives and studies.

(3) Each partnership shall establish a quality improvement program which addresses at least the following:

(a) Access and continuity of care, including partnership provider ratios, points of access to specialists, distance to care, waiting periods for services, and appropriate physical and language support in accordance with 20 USC Chapter 33;

(b) Procedures to credential and recredential partnership providers;

(c) Goals and objectives of a quality improvement program;

(d) Methods for taking corrective actions relating to quality improvement;

(e) Methods to internally and externally review and evaluate the quality of health care, including health services data and quality of care studies;

(f) Methods to integrate quality improvement with other management activities, including changes in the access to partnership providers and member services; and

(g) Establish a quality and access advisory committee composed of partnership providers and health care researchers.

Section 11. Fiscal Penalty. If a partnership fails to submit encounter data to the department in accordance with terms and conditions specified in the contract, the department shall reserve the right to withhold ten (10) percent of the partnership's capitation rate

for the month following nonsubmission of data. This amount withheld shall be returned to the partnership upon receipt and acceptance of the encounter data by the department.

Section 12. Termination of a Partnership Contract. The department shall have the right to terminate a partnership contract in accordance with administrative regulation 200 KAR 5:312, Section 2.

Section 13. Termination of Partnership Providers or Subcontractors. (1) Any partnership provider or subcontractor of a partnership who engages in activities that result in their suspension, termination, or exclusion from the Medicare or Medicaid Program shall be terminated from participation in the Partnership Program.

(2) If a health care provider is suspended, terminated, or excluded from participation in the Kentucky Medicaid Program, partnerships shall be notified by the department.

Section 14. Liability for Actions Taken Against Partnerships. Individual partnerships and any partnership providers, or subcontractors, shall be required to hold harmless the Commonwealth, its officers and employees, and members from incurring any liability for their Medicaid related services and debts.

Section 15. Partnership Insolvency. If a partnership becomes insolvent, is terminated from Kentucky Medicaid Program participation, or ceases to operate, the department shall:

(1) Make every effort to immediately notify partnership providers and members;

(2) Provide or arrange for the provision of Medicaid services in the partnership region, using the solvency reserve as shown in Section 5(5)(c) of this administrative regulation; and

(3) Assume responsibility for paying partnership providers directly, after the end of the partnership's obligation and at the partnership rates, for services to members until a new partnership can be implemented.

Section 16. Partnership Provider and Member Representation and Advocacy. Each partnership shall be required to develop and implement a plan to assure appropriate member and partnership provider participation in the establishment of partnership policies and procedures. The plan shall be approved by the department and include:

(1) The establishment of an ongoing consumer advisory committee composed of members and individuals from consumer advocacy groups who are representative of the member population; and

(2) Mechanisms for involving partnership providers, which may include provider membership on the governance body, separate provider advisory committees and ad hoc provider work groups.

Section 17. Marketing. Regional partnerships, or any subcontractors, shall:

(1) Conduct member marketing and enrollment activities only with the involvement and approval of the department; and

(2) Be prohibited from:

(a) Direct telephone marketing or direct mail advertising to members, or to recipients who are not enrolled in a partnership; and

(b) Offering or granting any reward, favor or compensation as an inducement to select a particular provider.

Section 18. Confidentiality. Partnerships shall be required to maintain confidentiality of all member information and records, and prevent unauthorized disclosure of this information for any reason in accordance with KRS 194.060 and 434.840 to 434.860 and 42 CFR 431, Subpart F.

JOHN H. MORSE, Commissioner and Secretary

APPROVED BY AGENCY: November 14, 1996

FILED WITH LRC: November 15, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 23, 1996 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 1996 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900, Fax Number: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick or Karen Doyle

(1) Type and number of entities affected: All home and community based waiver providers and recipients participating in the Medicaid Program.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments have been received to date.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The partnerships who elect to participate will have compliance, reporting and paper work requirements.

2. Second and subsequent years: Same requirements as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Savings of \$31,619,845 million based on three (3) regional partnerships being implemented in fiscal year 1997 to the extent that initial projection will be realized through final actuarial analysis.

2. Continuing costs or savings: Savings of \$117.0 million annually based on initial projections being realized.

3. Additional factors increasing or decreasing costs: Personnel impact - There will be some reallocation of staff resources and there may be a need for additional staff.

(b) Reporting and paperwork requirements: 1115 Waiver reports to the Health Care Financing Administration will be required.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be phased in statewide.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives

were rejected; Waiver is being implemented as approved. Alternatives were considered in the original request for the waiver.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Public health is expected to improve in that community. Health care quality and access is expected to increase. Certain health outcomes are expected to be achieved. More recipients should be managing their own health needs in the Medicaid population.

(b) State whether a detrimental effect on environment and public health would result if not implemented: None anticipated.

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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. The department was awarded a waiver under section 1115 of the Social Security Act to implement a demonstration project known as the "Kentucky Health Care Partnership".

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

CABINET FOR HEALTH SERVICES Department for Medicaid Services (New Administrative Regulation)

907 KAR 3:020. Coverage and payments for targeted case management and rehabilitative services provided through an agreement with the state Title V agency.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 431.615, 440.130, 447 Subpart B, 42 USC 1396a-d, 1396s, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources

and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented federal law for the provision of medical assistance to Kentucky, indigent citizenry. This administrative regulation provides for coverage and payments for targeted case management and rehabilitative services provided through an agreement with the state Title V agency, the Department for Public Health.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services.

(2) "Rehabilitative services" means medical or remedial services recommended by a physician or other licensed practitioner of the healing arts, within the scope of his practice under state law, for maximum reduction of physical or mental disability and restoration of a recipient to his best possible functional level.

(3) "Targeted case management services" means a set of activities which assist an individual in accessing needed medical, social, educational, and other support services.

(4) "Title V agency" means the Department for Health Services.

Section 2. Interagency Agreement. Services provided pursuant to this administrative regulation shall be in accordance with an interagency agreement between the department and the Title V agency.

Section 3. Coverage. Services provided shall be the following:

(1) Targeted case management services provided to the following:

(a) Medicaid-eligible children under the age of twenty-one (21) who meet the Department for Social Services' conditions and circumstances to be defined as a child in the custody of, or under the supervision of or at risk of being in the custody of the state; and

(b) Medicaid-eligible adults (persons twenty-one (21) years of age or older) who meet the Department for Social Services' conditions and circumstances to be defined as an adult in need of protective services.

(2) Rehabilitative services provided to Medicaid-eligible children under the age of twenty-one (21) who meet the Department for Social Services' conditions and circumstances as a child in the custody of, or under the supervision of or at risk of being in the custody of the state.

Section 4. Provider Qualifications and Conditions for Participation. The following provider qualifications and conditions for participation shall be applicable for services provided pursuant to this administrative regulation.

(1) The Title V agency may provide services directly or through agreement with the Department for Social Services as the state agency responsible for the provision of child and adult protective services, which includes the following:

(a) Children in the custody of the state; or

(b) Under the supervision of the state; or

(c) At risk of being in the custody of the state; and

(d) Adults who may receive protective services from the state as a component of the Title V Maternal and Child Health Program.

(2) Services which are provided by the Department for Social Services and its subcontractors shall meet appropriate requirements for the service, including as appropriate a plan of care, supervision, and reporting.

(3) Providers and subcontractors shall maintain records to document services provided for not less than five (5) years or until any audit dispute or issue is resolved if beyond five (5) years.

Section 5. Access to Records, Providers, and Recipients. (1) Treatment and financial records of providers and subcontractors shall be made available to the department upon request to verify services provided and the cost of the services.

(2) Inspection may be on site or through the submittal of written or electronic materials as determined to be appropriate by the department.

(3) The department shall have the right to interview all current or previous provider or subcontractor staff with regard to services provided pursuant to this administrative regulation and all recipients of targeted case management or rehabilitative services with regard to services received pursuant to this administrative regulation.

(4) Access to provider or subcontractor records relating to services provided shall be required for:

(a) Representatives of the United States Department of Health and Human Services;

(b) The state Attorney General's Office; and

(c) The state Auditor's Office.

(5) Providers or subcontractors shall be required to provide to the department and representatives of those agencies or offices referenced in this section of this administrative regulation, on request, any information maintained by the provider to document the service provided and any information regarding payments claimed by the provider for furnishing services.

Section 6. Reimbursement. The following reimbursement provisions shall be applicable:

(1) Payments shall be based on cost.

(2) An interim rate based on projected cost shall be used as necessary with a settlement to cost at the end of the state fiscal year.

(3) A billable unit of service shall include all services of that type (targeted case management or rehabilitative services) provided during the month.

Section 7. Incorporation by Reference of the Provider Manual. (1) "The Policies and Procedures Manual for Title V Services provided by the Department for Social Services", dated July 1996, shall be incorporated by reference in this administrative regulation.

(2) The manual shall be on file in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Third Floor East, Frankfort, Kentucky 40621.

(3) The manual shall be available for review during the normal business week, Monday through Friday, 8 a.m. through 4:30 p.m. (eastern time), excluding state holidays.

(4) Each participating provider shall be provided one (1) copy of the manual and appropriate manual updates following their incorporation by reference. Additional copies may be obtained from the Department for Medicaid Services upon payment of an appropriate fee which approximates cost in accordance with KRS 61.872.

Section 8. Implementation Date. The provisions of this administrative regulation shall be applicable with regard to services provided on or after July 1, 1996.

JOHN H. MORSE, Commissioner, Secretary

APPROVED BY AGENCY: November 6, 1996

FILED WITH LRC: November 7, 1996 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 23, 1996 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 16, 1996 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments

on the proposed administrative regulation to: William K. Moore, Jr., General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900, Fax Number: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick or Karen Doyle

(1) Type and number of entities affected: Department for Social Services providing case management and rehabilitative services provided through an agreement with the state Title V Agency, the Department for Health Services, to Medicaid recipients.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$24 million (cost).

2. Continuing costs or savings: \$27 million (cost).

3. Additional factors increasing or decreasing costs: Number of Medicaid recipients needing targeted case management and rehabilitative services.

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: To assure that medically necessary targeted case management and rehabilitative services are available to Medicaid recipients.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of Medicaid recipients.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions or arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the

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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.

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 November 6, 1996

The November meeting of the Administrative Regulation Review Subcommittee was held on Wednesday, November 6, 1996, at 10 a.m. in Room 131 of the Capitol Annex. Representative Jesse Crenshaw, Chairman, called the meeting to order, and the roll call was taken. The minutes of the October 7, 1996 meeting were approved.

Present were:

Members: Representative Jesse Crenshaw, Chairman, Senators Nick Kafoglis, Joey Pendleton, Richard L. Roeding; Representatives Jim Bruce, Woody Allen, Jimmy Lee.

LRC Staff: Greg Karambellas, Donna Little, Steve Lynn, Susan Wunderlich, Peggy Jones, Donna Valencia, Susan Eastman, Don Hines.

Guests: Stephanie Midkiff, Michael A. Bennett, Earl Mackey, Legislative Ethics Commission; Richard Casey, Kentucky Higher Education Assistance Authority; Jennifer Fetter, Major John P. Roth, Kentucky National Guard; Rex Hunt, Donald R. Speer, Karen Powell, Finance and Administration Cabinet; Carol McGuire, Board of Nursing; David Lovelace, Sarah Hernandez, Tourism Development Cabinet; Bob Bates, Tom Bennett, Department for Fish and Wildlife Resources; Lori Flannery, Economic Development Cabinet; Linda Stacy, Kathy Adams, Bob Logan, Aaron Keatley, Lauren Anderson, James Hale, Robert Daniell, Natural Resources and Environmental Protection Cabinet; Brenda Priestley, Tamela Biggs, Department of Corrections; Sandra Pullen Davis, Transportation Cabinet; Kevin Noland, Board of Education; Tom Willis, Kyna Koch, Barbara Kibler, Department of Education; Beverly Haverstock, George Parsons, Harlan Stubbs, Reecie Stagnolia, Linda Graves, Workforce Development Cabinet; Bill Ralston, Kembra Taylor, Tim Chancellor, Labor Cabinet; Melissa Stevens, Marcy Ches, Department of Workers' Claims; Shelley McConley, Eugene D. Attkisson, Larry Schneider, Department of Mines and Minerals; Julie Mix, Carla H. Montgomery, Department of Insurance; Judith G. Walden, Department for Housing, Buildings and Construction; Cookie Whitehouse, Cabinets for Families and Children and Health Services; John H. Walker, Gerald Luttrell, D. Swain, Joyce Bothe, John Gray, John A. Volpe, Gene D. Simmons, Cabinet for Health Services; Steve Osborne, John Hafendorfer, Cabinet for Families and Children; John McNulty, Office of Lt. Governor; Sam Crawford, Laura Knoth, Ronny Pryor, Kentucky Farm Bureau; Bill Howard, BOHN; Roger Grim, KACCS; Tim Young, American General Finance; Bill Doll, Kentucky Medical Association; Terrence C. Brown, Kentucky Physical Therapy Association; H. Carl Horneman, Kentucky Chamber of Commerce; Gay Dwyer, Kentucky Retail Federation; Mary Lane Whitty, Underwriters Safety and Claims; Ted Bradshaw, IIAK; Danbridge F. Walton, Masellan Health; Crystal Edwards, Travis Davenport, Michael Fred Cooper, Peter C. Brooks, Union College; Kythryn Carr, Madisonville Community College; Karen Caldwell, Shirley Crick, April Crick, Vanessa Harris, students.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

Legislative Ethics Commission

2 KAR 2:010 (& E). 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. Earl Mackey, Executive Director; Michael Bennett, Enforcement Counsel; and Stephanie Midkiff, Legal Counsel, represented the Commission.

Mr. Mackey stated that: (1) this administrative regulation: (a) was considered as an emergency at the October 7 meeting of the

Subcommittee; (b) revised the forms filed by legislative agents and employers to: 1. conform with changes made by the 1996 General Assembly to the legislative ethics laws; and 2. streamline the forms to make them less burdensome; and (c) was amended to comply with 1996 legislative changes in reporting requirements for the source of funds; (2) the new ethics law required associations, coalitions, and certain public interest entities to report the source of the financial funds received by the entities; and (3) while this administrative regulation permitted reporting these items in the aggregate as gifts, contributions, etc., if the funds were given for lobbying-related purposes, the administrative regulation required reporting them by the name and address of the contributor.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 and 3(1) were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b); and (2) Section 1 was amended to define "source of funds and financial resources".

Finance and Administration Cabinet: Purchasing

200 KAR 5:025. Memoranda of agreement and memoranda of understanding by state agencies. Karen Powell, General Counsel, Finance and Administration Cabinet, stated that this administrative regulation: (1) was promulgated at the request of the Program Review and Capital Projects committees to better track and define memoranda of agreement and understanding used by the state; (2) specified requirements to be included in memoranda, including: (a) specific monetary liability of each party; and (b) return of state funds if a project is not begun or completed by a certain date; and (3) required agencies entering into memoranda of agreement or understanding to report active agreements to the Cabinet annually.

Section 6 of this administrative regulation was amended to insert applicable statutes and statutes exempting the Transportation Cabinet.

Tourism Development Cabinet: Tourism Cabinet, Office of the Secretary

300 KAR 2:010. Kentucky Tourism Development Act Sales Tax Credit Program. David Lovelace, Deputy Secretary, Tourism Cabinet; Sarah Hernandez, Legal Counsel, Tourism Cabinet; and Lori Flannery, appeared before the Subcommittee. Mr. Lovelace stated that this administrative regulation implemented the new tourism development sales tax credit program, established the procedure for application. Subcommittee staff stated that because there was no specific statutory authority for the imposition of fees related to the sales tax credit program, the Cabinet had: (1) agreed to amend this administrative regulation to delete the imposition of fees; and (2) requested that the Subcommittee request LRC to refer to the appropriate legislative subcommittee the issues raised by this administrative regulation relating to the agency's need to impose fees and amendment of relevant statutes.

This administrative regulation was amended to delete the imposition of fees by deleting Section 3(3).

The Subcommittee approved a motion to request LRC to refer to the appropriate legislative subcommittee the issues raised by this administrative regulation relating to the agency's need to impose fees and amendment of relevant statutes.

Department of Fish and Wildlife Resources: Hunting and Fishing

301 KAR 3:022. License, tag and permit fees. Tom Bennett and Bob Bates represented the Department of Fish and Wildlife Resources. Mr. Bennett stated that the administrative regulation: (1) complied with Federal requirements of issuing migratory game bird permits; (2) created an additional fall turkey hunting season; and (3) changed the

expiration dates for hunting permits to correspond to sport licenses.

In response to questions from Representative Allen, Mr. Bennett stated that: (1) on the spring hunt, a turkey hunter would receive three (3) tags for \$17.50; (2) the Department wanted to segregate the spring and fall turkey hunting seasons; (3) a hunter would be able to take two (2) birds in both the fall archery season and spring season; (4) the fall archery season would be extended an additional month; (5) hunters would be able to take hens during the fall hunting season; and (6) a landowner could hunt on his own land.

Representative Lee asked whether the law had recently changed requiring persons exempted from licensure requirements to purchase special permits. Mr. Bennett stated that: (1) the law requiring a veteran and disabled hunter to purchase stamps has been the same for 7 or 8 years; (2) people in some parts of the state had been wrongly advised that they did not need to purchase stamps if they were disabled or over 65 years old; (3) in discussions during the 1996 Regular Session of the General Assembly on its budget, the Department was instructed to inform hunters that the license, not the special permits or stamps, were free; (4) most hunters understood this; (5) an Opinion of the Attorney General clearly stated this requirement; (6) the Department would enforce this requirement March 1, 1997; and (7) the Department needed to discuss this issue with the long term funding task force before deciding whether this issue should be presented to the General Assembly at its 1998 Regular Session.

This administrative regulation was amended as follows: (1) The NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly and accurately state the necessity for and function served by the administrative regulation, pursuant to KRS 13A.220(3)(f); and (2) Sections 4, 5, 6, 7, and 8 were renumbered pursuant to KRS 13A.220(4).

Economic Development Cabinet: Kentucky Jobs Development Authority

307 KAR 2:020. Kentucky Tourism Development Act Sales Tax Credit Program. Lori Flannery, General Counsel, Cabinet for Economic Development, appeared before the Subcommittee. Ms. Flannery stated that: (1) this administrative regulation: (a) implemented the portion of House Bill 815, the Kentucky Tourism Development Act Sales Tax Credit Program, for which the Cabinet is responsible; and (b) was a counterpart to 300 KAR 2:010; (2) the Cabinet proposed to amend this administrative regulation to delete the section authorizing the KEDFA Board to impose legal fees on applicants; and (3) Cabinet staff had discussed with Subcommittee staff the issue of legislative intent to permit imposition of fees; (4) Subcommittee staff had suggested that the issue should be referred to LRC for transmittal to the appropriate legislative subcommittee.

In response to a question by Chairman Crenshaw, Subcommittee staff stated that: (1) the issue relating to the imposition of fees was the same issue raised by 300 KAR 2:010; (2) there was no clear authority for the establishment of fees by the Cabinet; and (3) the Cabinet has: (a) agreed to delete the section of this administrative regulation that imposes fees; and (b) requested the Subcommittee to request LRC to refer the issue of the Cabinet's authority to impose fees to the appropriate legislative subcommittee for consideration of amendment to statutes to grant the Cabinet the authority to impose fees.

In response to a question by Chairman Crenshaw, Ms. Flannery stated that the Board sought only to impose fees in the same manner as, and as authorized for, all other tax incentive programs of the state, if the Cabinet was granted authority to impose fees, she could not state the exact fee that would be imposed; an administrative fee of 1% of the amount of the estimated proposed economic incentive approved by the KIDFA Board; KEDFA board to recoup from an applicant the legal or other professional fees to the Board; the Cabinet believed that the legislature intended to authorize the imposition of fees for this program as it has for all other tax incentive programs of the state; although language in the act specifically

provided for the imposition of fees, questions were raised because of the misnumbering of sections in a cross reference in a provision of House Bill 815 that inadvertently failed to specify all sections of the bill, and the manner in which sections of the bill authorizing the imposition of fees were codified in a KRS Chapter that did not contain the broad authority granted the Cabinet to impose fees.

Subcommittee staff stated that because of the manner in which the bill was codified because of the misnumbering in the bill, the authority to impose fees appeared to be restricted and did not extend to the program governed by this administrative regulation; and, the Statute Revisor could not recodify the bill.

Chairman Crenshaw asked whether the amendment to this administrative regulation meant that the Cabinet would not impose fees until the General Assembly amended existing statutes. Ms. Flannery stated that: (1) the Kentucky Economic Development Partnership Board, established in 1992, pursuant to authority granted the Partnership Board by statute, by resolution granted the KEDFA Board the authority to assess fees, even though KIDFA did not have specific statutory language authorizing fees; and (2) although the section of this administrative regulation that imposed fees would be deleted, the Cabinet believed that the Partnership Board, at its December meeting, could by resolution delegate to the KIDFA board the authority of the Partnership Board to collect fees.

Rep Bruce stated that it appeared that even if the section of this administrative regulation imposing fees was deleted, fees would be imposed. Ms. Flannery stated that: (1) she did not want to mislead the Subcommittee by implying that fees would not be imposed; (2) fees would be imposed if there was statutory authority for imposition; (3) the Partnership Board, at its December meeting, could by resolution delegate to the KIDFA board the authority of the Partnership Board to collect fees; (4) whether or not otherwise specifically authorized, the imposition of fees had been authorized by resolution since 1992, under the statutory authority granted to the Partnership Board; and (5) questions relating to the authority to impose fees were raised only because of the inadvertent omission in House Bill 815 in the number of sections of the bill that were cross-referenced.

Representative Bruce asked what problems the Cabinet would face if it did not impose fees. Ms. Flannery stated that KEDFA Board, attached to Cabinet for Economic Development, will be unable to recoup the legal fees charged by outside counsel. Representative Bruce stated that the: (1) firms employed by the Cabinet were expensive; (2) legal expenses could be reduced if the Cabinet utilized state attorneys, both: (a) in-house, and (b) as done by many state agencies, attorneys on the staff of the Attorney General; and (3) if legal fees were imposed even if the Cabinet amended this administrative regulation to delete the section imposing fees, and contrary to the recommendations of the Subcommittee, it could be more difficult to enact legislation at the next Regular Session to authorize the Cabinet to impose fees.

In order to permit Subcommittee staff to prepare a report for the Subcommittee, Ms. Flannery agreed to: (1) meet with Subcommittee staff prior to action by the Partnership Board; and (2) inform the Subcommittee: (a) if it intended to impose fees through the Partnership Board; (b) of the statutory authority for the imposition of fees through action of the Partnership Board; and (c) relevant legal issues that imposition through the Board would raise.

Chairman Crenshaw stated that while he appreciated Ms. Flannery's candor, he found the Cabinet's position relating to the possible imposition of fees through the Partnership Board inconsistent with its agreement to amend this administrative regulation to delete the section imposing fees.

Representative Lee stated that: (1) agencies often: (a) state that they inadvertently omitted certain provisions, words, fees, requests for fees or authority, or requirements from legislation proposed by them; and (b) promulgate an administrative regulation containing what was omitted from the legislation, such as a fee or fee increase that was not authorized or contained in the legislation proposed by the agency;

(2) the Subcommittee has no alternative to finding such administrative regulations deficient, because: (a) they exceed statutory authority; (b) specific authorization by the General Assembly is required; and (c), it cannot be argued, and it is not the case, that it is the intention of the General Assembly to raise fees with every bill it enacts; (3) he was sure that: (a) omissions from legislation were not more intentional than inadvertent; and (b) an agency might believe that it has a better chance with 7 members of a committee than with 138 legislators; and (c) it was not fair to members of the Subcommittee.

Ms. Flannery stated that she: (1) understood Representative Lee's concern; (2) and legislative staff believed that the omission in House Bill 815 was inadvertent and was not an expression of legislative intent not to authorize fees; and (3) agreed with legislative staff that the section imposing fees had to be deleted because the statute on its face did not authorize fees.

Chairman Crenshaw stated that the intention of the Subcommittee: (1) was that the section imposing fees be deleted; (2) was not to recommend or authorize the Cabinet to find another way to accomplish what the Subcommittee has stated it believed was not authorized.

This administrative regulation was amended as follows: the (1) STATUTORY AUTHORITY paragraph was amended to correct the citation of statutes; and (2) Section 5, imposing fees, was deleted.

The Subcommittee approved a motion to request LRC to refer the issues relating to the Cabinet's authority to impose fees and the need for amendment of existing statutes at the 1998 Regular Session of the General Assembly to the appropriate legislative subcommittee.

Justice Cabinet: Department of Corrections: Office of the Secretary

501 KAR 6:050. Luther Lockett Correctional Complex. Tamela Biggs, Staff Attorney, represented the Department of Corrections. Ms. Biggs stated that: (1) fire inspections were conducted weekly and monthly by Department staff; (2) to her knowledge, state and local fire officials had conducted inspections each year; (3) the administrative regulation stated that staff would request a fire inspection each year from local and state officials.

Subcommittee staff stated that: (1) this administrative regulation provided that fire inspections shall be conducted annually by state or local fire officials; (2) the Department had not been granted authority to order an inspection by state or local fire officials; and (3) the policy should clearly state that the institution would request an inspection.

This administrative regulation was amended as follows: (1) the Reference Sections of LLCC 01-13-01, LLCC 02-01-04, LLCC 08-01-01, LLCC 14-05-01, LLCC 15-03-04, were amended to correct statutory citations; (2) LLCC 01-13-01, B., 8., LLCC 02-01-04, B., LLCC 08-01-01, F., LLCC 08-01-01, G., I., LLCC 08-01-01, J., 1., d., 08-04-01, A., LLCC 14-05-01, C., 1., and LLCC 15-03-04, A. were amended to comply with the drafting requirements of KRS 13A.222(4); (3) LLCC 08-05-01 B. was amended to delete language that repeated or summarized statutory language, pursuant to KRS 13A.120(2)(e); (4) LLCC 08-05-01, C. was amended to comply with KRS 13A.120(2)(i) by designating the warden, deputy warden for program services, and psychological services staff as the designees of the Commissioner of the Department; (5) LLCC 08-04-01 was amended, pursuant to KRS 13A.222(4)(a), to specify that void disciplinary records was the subject of the section; (6) pursuant to KRS 13A.120(2)(i), the policy section of LLCC 08-01-01, LLCC 08-01-01, H., 2., and LLCC 08-01-01, I., were amended to comply with KRS 197.025(1); (7) LLCC 14-05-01, B., 1., c. was amended to: (a) delete a provision ordering state and local fire officials to conduct yearly inspections, pursuant to KRS 13A.120(2)(h); and (b) provide that the Department would request inspections; (8) the "Request for Inspection" form and "File Request" form were incorporated by reference in LLCC 08-01-01; and (9) the "Self Administration of Medication" agreement form was incorporated by reference in LLCC 15-03-04.

Transportation Cabinet: Department of Highways: Traffic

603 KAR 5:230. The extended weight coal or coal by-products haul system and associated bridge weight limits. Sandra Pullen Davis, Staff Assistant to the Secretary of the Transportation Cabinet, represented the Cabinet. Ms. Davis stated that: (1) this administrative regulation was the mandated annual update of the road segments of the extended weight coal haul road system; and (2) by November 1 of each year, the Cabinet is required to: (a) process data submitted from prior calendar year; and (b) present an update to roads eligible for inclusion in the extended weight coal haul road system.

This administrative regulation was amended as follows: (1) The STATUTORY AUTHORITY paragraph was amended to correct the statutory citations; (2) Section 2 was amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (3) Section 3 was amended to delete language that repeated KRS 189.230(2), pursuant to KRS 13A.120(2)(e); (4) Sections 4, 5, 6, 8, and 10 were amended to comply with the drafting requirements of KRS 13A.222(4); (5) Section 9 was amended to comply with the formatting requirements of KRS 13A.220(4).

Kentucky Board of Education: Department of Education: Office of Chief State School Officer

701 KAR 5:020 (& E). Kentucky High School Athletic Association; procedures for appeal of decisions to the Kentucky Board of Education. Kevin Noland, Associate Commissioner for Legal Services, represented the Department. Mr. Noland stated that 701 KAR 5:020, 701 KAR 5:055, 701 KAR 5:090, 702 KAR 1:080, 702 KAR 7:065, 703 KAR 3:205, and 707 KAR 1:180 were amended simultaneously to conform with changes in the uniform administrative hearing procedures enacted by 1996 Senate Bill 292 [KRS Chapter 13B].

This administrative regulation was amended as follows: Sections 1 through 4 were amended to comply with the: (1) format requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4)(b).

701 KAR 5:055 (& E). Removal hearing procedures. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph, and Sections 1, 2(2), and 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b); and (2) Sections 2, 3, and 4 were amended to delete language that repeated or summarized provisions of KRS Chapter 13B, as required by KRS 13A.120(2)(e) and (f).

701 KAR 5:090 (& E). Teacher disciplinary hearings. In response to a question by Chairman Crenshaw, Mr. Noland stated that this administrative regulation was amended to conform with the provisions of KRS Chapter 13B.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph, and Sections 1, 2, and 5 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b); and (2) Section 2(4) was amended to delete language that repeated or summarized provisions of KRS Chapter 13B, as required by KRS 13A.120(2)(e) and (f).

Office of District Support Services: General Administration

702 KAR 1:080 (& E). Transfer of annexed property; hearing. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph, and Section 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b); and (2) Section 2 was amended to delete language that repeated or summarized provisions of KRS Chapter 13B, as required by KRS 13A.120(2)(e) and (f).

School Administration and Finance

702 KAR 3:100. Data form; professional staff. Mr. Noland stated that: (1) this administrative regulation concerned the professional staff data form that: (a) school districts were required to submit; and (b) contained information about the certified staff, including: 1. what they were certified to teach, 2. what they actually taught, and 3. what their

salary was; and (2) rather than requiring the form be updated in the middle of the year, this administrative regulation required an end of the year update that would give the Department more accurate information: (a) concerning whether teachers taught in their fields; and (b) to present to the legislature when it appropriated funding for local school districts.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2(2) and 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b); and (2) Section 1 was amended to delete language that repeated or summarized the statutory definition of "teacher", as required by KRS 13A.120(2)(e) and (f).

702 KAR 3:270. SEEK Funding Formula. Mr. Noland and Kyna Koch, Director, Division of Finance, represented the Department. Mr. Noland stated that: (1) this administrative regulation amended the SEEK funding formula's add-on component for home and hospital instruction to conform with House Bill 101, enacted at the 1996 Regular Session of the General Assembly, which required the Department to use the average daily attendance of the prior year, rather than the current year; and (2) this change was consistent with the other add-ons in the SEEK formula.

In response to questions by Representative Bruce, Mr. Noland stated that: (1) the General Assembly appropriated money to local school districts based on: (a) the average daily attendance of students that were enrolled in and attended the local school districts; and (b) four statutory add-on components for: 1. exceptional children; 2. transportation; 3. at-risk students; and 4. home and hospital instruction; (2) the amendment to this administrative regulation conformed the calculation of the add-on component for home and hospital to House Bill 101; and (3) changing the calculation date to the prior year, rather than the current year, did not cost additional money.

In response to a question by Senator Pendleton, Mr. Noland stated that state law permitted home-bound instruction for medical reasons after a local school district: (1) reviewed a physician's statement; and (2) determined it was appropriate for a child to receive home-bound instruction.

In response to a question by Senator Roeding, Ms. Koch stated that the change in the administrative regulation was to conform with statutory changes in House Bill 101.

Mr. Noland stated that the Department did not have discretion in amending the administrative regulation, because the statute required the Department to use the prior year's home and hospital figures.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph, and Sections 1, 2, and 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b); and (3) Section 1(13) was amended to delete a provision that repeated KRS 157.440(2)(a), as required by KRS 13A.120(2)(e) and (f).

Senator Roeding stated that he wanted his objections to both the amendment and the administrative regulation noted.

Pupil Transportation

702 KAR 5:130. Vehicles designed to carry nine (9) passengers or less, standards for. Mr. Noland represented the Department. Mr. Noland stated that: (1) this administrative regulation implemented House Bill 610, enacted at the 1996 Regular Session of the General Assembly; (2) prior to the enactment of HB 610, school districts were authorized to use vans which were 9 passengers or less: (a) for emergencies; (b) to transport special education children; and (c) to turn around in areas too small for a regular bus; and (3) HB 610 authorized the use of vans to transport students to school-related activities when a regular-sized school bus was too large to transport a small number of students.

This administrative regulation was amended as follows: (1) the

NECESSITY, FUNCTION, AND CONFORMITY paragraph, and Sections 1 through 11 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b); (2) Section 1 was amended to comply with the statutory definition of "vehicle" established in KRS 156.153(3); and (3, Sections 8 and 11 were amended to correct the name of the form incorporated by reference.

Bureau of Learning Results Services: Assistance and Intervention Services

703 KAR 3:205 (& E). Management Improvement Program. This administrative regulation was amended as follows: (1) Sections 1 and 2 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b); and (2) Section 2(2)(e)1. was amended to cite the appropriate administrative regulation.

Office of Special Instructional Services: Exceptional and Handicapped Programs

707 KAR 1:180 (& E). Due process procedures. This administrative regulation was amended as follows: (1) Section 1(5), and Sections 4 through 15 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b); (2) Sections 1(6), 3(1), and 6(2)(a) were amended to correct statutory citations; and (3) Section 10(4)(f) was amended to correct the name of the Cabinet for Families and Children.

Workforce Development Cabinet: Department for Adult Education and Literacy: Adult Education and Literacy

785 KAR 1:010. Testing program. Beverly Haverstock, General Counsel; Reecie Stagnolia, Director of the Division of Management and Support Services; and Harlan Stubbs, Branch Supervisor, represented the Department. Mr. Stubbs stated that: (1) this administrative regulation: (a) amended the GED testing score requirement to raise the minimum standard score from 35 to 40 on each of the 5 subject areas of the GED test; and (b) retained the required 45 average; and (2) the American Council on Education required implementation of the increased scores by January 1, 1997 nationally.

In response to questions by Senator Roeding, Mr. Stubbs stated that: (1) the test scores of 35 or 40 represented a standard score scale, rather than a percentage, of the norm for high school seniors annually; (2) a score of a 50 was a mean, with the scale ranging from 20 to 80; (3) an average score of 45 was achieved by less than 50% of high school seniors; and (4) under the increased score requirements, 66% of high school seniors would pass the GED, while approximately 34% would not.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to correct a statutory citation; (2) Section 1 was amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b); and (3) the required application forms were incorporated by reference as required by KRS 13A.2251.

Labor Cabinet: Department of Workers' Claims

803 KAR 25:012. Resolution of medical fee disputes. Walter Turner, Commissioner; Melissa Stevens, Chief Ombuds; and Marcy Ches, Staff Attorney, represented the Department.

In response to a question by Representative Bruce, Subcommittee staff stated that the amendment consisted of drafting and formatting amendments to comply with the provisions of KRS Chapter 13A.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph, and Sections 1, 3, 4, and 5 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b); (2) Section 2 was amended to delete language that repeated or summarized KRS 342.735, as required by KRS

13A.120(2)(e) and (f); and (3) Appendix A and B were moved to the end, rather than the middle, of the administrative regulation.

803 KAR 25:089 & E. Workers' compensation medical fee schedule for physicians. Subcommittee staff stated that: (1) there were three amendments to this administrative regulation; (2) the first amendment was proposed by Subcommittee staff to comply with the drafting and formatting provisions of KRS Chapter 13A; and (3) the other two amendments were proposed by the agency.

Mr. Turner stated that: (1) the Workers Compensation medical fee schedule was designed to: (a) balance the Department's desire to obtain medical services for employees at the cost of the employer at the lowest reasonable price; (b) not cause physicians to refuse treatment of industrial injury victims; and (c) ensure patient access to care; (2) the fee schedule was based upon a scientific study conducted by Medicode of Salt Lake City, Utah, which the Department had hired; (3) because Medicode had access to a database of millions of medical reimbursements, Medicode had: (a) presented to the Department a fee schedule which contained relative values (RBRVs) for medical procedures; and (b) recommended conversion factors for use by a medical services biller in multiplying the conversion factor times the RBRVs to arrive at the price of the medical procedure; (4) the Department had submitted an amendment to this administrative regulation on October 28, 1996, to correct typographical errors in the 1996 fee schedule document; (5) the other amendment raised the reimbursement level for particular services; (6) overall, the medical fee schedule raised physician reimbursements approximately 8% above the 1994 medical fee schedule reimbursements; (7) the Department predicted that the insurance industry will accuse the Department of blowing its medical costs containment effort for Workers Compensation; (8) House Bill 928, enacted by the General Assembly in 1994, required the Department to issue a fee schedule that: (a) lowered medical reimbursements; and (b) was comparable to the amount paid by general health care carriers for the same services; (9) the Department increased the fee schedule by approximately 8% because: (a) almost three years had elapsed since the acquisition of the data upon which the 1994 fee schedule was created; and (b) the new fee schedule would probably be in effect for two or two and a half years; (10) while the Consumer Price Index had climbed by about 2.7%, per year, for the last few years, the medical costs index had gone up 4 to 5%; (11) the Department had lowered many reimbursements for surgeries in 1994; (12) because surgeons objected to the reductions for surgery reimbursements between the 1994 and 1996 fee schedules, the Department faced problems with: (a) patient access to medical care; (b) the Department's desire that the best medicine be available for Workers Compensation patients; and (c) the threat of surgeons to back out of industrial health care in Kentucky; (13) the Department staff: (a) looked at the reimbursement levels in various surgical categories; (b) compared those levels with the: 1. proposed 1996 fee schedules; and 2. what general health care carriers paid; and (c) found that: 1. the surgeons had legitimate complaints on some of the procedures; and 2. adjustment was necessary; (14) while the adjustment was based on the average amount paid by general health care carriers, those figures were reduced a little bit; and (15) the Department wanted to assure that an injured worker had access to medical care.

In response to a question by Chairman Crenshaw, Mr. Turner stated that: (1) the third amendment, relating to fees, was recently agreed upon with the surgeons; and (2) while generally the Department had an agreement with the surgeons on the amendment, the surgeons had agreed to accept the level of reimbursements established by the amendment, even though they were not elated over the changes.

Bill Doll, Attorney, Jackson and Kelly, appeared on behalf of the Kentucky Medical Association ("KMA"). Mr. Doll stated that: (1) KMA supported the recent amendments, which were based on much debate; and (2) while physicians were not ecstatic about the rates, the agreement represented a fair compromise that was reached late

Tuesday afternoon (November 5).

Terrence Brown, President, Kentucky Physical Therapy Association ("KPTA"), appeared on behalf of the Association. Mr. Brown stated that: (1) the physical therapists were also billed under the medical fee schedule procedure; (2) while the therapists had adamantly opposed the 1994 fee schedule, they were in favor of the 1996 fee schedule; (3) KPTA felt that Commissioner Turner and his staff: (a) involved Medicode, which was a very knowledgeable entity; and (b) brought forth a very fair and reasonable fee schedule; (4) while the therapists were not necessarily elated with the schedule, they felt it had been a satisfying experience; and (5) the therapists thought the Commissioner and his staff had: (a) received input from interested parties from all sides of the issue; and (b) reached a very fair and reasonable fee schedule.

This administrative regulation was amended as follows:

The first amendment amended the administrative regulation as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph, and Sections 1 through 4 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b); (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to correct a statutory citation; and (3) Section 4(1) was amended to insert the edition date and publisher of the material incorporated by reference.

On motion by Representative Bruce, seconded by Senator Pendleton, the Subcommittee approved the second amendment, which corrected typographical errors throughout the medical fee schedule.

On motion by Representative Lee, seconded by Senator Pendleton, the Subcommittee approved the third amendment, to increase the surgical reimbursement rates for eleven medical procedures contained in the medical fee schedule.

803 KAR 25:096. Selection of physicians and treatment plans. In response to a question by Representative Bruce, Mr. Turner stated that: (1) the requirements contained in this administrative regulation: (a) had existed in an administrative regulation since 1993; and (b) were required by House Bill 928, enacted by the General Assembly in 1994; (2) Workers' Compensation patients were required to make a selection of physician to avoid doctor-shopping; (3) an employee was permitted to change his choice of physician one time; and (4) the selected physician was required to fulfill some gatekeeper functions in the nonmanaged care setting, including furnishing a treatment plan, in certain circumstances, that stated what the physician intended to do relative to the long-term care of a patient.

This administrative regulation was amended as follows: (1) the TITLE; NECESSITY, FUNCTION, AND CONFORMITY paragraph, and Sections 1 through 5 and 7 through 12 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b); and (2) the STATUTORY AUTHORITY paragraph was amended to correct a statutory citation.

803 KAR 25:190. Utilization review and medical bill audit. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph, and Sections 1 through 8 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b); and (2) Section 1(1) was amended to delete language that repeated or summarized the KRS 342.0011(9) definition of "Commissioner", as required by KRS 13A.120(2)(e) and (f).

Department of Mines and Minerals: Division of Explosives and Blasting

805 KAR 4:085. Dealer registration; record requirements. Eugene Attkisson, Counsel for the Department of Mines and Minerals, and Larry Schneider, Director of the Division of Explosives and Blasting, represented the Department. In response to a question by Chairman Crenshaw, Subcommittee staff stated that the only amendments to the administrative regulations dealing with explosives and blasting related to drafting and formatting.

In response to a question by Senator Roeding, Mr. Schneider stated that the definition of explosives was: (1) found in the statute; and (b) not being amended in this administrative regulations.

This administrative regulation was amended as follows: (1) The RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct the statutory citations; (2) The NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly and accurately state the necessity for and function served by this administrative regulation, pursuant to KRS 13A.220(3)(f); (3) Section 1 was amended to: (a) comply with the drafting requirements of 13A.222(4); (b) delete language that repeated or summarized statutory requirements governing the subject matter of this administrative regulation, pursuant to KRS 13A.120(2)(e); and (c) delete the incorporation by reference of Form "(EC-12)"; (4) Sections 2(1) and 3 were amended to comply with the drafting requirements of KRS 13A.222(4); and (5) a new section, Section 4, was inserted to incorporate Form "(EC-12)".

805 KAR 4:093. Permit to purchase or possess explosives. This administrative regulation was amended as follows: (1) The RELATES TO and STATUTORY AUTHORITY paragraph was amended to correct statutory citation; (2) The NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly and accurately state the necessity for and function served by the administrative regulation, pursuant to KRS 13A.220(3)(f); (3) Section 1(1) was amended to: (a) cross reference a fee required by KRS 351.367; and (b) delete the incorporation by reference of Form "(EC-52)"; (4) Section 1(6) was amended to comply with drafting requirements of KRS 13A.222(4)(i); and (5) a new section, Section 2, was inserted to incorporate Form "(EC-52)".

805 KAR 4:140. Misfires. This administrative regulation was amended as follows: (1) The RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct a statutory citation; (2) The NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to: (a) correct a statutory citation; and (b) clearly and accurately state the necessity for and function served by this administrative regulation, pursuant to KRS 13A.220(3)(f); and (3) Section 1 was amended to comply with the drafting requirements of KRS 13A.222(4).

Division of Mining

805 KAR 5:070. Minimum requirements for roof support and the roof control plan approval process. In response to a question by Senator Roeding, Mr. Attkisson stated that this administrative regulation was: (a) modeled on federal regulations; (b) identical to federal regulations; and (c) would make compliance easier for Kentucky coal operators.

This administrative regulation was amended as follows: (1) The RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct a statutory citation; (2) The NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to comply with the drafting requirements of KRS 13A.222(4)(a); (3) Section 1(1) was amended to comply with the drafting requirements of KRS 13A.222(4)(d); (4) Sections 3, 12, 15, 17, and 18 were amended to comply with the drafting requirements of KRS 13A.222(4); (5) Sections 4, 6, 8, 11, and 16 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (6) Sections 7, 9, and 10 were amended to comply with the formatting requirements of KRS 13A.220(4).

Miner Training, Education and Certification

805 KAR 7:080. Training, certification, and annual retraining of mine emergency technicians. In response to a question by Chairman Crenshaw, Subcommittee staff stated that this administrative regulation had been amended to delete a grant of immunity to mine emergency technicians for acts committed in the scope of their employment, because the grant was in excess of statutory authority.

In response to questions by Senator Roeding, Mr. Attkisson stated that: this administrative regulation: (1) was a new administrative regulation based upon House Bill 605, that authorized the

creation of Mine Emergency Technicians; (2) did not specify fees; and (3) required 8 school hours of retraining each year.

This administrative regulation was amended as follows: (1) The RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) The NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to correct statutory citations; (2) Sections 2, 5, 6, 7, and 11 were amended to comply with the dr(a) comply with the drafting requirements of KRS 13A.222(4); and (b) delete material incorporated by reference; (5) Section 4 was amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of 13A.222(4); (6) Sections 8(4) and 10(2), which insulated Mine Emergency Technicians and MET instructors from civil liability for acts performed in the scope of their employment, was deleted, pursuant to KRS 13A.120(2); (7) Sections 9(3) and 9(4) were deleted pursuant to KRS 13A.222(4)(a); and (8) a new section, Section 12, was inserted to incorporate material by reference.

Department of Housing, Buildings and Construction: Plumbing

815 KAR 20:020. Parts or materials list. Judith Walden, General Counsel, represented the Department. Ms. Walden stated that this administrative regulation added a back-water valve to the list of acceptable materials for use in plumbing systems. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) the NECESSITY AND FUNCTION paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 1, 2, 4, and 5 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b); and (4) the statement that the State Plumbing Code Committee reviewed this administrative regulation prior to its filing with the Regulations Compiler was moved from the NECESSITY, FUNCTION, AND CONFORMITY paragraph to the end of the administrative regulation, as required by KRS 13A.220(5)(a).

815 KAR 20:191. Minimum fixture requirements. Ms. Walden stated that this administrative regulation: (1) addressed theaters and assembly halls in which there would now be more women's water closets; and (2) reduced the number of fixtures required at large swimming pools. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY AND FUNCTION paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1 through 7, 11 through 14, and 17 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b).

Manufactured Homes and Recreational Vehicles

815 KAR 25:010. Manufactured homes. This administrative regulation was amended as follows: (1) Sections 1(9) and 4 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b); and (2) Sections 4(4)(b) and 10(2) were amended to correct two typographical errors.

Hazardous Materials

815 KAR 30:060. Certification of underground petroleum storage tank contractors. Ms. Walden stated that: (1) this administrative regulation concerned underground storage tank installers; (2) the Department was required to certify people who install and remove underground storage tanks that hold petroleum; (3) this administrative regulation created a new category of contractors for an industry in which the only activity was installing new cathodic liners; and (4) because people in this industry would be tested solely on their lining capability, and not for removal or other functions, their licenses would be limited to the sole function of lining.

This administrative regulation was amended as follows: (1) the NECESSITY AND FUNCTION paragraph was amended to clearly

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state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (2) Sections 1 through 3, and 5 through 10 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b); and (3) Sections 1(6) and 1(8) were amended to correct statutory citations.

Cabinet for Health Services: Department for Public Health: Administration

902 KAR 1:400 (& E). Administrative hearings. John Walker, Assistant Counsel, Cabinet for Health Services, appeared before the Subcommittee. Subcommittee stated that the amendments to this administrative regulation made it clear that: (1) the conference established by this administrative regulation was not the administrative hearing governed or required by KRS Chapter 13B; and (2) those governed by this administrative regulation had the right to an administrative hearing as required by KRS Chapter 13B.

This administrative regulation was amended as follows: (1) Sections 1 through 4 were amended to: (a) make it clear that the conference was not the administrative hearing required and governed by KRS Chapter 13B; (b) provide that notices relating to conferences may be made by letter or the use of the form specified by the administrative regulation; and (c) insert a cross reference to KRS 13B.110; and (2) a new section, Section 6, was inserted to incorporate by reference required or permissive forms relating to the conference and KRS 13B administrative hearing.

Communicable Diseases

902 KAR 2:090. Tuberculosis detection, prevention, and control. Joyce Bothe, Department for Public Health, Gene Simmons, Tuberculosis Program Manager for Kentucky, appeared before the Subcommittee. Subcommittee staff stated that the amendments to this administrative regulation were to: (1) clarify the standards imposed by the administrative regulation; and (2) add the edition date of material incorporated by reference.

In response to a question by Senator Roeding, Mr. Simmons stated that the drug susceptibility test for anti-tuberculosis drugs was done in state labs and hospitals.

This administrative regulation was amended to: (1) comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (2) specify the name and edition date of material incorporated by reference that established standards and required procedures.

Radiation Operators Certification

902 KAR 105:070 & E. Violations and enforcements. Dr. John Volpe, manager of the radiation control program represented the Cabinet for Health Services. This administrative regulation was amended as follows: (1) The RELATES TO and STATUTORY AUTHORITY paragraph were amended to correct statutory citations; (2) The NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly and accurately state the necessity for and function served by the administrative regulation, pursuant to KRS 13A.220(3)(f); (3) Section 1 was amended to comply with the drafting requirements of KRS 13A.222(4); and (4) Section 2 was amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

This administrative regulation was amend to comply with the: (1) format requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222.

Water Fluoridation

902 KAR 115:020 & E. Enforcement of Water Fluoridation Program. This administrative regulation was amended as follows: (1) The RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) The NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to: (a) add statutory citations; and (b) clearly and accurately state the necessity for and function served by the administrative regulation, pursuant to KRS 13A.220(3)(f); (3) Section 1 was amended to comply with the:

(a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (4) Section 3 was amended to comply with the: (a) drafting requirements of KRS 13A.222(4)(a); and (b) the format requirements for the incorporation of material by reference.

Cabinet for Families and Children: Department for Social Services: Child Welfare

905 KAR 1:320 & E. Fair hearing. John Walker, Office of the Cabinet, Cabinet For Families and Children, appeared before the Subcommittee. This administrative regulation was amended to: (1) comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (2) submit the federal mandate comparison relating to the fair hearing process that had been prepared by the Cabinet.

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Kentucky Higher Education Assistance Authority: National Guard Tuition Assistance Program

11 KAR 13:010E. National Guard Tuition Award Program. Richard Casey, General Counsel, represented the Kentucky Higher Education Assistance Authority ("Authority"). Mr. Casey stated that: (1) the 1996 General Assembly established a program to fund tuition awards for National Guard members; (2) authority to administer the new program was split between the Department of Military Affairs and the Authority; (3) while the Department of Military Affairs was responsible for determining eligibility and the amount of the awards, the Authority was responsible for dispersing the funds with financial integrity; (4) this emergency administrative regulation outlined the duties of both administrative bodies; (5) the Department of Military Affairs was required to: (a) determine eligibility; (b) verify enrollment at participating institutions; and (c) send a list of eligible recipients to the Authority; and (6) after receiving the list from the Department, the Authority would disperse the indicated amount of money directly to the participating institutions.

Department of Military Affairs: National Guard Tuition Award Program

106 KAR 3:010E. Kentucky National Guard Tuition Award Program. Major John Roth, Kentucky National Guard's Education Office, represented the Department.

Board of Nursing

201 KAR 20:390E. Nursing incentive scholarship fund. Carol McGuire, Education Consultant, represented the Board. Ms. McGuire stated that the amended administrative regulation: (1) conformed with the statutory changes made during the 1996 Regular Session of the General Assembly; and (2) allowed the Board to award scholarship money under the statutory provisions that became effective July 15, 1996.

Kentucky State Board of Education: Department of Education: Office of District Support Services: School Terms, Attendance and Operation

702 KAR 7:065 (& E). Designation of agent to manage high school interscholastic athletics. Kevin Noland, Associate Commissioner for Legal Services, represented the Department. Mr. Noland stated that this administrative regulation implemented Senate Bill 292, establishing uniform administrative hearing procedures and enacted during the 1996 Regular Session of the General Assembly.

Workforce Development Cabinet: Department of Vocational Rehabilitation: Administration

781 KAR 1:030E. Order of selection and economic need test for vocational rehabilitation services. Beverly Haverstock, General Counsel; and George Parsons, Rehabilitation Program Administrator,

represented the Department. Ms. Haverstock stated that: (1) this administrative regulation implemented a system allowed by federal law under which the Department would determine the level of services that could be provided for a person with a disability who came to its office; (2) states were permitted to establish an order of selection in order to make the best decisions on: (a) who was eligible for services; and (b) what services would be provided; and (3) because Kentucky could not provide all services for all persons with disabilities, it served persons with the most severe disabilities before those with less severe disabilities.

In response to questions by Chairman Crenshaw, Ms. Haverstock stated that: (1) services were not being reduced by this administrative regulation; and (2) this administrative regulation provided that a client would not be removed from those services if the client: (a) had already been declared eligible; and (b) was receiving services under an existing plan.

Mr. Parsons stated that: (1) even though Kentucky had used an order of selection for a number of years based upon state-developed categories, in May, 1996, the federal government had promulgated administrative regulations that allowed the order of selection to be based only on the severity of the disability; (3) the federal regulation: (a) conflicted with the state provisions which had targeted people with disabilities who received public support; and (b) prohibited Kentucky from targeting people who received public support; (4) this administrative regulation amended the order of selection to base the order on the number of restrictions in functional capacities; (5) the Department hoped: (a) the same people would be served under the new categories; and (b) to serve people with severe disabilities who were given priority consideration; (6) while there would be some impact on services, the exact impact could not be determined until the federal guidelines had been implemented for a period of time; (7) eligible applicants may not be served under the new order of selection in the same priority that had existed under the previous order; and (8) the Department's intent was to serve and place people in employment, not to screen out people.

In response to questions by Representative Lee, Mr. Parsons stated that: (1) this administrative regulation was: (a) consistent with the federal regulations; and (b) drafted as a result of the Department's work with the federal government; (2) because the federal government did not require states to establish an order of selection, the establishment of an order of selection was more restrictive than the federal government required; (3) states with enough money to fund all people with disabilities did not need an order of selection; (4) if a state did not have enough money to serve all people, the state was required to establish an order of selection consistent with the federal guidelines; (5) because Kentucky did not have enough money to serve all people with disabilities, Kentucky had used an order of selection since 1982; (6) a mandate had existed since 1973 that Kentucky serve the people with the most severe disabilities first; and (7) if this administrative regulation was not amended to comply with the federal guidelines by October 1, Kentucky would have lost federal funds.

Department for Employment Services: Unemployment Insurance

787 KAR 1:200 (& E). Maximum weekly benefit rate. Beverly Haverstock, General Counsel, and Linda Graves, Division of Unemployment Insurance, represented the Department. Ms. Haverstock stated that: (1) the Subcommittee approved the emergency version of this administrative regulation at its October 7, 1996 meeting; and (2) this administrative regulation contained the formula for calculating the maximum weekly benefit rate for unemployment insurance beneficiaries.

In response to a question by Chairman Crenshaw, Ms. Haverstock stated that: (1) this administrative regulation increased the weekly benefit for unemployment insurance beneficiaries in 1996; (2) because what the Department took in was increased, the amount it paid out in benefits was increased; (3) the total wages taken in was: (a) \$36,017,761,705 this year; and (b) \$33,842,048,247 last year; and

(4) when the Department applied the statutory formula, the maximum weekly benefit increased from \$238 to \$246 a week.

In response to a question by Senator Roeding, Ms. Haverstock stated that: (1) the average weekly wage in Kentucky increased from \$432.45 to \$447.03; and (2) the Department collected unemployment insurance from employers in Kentucky.

Labor Cabinet: Occupational Safety and Health

Kembra Taylor, General Counsel, Labor Cabinet, Tim Chancellor, and Bill Ralston, Labor Cabinet appeared before the Subcommittee. Subcommittee staff stated that: (1) these administrative regulations were included in Cabinet administrative regulations being reviewed by Subcommittee and Cabinet staff for amendments to comply with various amendments to sections of KRS Chapter 13A governing the incorporation of federal regulations which required Subcommittee staff assistance; (2) the review: (a) related to formatting; and (b) did not relate to questions of statutory authority; and (3) the amendments to Cabinet has agreed to amend these administrative regulations pursuant to this review.

In response to questions by Senator Roeding, Ms. Taylor stated that these administrative regulations related to inspections because they established requirements that employers must meet; did not establish or relate to the manner in which OSHA conducted inspections, or to fees or types of fees paid by employers;

Senator Roeding: (1) stated that there were many complaints about OSHA inspections because it was believed that, rather than assist employers to comply with administrative regulations, the intent often appeared to be to fine employers; and (2) asked if these administrative regulations changed the focus from this to assisting employers to comply. Ms. Taylor stated that the: (1) Cabinet works with employers to help them comply with standards; (2) standards established by these administrative regulations were specification or performance standards that established the level of safety that an employer must meet; (3) Cabinet had a Division of Education and Training that: (a) is not an enforcement body; (b) is available to all Kentucky employers; (c) is advertised; (d) assists employers to comply with OSHA standards; (4) the Voluntary Protection Program permits employers to comply with certain requirements and guidelines and avoid inspections; and (5) if an inspection is conducted by the Compliance Division, there is a requirement for the issuance of citations if warranted.

Senator Roeding stated that: (1) standards should exist for inspectors; (2) that the whole burden should not be placed on employers; (3) complaints had been made concerning inspectors; and (4) requested that the Cabinet: (a) work with and assist employers; (b) ensure that its inspectors would inform employers of assistance offered by the Cabinet to inform and help employers meet standards. Ms. Taylor stated that: (1) these administrative regulations did not relate to the duties or responsibilities of inspectors; (2) the Cabinet has a Fields Operation Manual that instructs an inspector how to conduct an OSHA inspection; (3) employers could call the Cabinet's Division of Education and Training and request a consultative survey that would: (a) inform the employer how to comply; and (b) not result in citations; and (4) inspectors inform employers of the available services.

With regard to 803 KAR 2:600, Representative Bruce stated that he wanted more information on the standards established by this administrative regulation for agriculture. Cabinet personnel stated that this administrative regulation: (1) adopts federal OSHA standards; and (2) was amended to update: (a) consensus standards; and (b) the names and addresses of consensus standards organizations. Chairman Crenshaw stated that the information requested was what requirements were established for those engaged in agriculture. Ms. Taylor stated that examples of requirements imposed on agriculture were: (1) field sanitation standards, requiring certain sanitary facilities for agricultural employees, such as hot water to wash; and (2) general OSHA standards relating to recordkeeping relating to injuries or

illnesses.

Representative Allen stated that he: (1) was concerned over the extent of requirements and inspections; and (2) wanted more complete information concerning the requirements imposed by 803 KAR 2:600 on agriculture.

Ms. Taylor agreed to provide the Subcommittee with the information requested by the Subcommittee.

In response to Senator Roeding statement that he wanted information relating to the requirements of 803 KAR 2:311, 803 KAR 2:315, and 803 KAR 2:316 established for the construction industry and machinery, power towels, welding, cutting, and braising, Cabinet staff stated the amendments to these administrative regulations updated references or addresses. Ms. Taylor stated that the: (1) amendments to these administrative regulations did not make substantive changes to OSHA requirements or administrative regulations; and (2) Cabinet would provide the Subcommittee with information relating to the requirements established for agriculture by Cabinet administrative regulations.

Senator Roeding stated that many regulated employers, especially small employers: (a) are not informed of the requirements established by these administrative regulations; and (b) have stated that: 1. it was not possible for them to keep up with all the requirements and changes to the requirements; and 2. inspectors seemed more interested in finding violations rather than assisting employers to comply with the requirements. Ms. Taylor stated that employers were notified by: (1) the Division of Education and Training; and (2) various employer organizations that inform their members of Cabinet requirements and changes in requirements.

In response to questions by Senator Kafoglis, Ms. Taylor stated that: (1) these administrative regulations: (a) adopted federal requirements; (b) did not exceed federal requirements; (c) conformed to federal requirements; and (2) the failure by the state agency to conform to federal requirements would result in: (a) a determination that the state program was not as effective as the federal program; (b) a loss of the state federal program; and (c) administration of the program by the federal agency.

In response to a question by Representative Lee, Ms. Taylor stated that the amendments to these administrative regulations did not establish or impose standards or requirements that were more stringent than requirements imposed by: (a) these administrative regulations, prior to the amendments before the Subcommittee; or (b) existing federal requirements.

The Cabinet agreed to Chairman Crenshaw and Representative Bruce's request that 803 KAR 2:600 be deferred in order to permit the Subcommittee to be informed of the specific requirements imposed by this administrative regulation on agriculture.

Noting the objection of Senator Roeding, and the comments made by Subcommittee members, the Subcommittee approved these administrative regulations.

803 KAR 2:019. Receiving and unloading bulk hazardous liquids.

803 KAR 2:200. Confined space entry.

803 KAR 2:300. General.

803 KAR 2:301. Adoption and extension of established federal standards.

803 KAR 2:302. General safety and health provisions.

803 KAR 2:303. Walking-working surfaces.

803 KAR 2:304. Means of egress.

803 KAR 2:305. Powered platforms, manlifts, and vehicle-mounted work platforms.

803 KAR 2:306. Occupational health and environmental control.

803 KAR 2:307. Hazardous materials.

803 KAR 2:308. Personal protective equipment.

803 KAR 2:309. General environmental controls.

803 KAR 2:311. Fire protection.

803 KAR 2:312. Compressed gas and compressed air equipment.

803 KAR 2:313. Materials handling and storage.

803 KAR 2:314. Machinery and machine guarding.

803 KAR 2:315. Hand and portable powered tools and other hand-held equipment.

803 KAR 2:316. Adoption of 29 CFR Part 1910.251-.257.

803 KAR 2:317. Special industries.

803 KAR 2:319. Commercial diving operations.

803 KAR 2:320. Air contaminants.

803 KAR 2:402. General safety and health provisions.

803 KAR 2:403. Occupational health and environmental controls.

803 KAR 2:404. Personal protective and lifesaving equipment.

803 KAR 2:408. Tools-hand and power.

803 KAR 2:410. Electrical.

803 KAR 2:422. Rollover protective structures, overhead protection.

803 KAR 2:425. Toxic and hazardous substances.

803 KAR 2:500. Maritime employment.

Department of Insurance: Health Insurance Contracts

806 KAR 17:100 & E. Certificate of filing for provider-sponsored networks. Carla Montgomery, Department of Insurance, stated that this administrative regulation established the filing requirements for obtaining a certificate for provider sponsored networks.

In response to a question by Chairman Crenshaw, Ms. Montgomery stated that the requirements related to: (1) information required to implement or determine compliance with relevant statutes; and (2) basic information, similar to information requested of Health Maintenance Organizations, such as: (a) name and address; (b) principal place of business; (c) location of books and records; (d) organizational, financial documents; (e) copies of policies and procedures to be used to administer the health plans; and (f) information relating to members of provider boards of trustees, such as: 1. biographical information; and 2. addresses.

806 KAR 17:120 & E. Accountable health plan certification. Ms. Montgomery stated that this administrative regulation: (1) related to accountable health plan certification used by the Kentucky Health Purchasing Alliance for applicant organizations that want to offer an accountable health plan through their organizations; (2) will be implemented by the Purchasing Alliance; (3) establishes the application process; and (4) contains the same standards that were promulgated by the Health Policy Board when it was the administrative body with jurisdiction over the subject matter.

In response to questions by Senator Roeding, Ms. Montgomery stated that: (1) the provisions of this administrative regulation were in effect because an emergency administrative regulation had been filed by the Department; (2) both the emergency and ordinary administrative regulations were before the Subcommittee; (3) a public hearing was not held because the Department had not received a request to hold a public hearing; and (4) required forms had been incorporated by reference and filed by the Department.

Senator Roeding stated that: (1) many were unaware that public hearings: (a) could be requested; and (b) were held on the subject matter; and (2) while the information was required in some instances to protect consumers, the: (a) submission of required forms and information was difficult and expensive; and (b) Department should: 1. ensure provider input; and 2. assist providers in complying in the most cost efficient manner. In response to questions by Senator Roeding relating to the release of information form incorporated by reference in 806 KAR 17:100 & E. and 806 KAR 17:120 & E., especially relating to the information required by the form incorporated by reference in 806 KAR 17:120 & E., Ms. Montgomery stated that: (1) with the exception of proprietary information which is exempt from disclosure, the information submitted was available for public inspection; (2) while those required to submit the forms were given an opportunity to comment on the forms and information required by administrative regulation at a public hearing, a public hearing was not requested; (3) many have requested to be notified of Department Notices of Intent to promulgate administrative regulations and have the opportunity to comment; and (4) except for necessary changes to

dates in the forms, the forms that are required are practically identical to the forms required by the Health Policy Board when it had jurisdiction over the subject matter of the administrative regulations.

806 KAR 17:130 & E. Twenty-four (24) hour pilot insurance program. Ms. Montgomery stated that this administrative regulation: (1) established the twenty-four (24) hour pilot insurance program that the Department administers with Workers' Compensation to bring health insurance and workers' compensation together; and (2) contained the same standards contained in an administrative regulation promulgated by the Health Policy Board when it was the administrative body with jurisdiction over the subject matter. In response to a question by Representative Bruce, Ms. Montgomery stated that, except for some technical changes, this administrative regulation was identical to the administrative regulation governing the program that was promulgated by the Health Policy Board when it was the administrative body with jurisdiction over the subject matter.

Group and Blanket Health Insurance

806 KAR 18:060 & E. Filing requirements for associations. Ms. Montgomery stated that this administrative regulation: (1) related to associations; (2) established filing requirements for associations that: (a) existed January 30, 1996; and (b) did not offer group health insurance plans; (3) granted associations until September 1, 1996, to file with the Department and obtain approval to offer group health; and (4) establishes what items are required to be filed with the Department.

In response to a question by Representative Bruce, Ms. Montgomery stated that: (1) associations, such as the Farm Bureau and car dealers' association, were not required to file because they had offered insurance prior to January, 1996; (2) 54 other associations had filed, of which 14 have been approved by the Department; and (3) the Department was reviewing the other filings, for some of which additional information is required from an association.

In response to a question by Senator Roeding, Ms. Montgomery stated that: (1) no association had filed after the September deadline; and (2) the statute prohibited the Department from accepting applications filed after the September deadline.

Cabinet for Health Services: Certificate of Need (Deferred from September)

John Gray, Director, Certificate of Need Office, Cabinet for Health Services, appeared before the Subcommittee. Subcommittee staff stated that: (1) a preliminary review had been made of these emergency administrative regulations; (2) a few minor amendments relating to material incorporated by reference may be required for the ordinary administrative regulations when they are considered by the Subcommittee; and (3) 900 KAR 6:040E, governing licensure hearings would be further reviewed for compliance with KRS Chapter 13B, governing administrative hearings.

Senator Roeding stated that Kentucky Certificate of Need requirements were probably more onerous than any other state's requirements. In response to questions by Senator Roeding, Mr. Walker stated that these administrative regulations would not make the Certificate of Need procedure easier or less expensive.

In response to a question by Chairman Crenshaw, Mr. Walker stated that: (1) these administrative regulations would not make the Certificate of Need procedure more difficult than current requirements; (2) after the abolition of the Health Policy Board, the Certificate of Need procedure was transferred to the Cabinet; (3) statutes governing the subject matter require the: (a) promulgation of these administrative regulations; and (b) establishment of: 1. application fees; 2. capital and major medical equipment expenditure minimums; and 3. the procedure for licensure hearings required by KRS 216B.015; (4) the fees are: (a) the same; and (b) the minimum for capital expenditure and major medical expenditure are required by statute to be adjusted annually; (5) the threshold for which a Certificate of Need for the purchase of major medical equipment has been raised to 1.567 million dollars, which permits the purchase of more expensive

equipment without a Certificate of Need than in the past; (6) applicable statutes require this adjustment based on medical cost inflation; and (7) the administrative regulation governing hearing procedures: (a) relates to licensure revocation after citation; and (b) does relate to the costs for home health care.

In response to a question by Representative Bruce, Mr. Walker stated that the Cabinet: (1) was granted jurisdiction over the Certificate of Need process in July; (2) had held three public hearings, and will hold two additional public hearings, to: (a) obtain testimony from the public in an attempt to determine whether adjustments to the Certificate of Need process need to be made; and (3) would receive recommendations he would make after the public hearings.

In response to a question by Senator Roeding, Mr. Walker agreed to send Senator Roeding the schedule of public hearings relating to the Certificate of Need process.

900 KAR 6:020E. Certificate of need application fee schedule.

900 KAR 6:030E. Certificate of need expenditure minimums.

900 KAR 6:040E. Licensure hearings.

The following administrative regulations were deferred to the next Subcommittee meeting upon agreement by the Subcommittee and the promulgating agency:

Agricultural Experiment Station: Commercial Feeds

12 KAR 2:006. Definitions.

12 KAR 2:011. Label format.

12 KAR 2:016. Brand and product names.

12 KAR 2:017. Product purpose statement.

12 KAR 2:018. Guaranteed analysis.

12 KAR 2:021. Guarantees.

12 KAR 2:026. Ingredients.

12 KAR 2:036. Nonprotein nitrogen.

12 KAR 2:041. Additives.

12 KAR 2:046. Poisonous or deleterious substances.

12 KAR 2:051. Manufacturing conditions.

12 KAR 2:061. Registration.

12 KAR 2:066. Suitability.

Pet Food

12 KAR 3:012. Uniform labeling format.

12 KAR 3:017. Brand and product names.

12 KAR 3:022. Guarantees.

12 KAR 3:027. Ingredients.

12 KAR 3:037. Additives.

12 KAR 3:042. Statement of caloric content.

State Board of Elections: Forms and Procedures

31 KAR 4:040E. Absentee ballots cast in county clerk's office.

Voting

31 KAR 5:010E. Absentee voting.

Department of Fish and Wildlife Resources: Game

301 KAR 2:225E. Dove, wood duck, teal and other migratory game bird hunting.

Department of Agriculture: Linked Deposits

302 KAR 3:010E. Linked Deposit Investment Program for agribusiness.

Economic Development Cabinet: Linked Deposit Investment Program

307 KAR 5:010E. Linked Deposit Investment Program.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Waste Management: General Administrative Procedures

401 KAR 30:005. Definitions related to 401 KAR Chapter 3.

401 KAR 30:010. Adoption without change.

- 401 KAR 30:031. Environmental performance standards.
- 401 KAR 30:040. Transfer of regulatory responsibility.
- 401 KAR 30:080. Standards for variances.

Identification and Listing of Hazardous Waste

- 401 KAR 31:005. Definitions related to 401 KAR Chapter 31.
- 401 KAR 31:010. General provisions for hazardous wastes.
- 401 KAR 31:030. Characteristics of hazardous waste.
- 401 KAR 31:040. Lists of hazardous wastes.
- 401 KAR 31:050. General provisions for special waste.
- 401 KAR 31:060. Rulemaking petitions for hazardous waste.
- 401 KAR 31:070. Delisted hazardous waste streams.
- 401 KAR 31:110. Appendix on toxicity characteristic leaching procedure.
- 401 KAR 31:120. Appendix on chemical analysis test methods.
- 401 KAR 31:160. Appendix on basis for listing hazardous waste.
- 401 KAR 31:170. Appendix on hazardous waste constituents.

Standards Applicable to Generators of Hazardous Waste

- 401 KAR 32:005. Definitions related to 401 KAR Chapter 32.
- 401 KAR 32:010. General provisions for generators.
- 401 KAR 32:020. Manifest system.
- 401 KAR 32:030. Pretransport requirements.
- 401 KAR 32:040. Recordkeeping and reporting.
- 401 KAR 32:050. Special conditions.
- 401 KAR 32:100. Appendix on hazardous waste manifest and instructions.

Standards Applicable to Transporters of Hazardous Waste

- 401 KAR 33:005. Definitions related to 401 KAR Chapter 33.
- 401 KAR 33:010. General provisions for transporters.

Standards for Owners and Operators of Hazardous Waste Storage; Treatment and Disposal Facilities

- 401 KAR 34:005. Definitions related to 401 KAR Chapter 34.
- 401 KAR 34:010. General provisions for facilities.
- 401 KAR 34:020. General facility standards.
- 401 KAR 34:050. Manifest system, recordkeeping and reporting.
- 401 KAR 34:060. Groundwater protection.
- 401 KAR 34:070. Closure and postclosure.
- 401 KAR 34:080. General financial requirements.
- 401 KAR 34:090. Closure financial requirements.
- 401 KAR 34:100. Postclosure financial requirements.
- 401 KAR 34:120. Liability requirements.
- 401 KAR 34:180. Use and management on containers.
- 401 KAR 34:190. Tanks.
- 401 KAR 34:200. Surface impoundments.
- 401 KAR 34:210. Waste piles.
- 401 KAR 34:230. Landfills.
- 401 KAR 34:240. Incinerators.
- 401 KAR 34:245. Containment buildings.
- 401 KAR 34:250. Miscellaneous units.
- 401 KAR 34:275. Air emission standards for process vents.
- 401 KAR 34:280. Air emission standards for equipment leaks.
- 401 KAR 34:281. Air emission standards for tanks, surface impoundments, and containers.
- 401 KAR 34:287. Corrective action for waste management units.
- 401 KAR 34:290. Appendix on recordkeeping instructions.
- 401 KAR 34:360. Appendix on the list of hazardous constituents for groundwater monitoring.

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

- 401 KAR 35:005. Definitions related to 401 KAR Chapter 35.
- 401 KAR 35:010. General provisions for facilities (IS).
- 401 KAR 35:020. General facilities standards (IS).
- 401 KAR 35:050. Manifest system, recordkeeping and reporting (IS).
- 401 KAR 35:060. Groundwater monitoring (IS).
- 401 KAR 35:070. Closure and postclosure (IS).
- 401 KAR 35:080. General financial requirements (IS).
- 401 KAR 35:090. Closure financial requirements (IS).

- 401 KAR 35:100. Postclosure financial requirements (IS).
- 401 KAR 35:120. Liability requirements (IS).
- 401 KAR 35:180. Use and management of containers (IS).
- 401 KAR 35:190. Tanks (IS).
- 401 KAR 35:200. Surface impoundments (IS).
- 401 KAR 35:210. Waste piles (IS).
- 401 KAR 35:230. Landfill (IS).
- 401 KAR 35:245. Containment buildings (IS).
- 401 KAR 35:250. Thermal treatment (IS).
- 401 KAR 35:275. Air emission standards for process vents (IS).
- 401 KAR 35:280. Air emission standards for equipment leaks (IS).
- 401 KAR 35:281. Air emission standards for tanks, surface impoundments, and containers (IS).

- 401 KAR 35:290. Appendix on recordkeeping instructions (IS).

Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities

- 401 KAR 36:005. Definitions related to 401 KAR Chapter 36.
- 401 KAR 36:020. Hazardous waste burned in boilers and industrial furnaces.
- 401 KAR 36:025. Tables and procedures associated with the standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities.
- 401 KAR 36:030. Recyclable materials used in a manner constituting disposal.

- 401 KAR 36:070. Spent lead-acid batteries being reclaimed.

Waste Management - Land Disposal Restrictions

- 401 KAR 37:005. Definitions related to 401 KAR Chapter 37.
- 401 KAR 37:010. General provisions for land disposal restrictions.
- 401 KAR 37:030. Prohibitions on land disposal.
- 401 KAR 37:040. Treatment standards.
- 401 KAR 37:050. Prohibitions on storage.

Hazardous Waste Permitting Process

- 401 KAR 38:005. Definitions related to 401 KAR Chapter 38.
- 401 KAR 38:010. General provisions for permitting.
- 401 KAR 38:020. Interim status provisions.
- 401 KAR 38:030. Conditions applicable to all permits.
- 401 KAR 38:040. Changes to permits; expiration of permits.
- 401 KAR 38:050. Public information procedures.
- 401 KAR 38:060. Special types of permits.
- 401 KAR 38:070. Applications procedures.
- 401 KAR 38:080. Contents of Part A application.
- 401 KAR 38:090. General contents of Part B application.
- 401 KAR 38:100. Specific Part B requirements for groundwater protection.
- 401 KAR 38:150. Specific Part B requirements for containers.
- 401 KAR 38:160. Specific Part B information requirements for tanks.

- 401 KAR 38:170. Specific Part B requirements for surface impoundments.

- 401 KAR 38:190. Specific Part B requirements for incinerators.
- 401 KAR 38:250. Specific Part B requirements for equipment.
- 401 KAR 38:500. Provisions for approval by the local government or the Kentucky Regional Integrated Treatment and Disposal Facility Siting Board.

Hazardous Waste Fees

- 401 KAR 39:005. Definitions related to 401 KAR Chapter 39.
- 401 KAR 39:080. Recycling and universal waste fees.
- 401 KAR 39:110. Registration fees.
- 401 KAR 39:120. Application fees.

Enforcement and Compliance Monitoring for Hazardous Waste

- 401 KAR 40:001. Definitions related to 401 KAR Chapter 40.

Underground Storage Tanks

- 401 KAR 42:005. Definitions related to 401 KAR Chapter 42.

Standards for Special Collection System Wastes

- 401 KAR 43:005. Definitions related to 401 KAR Chapter 43.
- 401 KAR 43:010. General standards.
- 401 KAR 43:020. Standards for small quantity handlers of universal

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waste.

401 KAR 43:030. Standards for large quality handlers of universal waste.

401 KAR 43:040. Standards for universal waste transporters.

401 KAR 43:050. Standards for destination facilities.

401 KAR 43:060. Import requirements.

401 KAR 43:070. Petitions to include other waste under 401 KAR Chapter 43.

Standards for the Management of Used Oil

401 KAR 44:005. Definitions related to 401 KAR Chapter 44.

401 KAR 44:010. Applicability.

401 KAR 44:020. Standards for used oil generators.

401 KAR 44:030. Standards for used oil collection centers and aggregation points.

401 KAR 44:040. Standards for used oil transporter and transfer facilities.

401 KAR 44:050. Standards for used oil processors and refiners.

401 KAR 44:060. Standards for used oil burners who use off-specification used oil for energy recovery.

401 KAR 44:070. Standards for used oil marketers.

401 KAR 44:080. Standards for use as a dust suppressant and disposal of used oil.

Solid Waste Facilities

401 KAR 47:005. Definitions related to 401 KAR Chapter 47.

Standards for Solid Waste Facilities

401 KAR 48:005. Definitions related to 401 KAR Chapter 48.

Solid Waste Planning

401 KAR 49:005. Definitions related to 401 KAR Chapter 49.

Justice Cabinet: Department of Corrections: Office of the Secretary

501 KAR 6:130. Western Kentucky Correctional Complex. Subcommittee Staff stated that this administrative regulation was amended to: (1) delete WKCC 22-00-01, III, G., 6., b., (3) which prohibited the United States Postal Service from insuring arts and crafts projects mailed by inmates because it exceeded statutory authority; (2) correct drafting and formatting errors pursuant to KRS 13A.220(4) and KRS 13A.222(4); and (3) WKCC 20-01-01, III., D., 3., g. was deleted to comply with drafting requirements of KRS 13A.222(4)(a).

In response to questions from Senator Roeding regarding the insurance of inmate packages, Ms. Biggs stated that: (1) the Department did not want to permit insurance of packages because in the past: (a) there was a difference of opinion between the inmate and the U. S. Postal Service of the value of the project; (b) it became a problem for the Correctional Complex post office; (2) the Department decided to prohibit the insurance of inmate packages; and (3) under this policy, an inmate could send a package but could not insure it.

In response to a question from Chairman Crenshaw, Subcommittee Staff stated that the amendment to this administrative regulation would permit an inmate package to be insured.

Ms. Biggs stated that because an inmate could not go to the post office to fill out the paperwork, the inmate could not insure the arts and craft packages.

Representative Bruce: (1) stated that he wanted additional time to review this administrative regulation; and (2) asked if the Department would defer consideration of the administrative regulation until the December meeting.

In response to a question by Chairman Crenshaw, Ms. Biggs stated that: (1) there was not a time problem in deferring consideration of the administrative regulation; and (2) the Department would agree to the deferral.

The Subcommittee approved a motion by Representative Bruce to defer this administrative regulation until the December meeting.

Department of State Police: Candidate Selection

502 KAR 45:005E. Definitions.

502 KAR 45:035E. Application.

502 KAR 45:045E. Written examination.

502 KAR 45:075E. Register.

502 KAR 45:150E. Content Based Task Test (CBTT).

Department of Training: Concealed Deadly Weapon License

503 KAR 6:010E. Carry concealed deadly weapon licensing.

503 KAR 6:020E. Carry concealed deadly weapon licensing application form.

503 KAR 6:030E. The carry concealed deadly weapon licensing applicant identification photo.

503 KAR 6:040E. Application form issuance, completion, and submission procedures.

503 KAR 6:050E. Application form denial procedures and reconsideration process.

503 KAR 6:060E. Data extraction/imaging of the application materials.

503 KAR 6:070E. The applicant background analysis process.

503 KAR 6:080E. Applicant and sheriff notification processes and procedures.

503 KAR 6:090E. The license denial process.

503 KAR 6:100E. The license suspension/ reinstatement process.

503 KAR 6:110E. The license revocation/reinstatement process.

Transportation Cabinet: Department of Highways: Traffic

603 KAR 5:320E. Safety in highway work zones.

Kentucky Board of Education: Department of Education: Office of District Support Services: School Administration and Finance

702 KAR 3:285 & E. School district Medicaid providers.

School Terms, Attendance and Operation

702 KAR 7:055E. Repeal of 702 KAR 7:010, 7:020, and 7:050.

702 KAR 7:125E. Pupil attendance.

Bureau of Learning Results Services: Assistance and Intervention Services

703 KAR 3:060E. Procedures for determining rewards and sanctions.

Learning Results Services

703 KAR 4:010E. The formula for determining successful schools.

703 KAR 4:090E. Statewide Assessment and Accountability Program; school building and local district appeal of performance judgements.

Labor Cabinet: Occupational Safety and Health

803 KAR 2:600. Occupational safety and health standards for agriculture. (See Discussion under "Labor Cabinet: Occupational Safety and Health" above.)

Department of Workers' Claims

803 KAR 25:015. Procedure in Workers' Compensation enforcement hearings.

Department of Alcoholic Beverage Control: Malt Beverage Equipment, Supplies and Service

804 KAR 11:010. Equipment and supplies.

Department of Insurance: Kinds of Insurance; Limits of Risk; Reinsurance

806 KAR 5:060E. Registration of service contracts for consumer products.

Health Insurance Contracts

806 KAR 17:140E. Health insurance rate filing requirements.

Kentucky Racing Commission: Thoroughbred Racing

810 KAR 1:026. Racing associations.

Cabinet for Health Services: Certificate of Need

900 KAR 6:010E. Certificate of need process.

Department for Public Health: State Health Plan

902 KAR 17:030E. State Health Plan.

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902 KAR 17:040E. Data reporting by health care providers.

Health Services and Facilities

902 KAR 20:275E. Mobil health services.

902 KAR 20:320E. Psychiatric treatment facility operation and services.

Cabinet for Families and Children: Department for Social Insurance: Public Assistance

904 KAR 2:470E. Disability Determinations Program.

Department for Social Services: Child Welfare

905 KAR 1:180E. DSS policy and procedures manual.

Day Care

905 KAR 2:100E. Certification of family child care homes.

Cabinet for Health Services: Department for Medicaid Services

907 KAR 1:022E. Nursing facility and intermediate care facility for the mentally retarded services.

907 KAR 1:025E. Payments for nursing facility and intermediate care facility for the mentally retarded services.

Payment and Services

907 KAR 3:020E. Coverage and payments for targeted case management and rehabilitative services provided through an agreement with the state Title V agency.

Department for Mental Health and Mental Retardation Services: Mental Health

908 KAR 2:100E. Kentucky Early Intervention Program definitions.

908 KAR 2:110E. Kentucky Early Intervention Program point of entry.

908 KAR 2:120E. Kentucky Early Intervention Program evaluation and eligibility.

908 KAR 2:130E. Kentucky Early Intervention Program assessment and service planning.

908 KAR 2:140E. Kentucky Early Intervention Program primary service coordination.

908 KAR 2:150E. Kentucky Early Intervention Program personnel qualifications.

908 KAR 2:160E. Kentucky Early Intervention Program covered services.

908 KAR 2:170E. Notice of action and administrative appeal.

908 KAR 2:180E. Kentucky Early Intervention Program mediation.

The Subcommittee adjourned at 2:15 p.m. until December 2, 1996 at 10 a.m. in Room 149 of the State Capitol Annex.

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OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON TRANSPORTATION Meeting of October 1, 1996

The following administrative regulations were available for consideration by the Interim Joint Committee on Transportation during its meeting of October 1, 1996, having been referred to the Committee on September 12, 1996, pursuant to KRS 13A.290(6):

601 KAR 1:025
601 KAR 1:101
601 KAR 13:090 & E
601 KAR 13:100 & E
603 KAR 2:015

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the September 3, 1996 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE Meeting of October 16, 1996

The following administrative regulations were available for consideration by the Interim Joint Committee on Health and Welfare during its meeting of October 16, 1996, having been referred to the Committee on October 10, 1996, pursuant to KRS 13A.290(6):

902 KAR 14:070 & E
902 KAR 14:080
905 KAR 1:360 & E

The committee took no action on the previously listed Administrative Regulations which is reflected in the minutes of the October 16, 1996 meeting, which are hereby incorporated by reference.

INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE Meeting of October 24, 1996

The following administrative regulation was available for consideration by the Interim Joint Committee on Appropriations and Revenue during its meeting of October 24, 1996, having been referred to the Committee on October 10, 1996, pursuant to KRS 13A.290(6):

200 KAR 15:010

The following administrative regulation was found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulation is reflected in the minutes of the October 24, 1996 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON EDUCATION Meeting of November 7, 1996

The following administrative regulations were available for consideration by the Interim Joint Committee on Education during its meeting of November 7, 1996, having been referred to the Committee on October 16, 1996, pursuant to KRS 13A.290(6):

704 KAR 20:305E
704 KAR 20:475E
735 KAR 1:010
735 KAR 1:020

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the November 7, 1996 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

ADMINISTRATIVE REGISTER - 2673

**INTERIM JOINT COMMITTEE ON
LICENSING AND OCCUPATIONS
Meeting of November 8, 1996**

The following administrative regulations were available for consideration by the Interim Joint Committee on Licensing and Occupations during its meeting of November 8, 1996, having been referred to the Committee on October 7, 1996, pursuant to KRS 13A.290(6):

Board of Hairdressers & Cosmetologists: 201 KAR 12:082E; 201 KAR 12:200E

Division of Charitable Gaming: 500 KAR 11:001&E; 500 KAR 11:010; 500 KAR 11:015; 500 KAR 11:025; 500 KAR 11:030; 500 KAR 11:060; 500 KAR 11:070; 500 KAR 11:080; 500 KAR 11:090; 500 KAR 11:110&E; 500 KAR 11:120

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

Board of Hairdressers & Cosmetologists: 201 KAR 12:082E; 201 KAR 12:200E

Division of Charitable Gaming: 500 KAR 11:001&E; 500 KAR 11:010; 500 KAR 11:015; 500 KAR 11:025; 500 KAR 11:030; 500 KAR 11:060; 500 KAR 11:070; 500 KAR 11:080; 500 KAR 11:090; 500 KAR 11:110&E; 500 KAR 11:120

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the 11/8/96 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

ADMINISTRATIVE REGISTER - F1

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates F2

The Locator Index lists all administrative regulations published in VOLUME 23 of the Administrative Register from July, 1996 through June, 1997. It also lists the page number on which each administrative regulation is published, the effective date of the administrative regulation after it has completed the review process, and other action which may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 22 are those administrative regulations that were originally published in the Volume 22 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1996 bound Volumes were published.

KRS Index F11

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 23 of the Administrative Register.

Subject Index F23

The Subject Index is a general index of administrative regulations published in VOLUME 23 of the Administrative Register, and is mainly broken down by agency.

ADMINISTRATIVE REGISTER - F2

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	23 Ky.R Page No.	Effective Date	Regulation Number	23 Ky.R Page No.	Effective Date
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VOLUME 22

The administrative regulations listed under VOLUME 22 are those administrative regulations that were originally published in the Volume 22 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1996 bound Volumes were published.

EMERGENCY ADMINISTRATIVE REGULATIONS: (Note: Emergency regulations expire 170 days from publication, or 170 days from publication plus number of days of requested extensions, or upon replacement or repeal, whichever occurs first)

200 KAR 5:302E	2249	5-15-96
Replaced		11-11-96
201 KAR 8:430E	2252	5-15-96
Replaced		9-18-96
500 KAR 11:001E	2253	5-15-96
Replaced		11-8-96
500 KAR 11:110E	2255	5-15-96
Replaced		11-8-96
601 KAR 13:090E	1971	4-15-96
Replaced		10-1-96
601 KAR 13:100E	1973	4-15-96
Replaced		10-1-96
702 KAR 3:285E	2257	5-15-96
787 KAR 1:210E	1976	4-8-96
Replaced		10-14-96
902 KAR 1:400E	2267	5-13-96
902 KAR 14:070E	2269	5-15-96
Replaced	1943	10-16-96
902 KAR 17:021E	2272	4-30-96
Expires		11-17-96
904 KAR 3:042E	1977	4-15-96
Replaced		9-18-96
907 KAR 1:013E	2273	5-13-96

907 KAR 1:034E	2278	5-13-96
907 KAR 1:035E	2282	5-13-96
907 KAR 1:060E	1576	1-18-96
907 KAR 1:061E	1578	1-18-96
907 KAR 1:140E	1981	4-4-96
907 KAR 1:715E	2283	5-13-96
907 KAR 3:005E	1984	4-15-96
Replaced		9-18-96
907 KAR 3:010E	1986	4-15-96
Replaced		9-18-96
908 KAR 1:340E	1582	1-30-96

ORDINARY ADMINISTRATIVE REGULATIONS:

201 KAR 8:015		
Amended	2311	(See Volume 23)
601 KAR 1:200	2504	(See Volume 23)
815 KAR 8:010		
Amended	2335	(See Volume 23)
815 KAR 8:020		
Amended	2337	(See Volume 23)
902 KAR 8:090		
Amended	2359	(See Volume 23)
907 KAR 1:060		
Amended	2497	8-21-96
907 KAR 1:061		
Amended	2499	8-21-96
908 KAR 1:340	2512	(See Volume 23)

*Statement of Consideration Not Filed by Deadline

VOLUME 23

EMERGENCY ADMINISTRATIVE REGULATIONS: (Note: Emergency regulations expire 170 days from publication, or 170 days from publication plus number of days of requested extensions, or upon replacement or repeal, whichever occurs first)

2 KAR 2:010E	1349	7-18-96
11 KAR 13:010E	1537	9-13-96
20 KAR 1:081E	320	7-15-96
Expires		1-18-97
31 KAR 4:040E	44	6-13-96
31 KAR 5:010E	45	6-13-96
40 KAR 3:020E	1876	10-15-96
101 KAR 2:100E	46	5-23-96
101 KAR 3:010E	52	5-23-96
106 KAR 3:010E	1539	8-28-96
200 KAR 5:011E	320	7-12-96
Expires		1-18-97
200 KAR 22:130E		
Replaced	210	9-11-96

201 KAR 1:040E		
Replaced	1393	9-11-96
201 KAR 1:045E	58	5-22-96
Replaced		9-13-96
201 KAR 1:130E	59	5-22-96
Replaced		9-13-96
201 KAR 10:050E		
Replaced	170	9-11-96
201 KAR 11:190E	1877	10-14-96
201 KAR 12:082E	321	7-1-96
201 KAR 12:200E	324	7-1-96
201 KAR 20:390E	1541	8-16-96
301 KAR 2:221E	1880	10-2-96
301 KAR 2:222E	1883	10-2-96
301 KAR 2:224E	1887	10-2-96
301 KAR 2:225E	1544	8-16-96
302 KAR 3:010E	325	7-15-96
302 KAR 20:110E	2439	11-6-96
302 KAR 20:120E	2440	11-6-96

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	23 Ky.R Page No.	Effective Date	Regulation Number	23 Ky.R Page No.	Effective Date
302 KAR 78:020E	61	6-5-96	806 KAR 5:060E	375	7-15-96
Replaced	1934	11-11-96	806 KAR 9:240E	1901	9-20-96
307 KAR 5:010E	327	7-15-96	806 KAR 17:100E	376	7-15-96
401 KAR 8:030E	1888	10-7-96	806 KAR 17:120E	378	7-15-96
401 KAR 50:035E	62	6-14-96	806 KAR 17:130E	379	7-15-96
415 KAR 1:050E	328	7-3-96	806 KAR 17:140E	1550	8-23-96
415 KAR 1:060E	330	7-3-96	806 KAR 18:060E	382	7-15-96
415 KAR 1:070E	333	7-3-96	806 KAR 18:080E	2443	11-15-96
415 KAR 1:080E	336	7-3-96	900 KAR 6:010E	383	7-11-96
415 KAR 1:090E	340	7-3-96	900 KAR 6:020E	390	7-11-96
415 KAR 1:100E	343	7-3-96	900 KAR 6:030E	391	7-11-96
415 KAR 1:110E	344	7-3-96	900 KAR 6:040E	392	7-11-96
415 KAR 1:114E	348	7-3-96	902 KAR 16:011E	393	7-12-96
415 KAR 1:120E	352	7-3-96	Expires		1-18-97
415 KAR 1:125E	359	7-3-96	902 KAR 17:030E	394	7-11-96
502 KAR 45:005E	1350	8-14-96	902 KAR 17:040E	395	7-11-96
502 KAR 45:035E	1351	8-14-96	902 KAR 20:275E	1380	8-13-96
502 KAR 45:045E	1351	8-14-96	902 KAR 20:320E	398	6-16-96
502 KAR 45:055E	1897	10-15-96	902 KAR 47:080E	1903	10-1-96
502 KAR 45:075E	1352	8-14-96	902 KAR 47:090E	1907	10-1-96
502 KAR 45:150E	1353	8-14-96	902 KAR 47:100E	1911	10-1-96
502 KAR 60:010E	1354	8-14-96	902 KAR 105:070E	98	6-12-96
Withdrawn		9-11-96	902 KAR 115:020E	99	6-12-96
503 KAR 6:010E	1355	8-14-96	904 KAR 2:410E	1918	10-1-96
503 KAR 6:020E	1357	8-14-96	904 KAR 2:470E	410	7-12-96
503 KAR 6:030E	1358	8-14-96	905 KAR 1:180E	1552	9-12-96
503 KAR 6:040E	1359	8-14-96	905 KAR 1:320E	411	7-12-96
503 KAR 6:050E	1360	8-14-96	905 KAR 1:360E	100	6-6-96
503 KAR 6:060E	1361	8-14-96	Replaced	1952	10-16-96
503 KAR 6:070E	1362	8-14-96	905 KAR 2:100E	416	7-12-96
503 KAR 6:080E	1363	8-14-96	905 KAR 2:140E	2444	11-15-96
503 KAR 6:090E	1365	8-14-96	907 KAR 1:019E	2453	11-15-96
503 KAR 6:100E	1366	8-14-96	907 KAR 1:022E	104	6-13-96
503 KAR 6:110E	1367	8-14-96	907 KAR 1:025E	109	6-13-96
603 KAR 5:320E	1546	9-3-96	907 KAR 1:060E		
603 KAR 5:330E	366	7-12-96	Expired		8-18-96
701 KAR 5:020E	80	6-14-96	907 KAR 1:061E		
701 KAR 5:051E	81	6-14-96	Expired		8-18-96
Expired		10-14-96	907 KAR 1:417E	2454	11-15-96
701 KAR 5:055E	82	6-14-96	907 KAR 1:673E	2455	11-15-96
701 KAR 5:086E	84	6-14-96	907 KAR 3:020E	421	7-28-96
Expired		10-15-96	908 KAR 1:340E		
701 KAR 5:090E	85	6-14-96	Expired		8-18-96
702 KAR 1:080E	86	6-14-96	908 KAR 2:100E	1554	9-13-96
702 KAR 7:055E	1368	8-12-96	908 KAR 2:110E	1556	9-13-96
702 KAR 7:065E	87	6-14-96	908 KAR 2:120E	1560	9-13-96
702 KAR 7:125E	1369	8-12-96	908 KAR 2:130E	1563	9-13-96
703 KAR 3:060E	1372	8-12-96	908 KAR 2:140E	1566	9-13-96
703 KAR 3:205E	89	6-14-96	908 KAR 2:150E	1569	9-13-96
703 KAR 4:010E	1376	8-12-96	908 KAR 2:160E	1572	9-13-96
703 KAR 4:090E	1379	8-12-96	908 KAR 2:170E	1574	9-13-96
704 KAR 20:305E	367	6-28-96	908 KAR 2:180E	1576	9-13-96
704 KAR 20:475E	370	6-28-96	909 KAR 1:005E	423	7-11-96
707 KAR 1:180E	91	6-14-96	Expires		1-18-97
781 KAR 1:030E	1548	9-12-96			
787 KAR 1:200E	371	6-26-96			
787 KAR 1:320E	1898	10-3-96			
803 KAR 25:034E	2442	11-14-96			
803 KAR 25:036E	1899	10-15-96			
803 KAR 25:089E	372	6-28-96			
803 KAR 50:010E					
Replaced	191	9-11-96			
804 KAR 13:010E	373	7-8-96			
Replaced	1942	11-11-96			

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LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	23 Ky.R Page No.	Effective Date	Regulation Number	23 Ky.R Page No.	Effective Date
11 KAR 8:030			200 KAR 5:021		
Amended	159		Amended	1403	11-11-96
As Amended	1387	9-5-96	200 KAR 5:025	1467	
11 KAR 12:050			Amended	1955	
Amended	161		As Amended	2458	
As Amended	1389	9-5-96	200 KAR 5:302	1468	
11 KAR 13:010	2636		As Amended	1924	11-11-96
12 KAR 2:006			200 KAR 5:304		
Amended	1604		Amended	1401	11-11-96
12 KAR 2:011			200 KAR 5:306		
Amended	1604		Amended	1405	
12 KAR 2:016			As Amended	1925	11-11-96
Amended	1606		200 KAR 5:325	1470	11-11-96
12 KAR 2:017	1805		200 KAR 15:010		
12 KAR 2:018	1806		Amended	462	
12 KAR 2:021			As Amended	1927	10-24-96
Amended	1607		200 KAR 22:130	210	9-11-96
12 KAR 2:026			201 KAR 1:040		
Amended	1608		Amended	169	
12 KAR 2:036			As Amended	1393	9-11-96
Amended	1609		201 KAR 1:045		
12 KAR 2:041			Amended	464	
Amended	1610		As Amended	1578	9-13-96
12 KAR 2:046			201 KAR 1:130		
Amended	1611		Amended	465	
12 KAR 2:051			As Amended	1579	9-13-96
Amended	1612		201 KAR 8:015		
12 KAR 2:061			As Amended	1394	8-21-96
Amended	1612		201 KAR 8:430	211	
12 KAR 2:066	1809		As Amended	1395	
12 KAR 3:012			As Amended	1581	9-18-96
Amended	1613		201 KAR 10:050		
12 KAR 3:017			Amended	170	9-11-96
Amended	1615		201 KAR 12:082		
12 KAR 3:022			Amended	2195	
Amended	1616		201 KAR 12:200	2335	
12 KAR 3:027			201 KAR 20:390		
Amended	1617		Amended	2534	
12 KAR 3:037			201 KAR 22:031		
Amended	1618		Amended	171	8-21-96
12 KAR 3:042	1810		201 KAR 22:106		
13 KAR 2:060			Amended	173	8-21-96
Amended	164		201 KAR 22:135		
As Amended	1389	9-5-96	Amended	175	8-21-96
13 KAR 2:070	1049		201 KAR 31:060	213	
Expired		9-13-96	As Amended	1583	9-13-96
40 KAR 1:040	206		201 KAR 32:060	215	
Withdrawn		10-22-96	As Amended	1584	9-18-96
40 KAR 1:050	207		300 KAR 2:010	1810	
Withdrawn		10-22-96	As Amended	2459	
40 KAR 1:060	208		301 KAR 1:016		
Withdrawn		10-22-96	Amended	2197	
40 KAR 1:070	209		301 KAR 1:100		
Withdrawn		10-22-96	Repealed	1929	11-11-96
101 KAR 1:365			301 KAR 1:201		
Amended	2193		Amended	468	
103 KAR 18:050			As Amended	1929	11-11-96
Amended	461		301 KAR 2:176	217	9-11-96
As Amended	1578	10-14-96	301 KAR 2:140		
104 KAR 1:020			Amended	2200	
Amended	166		301 KAR 2:211		
As Amended	1391	9-11-96	Repealed	217	9-11-96
109 KAR 7:020	2638		301 KAR 2:225		
			Amended	2536	

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LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	23 Ky.R Page No.	Effective Date	Regulation Number	23 Ky.R Page No.	Effective Date
301 KAR 3:022			401 KAR 31:040		
Amended	1619		Amended	511	
As Amended	2460		Amended	1969	
301 KAR 3:028			401 KAR 31:050		
Amended	471		Amended	528	
As Amended	1932	11-11-96	401 KAR 31:060		
301 KAR 4:200			Amended	530	
Amended	472		Amended	1986	
As Amended	1933	11-11-96	401 KAR 31:070		
302 KAR 78:020	1471		Amended	533	
As Amended	1934	11-11-96	401 KAR 31:110		
307 KAR 2:020	1812		Amended	536	
As Amended	2461		401 KAR 31:120		
401 KAR 5:001			Amended	538	
Amended	1621		401 KAR 31:160		
401 KAR 5:005			Amended	546	
Amended	1633		401 KAR 31:170		
401 KAR 5:006	1814		Amended	550	
401 KAR 8:010			401 KAR 32:005	1067	
Amended	2538		Amended	1989	
401 KAR 8:060			401 KAR 32:010		
Amended	2543		Amended	559	
401 KAR 8:070			401 KAR 32:020		
Amended	2548		Amended	562	
401 KAR 8:100			401 KAR 32:030		
Amended	2560		Amended	564	
401 KAR 8:150			401 KAR 32:040		
Amended	2563		Amended	567	
401 KAR 8:200			401 KAR 32:050		
Amended	2568		Amended	569	
401 KAR 8:250			401 KAR 32:100		
Amended	2573		Amended	573	
401 KAR 8:300			401 KAR 33:005	1080	
Amended	2579		Amended	2003	
401 KAR 8:350			401 KAR 33:010		
Amended	2593		Amended	577	
401 KAR 8:400			401 KAR 34:005	1093	
Amended	2595		Amended	2016	
401 KAR 8:420			401 KAR 34:010		
Amended	2600		Amended	579	
401 KAR 8:440			401 KAR 34:020		
Amended	2606		Amended	581	
401 KAR 8:500			401 KAR 34:050		
Amended	2609		Amended	586	
401 KAR 8:600			401 KAR 34:060		
Amended	2612		Amended	589	
401 KAR 8:700			Amended	2029	
Amended	2614		401 KAR 34:070		
401 KAR 30:005	1052		Amended	597	
401 KAR 30:010			401 KAR 34:080		
Amended	475		Amended	603	
401 KAR 30:031			401 KAR 34:090		
Amended	487		Amended	606	
401 KAR 30:040			401 KAR 34:100		
Amended	490		Amended	613	
401 KAR 30:080			401 KAR 34:120		
Amended	492		Amended	621	
401 KAR 31:005	1054		Amended	2037	
Amended	1956		401 KAR 34:180		
401 KAR 31:010			Amended	626	
Amended	494		401 KAR 34:190		
401 KAR 31:030			Amended	629	
Amended	509		401 KAR 34:200		
			Amended	635	

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LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	23 Ky.R Page No.	Effective Date	Regulation Number	23 Ky.R Page No.	Effective Date
401 KAR 34:210			401 KAR 36:005	1154	
Amended	640		Amended	2076	
401 KAR 34:230			401 KAR 36:020		
Amended	644		Amended	760	
401 KAR 34:240			401 KAR 36:025		
Amended	649		Amended	783	
401 KAR 34:245	1105		401 KAR 36:030		
401 KAR 34:250			Amended	795	
Amended	653		401 KAR 36:070		
401 KAR 34:275			Amended	797	
Amended	655		401 KAR 37:005	1166	
401 KAR 34:280			Amended	2089	
Amended	663		401 KAR 37:010		
401 KAR 34:281	1109		Amended	799	
Amended	2042		Amended	2103	
401 KAR 34:287	1118		401 KAR 37:030		
401 KAR 34:290			Amended	809	
Amended	669		401 KAR 37:040		
401 KAR 34:360			Amended	816	
Amended	672		401 KAR 37:050		
401 KAR 35:005	1121		Amended	925	
Amended	2051		401 KAR 38:005	1179	
401 KAR 35:010			Amended	2113	
Amended	680		401 KAR 38:010		
401 KAR 35:020			Amended	928	
Amended	683		401 KAR 38:020		
401 KAR 35:050			Amended	931	
Amended	687		401 KAR 38:030		
Amended	2065		Amended	934	
401 KAR 35:060			401 KAR 38:040		
Amended	690		Amended	938	
401 KAR 35:070			Amended	2127	
Amended	694		401 KAR 38:050		
401 KAR 35:080			Amended	943	
Amended	701		401 KAR 38:060		
401 KAR 35:090			Amended	949	
Amended	703		401 KAR 38:070		
401 KAR 35:100			Amended	956	
Amended	710		401 KAR 38:080		
401 KAR 35:120			Amended	959	
Amended	717		401 KAR 38:090		
Amended	2068		Amended	961	
401 KAR 35:180			401 KAR 38:100		
Amended	722		Amended	965	
401 KAR 35:190			401 KAR 38:150		
Amended	724		Amended	968	
401 KAR 35:200			401 KAR 38:160		
Amended	731		Amended	970	
401 KAR 35:210			401 KAR 38:170		
Amended	735		Amended	972	
401 KAR 35:230			401 KAR 38:190		
Amended	738		Amended	974	
401 KAR 35:245	1133		401 KAR 38:250		
Amended	2073		Amended	976	
401 KAR 35:250			401 KAR 38:500		
Amended	742		Amended	978	
401 KAR 35:275			401 KAR 39:005	1192	
Amended	744		Amended	2132	
401 KAR 35:280			401 KAR 39:080		
Amended	751		Amended	980	
401 KAR 35:281	1137		401 KAR 39:110		
401 KAR 35:290			Amended	982	
Amended	757		401 KAR 39:120		
			Amended	983	

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LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	23 Ky.R Page No.	Effective Date	Regulation Number	23 Ky.R Page No.	Effective Date
401 KAR 40:001	1205		500 KAR 11:015		
401 KAR 42:005			Amended	1409	11-8-96
Amended	986		500 KAR 11:025		
401 KAR 43:005	1207		Amended	1410	
Amended	2145		As Amended	1935	11-8-96
401 KAR 43:010	1219		500 KAR 11:030		
401 KAR 43:020	1222		Amended	1001	
401 KAR 43:030	1226		As Amended	1935	11-8-96
Amended	2159		500 KAR 11:060		
401 KAR 43:040	1231		Amended	1412	11-8-96
Amended	2163		500 KAR 11:070		
401 KAR 43:050	1233		Amended	1413	11-8-96
401 KAR 43:060	1235		500 KAR 11:080		
401 KAR 43:070	1237		Amended	1414	
401 KAR 44:005	1240		As Amended	1938	11-8-96
Amended	2165		500 KAR 11:090		
401 KAR 44:010	1242		Amended	1415	11-8-96
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401 KAR 44:030	1248		As Amended	1938	11-8-96
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Amended	2167		501 KAR 6:020		
401 KAR 44:050	1253		Amended	175	9-11-96
401 KAR 44:060	1258		Amended	1005	9-17-96
401 KAR 44:070	1261		Amended	1416	11-11-96
401 KAR 44:080	1264		Amended	2250	
401 KAR 46:060			Amended	2616	
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401 KAR 46:070			Amended	2252	
Recodified from 401-49:230		11-8-96	Amended	2618	
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401 KAR 48:005			Amended	1677	
Amended	990		501 KAR 6:060		
401 KAR 49:005	1272		Amended	2253	
401 KAR 49:220			501 KAR 6:130		
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401 KAR 49:230			As Amended	1941	
Recodified as 401-46:070		11-8-96	Amended	1678	
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401 KAR 51:017			As Amended	1586	9-17-96
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Amended	2218		Amended	1418	
415 KAR 1:060			503 KAR 4:010	1283	
Amended	2220		As Amended	1587	9-17-96
415 KAR 1:070			503 KAR 4:020	1284	
Amended	2223		As Amended	1587	9-17-96
415 KAR 1:080			503 KAR 4:030	1285	
Amended	2226		As Amended	1587	9-17-96
415 KAR 1:090			503 KAR 4:040	1286	
Amended	2230		As Amended	1588	9-17-96
415 KAR 1:100			503 KAR 4:050	1288	
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415 KAR 1:110			503 KAR 4:060	1290	
Amended	2234		As Amended	1590	9-17-96
415 KAR 1:114			503 KAR 4:070	1291	
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415 KAR 1:120			503 KAR 6:020	2342	
Amended	2242		503 KAR 6:030	2344	
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500 KAR 11:001			503 KAR 6:080	2346	
Amended	1000	11-8-96	503 KAR 6:090	2348	
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601 KAR 1:025			As Amended	2468	
Amended	1010		702 KAR 3:285	1474	
As Amended	1591	10-1-96	702 KAR 4:150	2351	
601 KAR 1:101			702 KAR 5:130		
Amended	1012		Amended	1431	
As Amended	1592	10-1-96	As Amended	2471	
601 KAR 1:160			702 KAR 5:150		
Repealed	441	9-3-96	Amended	2268	
601 KAR 1:200			702 KAR 7:010		
Amended	441	9-3-96	Repealed	1368	8-12-96
601 KAR 9:074			702 KAR 7:020		
Repealed	441	9-3-96	Repealed	1368	8-12-96
601 KAR 11:020			702 KAR 7:050		
Amended	2260		Repealed	1368	8-12-96
601 KAR 13:025			702 KAR 7:065		
Amended	2261		Amended	1433	
601 KAR 13:070			702 KAR 7:125	2352	
Amended	2264		703 KAR 3:060		
601 KAR 13:090	219		Amended	2269	
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601 KAR 13:100	221		Amended	1434	
Amended	1399		As Amended	2472	
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601 KAR 13:110	2639		Amended	2273	
603 KAR 2:015			703 KAR 4:090		
Amended	1014		Amended	2276	
As Amended	1596	10-1-96	703 KAR 4:110	2355	
603 KAR 4:040			704 KAR 3:345		
Amended	178	9-3-96	Amended	2277	
603 KAR 5:066			704 KAR 3:390		
Amended	183	9-3-96	Amended	186	9-5-96
603 KAR 5:115			704 KAR 20:050		
Amended	2266		Repealed	1292	10-3-96
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Amended	2171		Amended	2280	
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603 KAR 5:320	2641		Amended	2282	
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Amended	2529		704 KAR 20:670		
701 KAR 5:020			Amended	1017	10-3-96
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701 KAR 5:065	2350		735 KAR 1:010		
701 KAR 5:086	1473		Amended	1443	11-7-96
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701 KAR 5:090			Amended	1447	11-7-96
Amended	1425		781 KAR 1:030		
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702 KAR 1:080			785 KAR 1:010		
Amended	1426		Amended	1679	
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702 KAR 3:100			787 KAR 1:200		
Amended	1428		Amended	1681	
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803 KAR 2:200			Amended	1453	
Amended	1684		Withdrawn		9-30-96
803 KAR 2:300			Repealed	2442	11-14-96
Amended	1687		803 KAR 25:089		
803 KAR 2:301			Amended	1750	
Amended	1689		As Amended	2485	
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Amended	1690		Amended	2619	
803 KAR 2:303			803 KAR 25:096		
Amended	1692		Amended	1455	
803 KAR 2:304			Amended	2177	
Amended	1694		As Amended	2485	
803 KAR 2:305			803 KAR 25:190		
Amended	1696		Amended	1459	
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Amended	1702		Amended	191	9-11-96
803 KAR 2:308			804 KAR 4:330	2367	
Amended	1705		804 KAR 11:010		
803 KAR 2:309			Amended	1463	
Amended	1708		804 KAR 13:010	1477	
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803 KAR 2:312			Amended	1751	
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Amended	1714		As Amended	2492	
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Amended	1716		Amended	1752	
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803 KAR 2:316			Amended	1019	
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803 KAR 2:410			808 KAR 10:291	2370	
Amended	1741		808 KAR 10:300	2371	
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Amended	1743		Amended	1021	
803 KAR 2:425			811 KAR 1:020		
Amended	1744		Amended	2287	
803 KAR 2:500			811 KAR 1:035		
Amended	1746		Amended	2288	
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815 KAR 20:020			As Amended	2524	
Amended	1754		902 KAR 115:020		
As Amended	2501		Amended	1785	
815 KAR 20:090			As Amended	2524	
Amended	2691		904 KAR 2:470	2387	
815 KAR 20:120			904 KAR 3:042	1304	
Amended	1757		As Amended	1600	9-18-96
815 KAR 20:130			905 KAR 1:320		
Amended	2625		Amended	1786	
815 KAR 20:191			As Amended	2525	
Amended	1764		905 KAR 1:360	1484	
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815 KAR 20:195	2372		906 KAR 1:040		
815 KAR 25:010			Amended	2320	
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815 KAR 30:060			907 KAR 1:022		
Amended	1780		Amended	2322	
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900 KAR 1:015			Amended	2327	
Repealed	1300	9-18-96	907 KAR 1:034		
900 KAR 2:060			Amended	1796	
Amended	2294		907 KAR 1:035		
900 KAR 6:010	2373		Amended	1799	
900 KAR 6:020	2380		907 KAR 1:140		
900 KAR 6:030	2381		Amended	1801	
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902 KAR 1:400	1829		Amended	2631	
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Amended	2190		907 KAR 1:705	2651	
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902 KAR 8:090			Amended	2530	
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902 KAR 14:080			Amended	449	8-21-96
Amended	1032		908 KAR 1:350	1833	
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6.821	2 KAR 2:010	150.015	301 KAR 2:225E
6.824	2 KAR 2:010	150.025	301 KAR 1:016
6.827	2 KAR 2:010	301 KAR	2:221E
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12.290	735 KAR 1:010	301 KAR	2:224E
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13A.310	907 KAR 1:417E	150.090	301 KAR 1:016
	907 KAR 1:423	150.105	301 KAR 2:176
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13B.010	104 KAR 1:020	301 KAR	2:176
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16.040	502 KAR 45:005E	150.235	301 KAR 3:022
	502 KAR 45:035E	150.240	301 KAR 3:022
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	502 KAR 45:055E	150.305	301 KAR 2:140
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45A.345-45A.353	109 KAR 7:020	150.525	301 KAR 3:022
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151B.110	785 KAR 1:010		703 KAR 4:090
151B.125	785 KAR 1:010		703 KAR 4:110
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156.153	702 KAR 5:130	161.020	704 KAR 20:052
156.160	702 KAR 3:130		704 KAR 20:260
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156.200	702 KAR 3:130		704 KAR 20:670
156.210	701 KAR 5:051		704 KAR 20:710
157.200	707 KAR 1:180	161.027	704 KAR 20:460
157.226	702 KAR 5:150		704 KAR 20:710
157.3175	702 KAR 5:150	161.028	704 KAR 20:052
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157.620	702 KAR 3:270		704 KAR 20:475
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189.394	603 KAR 5:320		902 KAR 47:100E
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