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MEETING NOTICE
The Administrative Regulation Review Subcommittee is tenta-
ively scheduled to meet on Tuesday, July 13, 2004 at 10:30
a.m. in Room 149 of the Capitol Annex. See tentative agenda on
pages 1-2 of this Administrative Register.

AMENDED AFTER COMMENTS: NONE

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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 and Public Comment Period

The administrative body shall schedule a public hearing on proposed administrative regulations which shall not be held before the 21st day or later than the last workday of the month of publication. Written comments shall also be accepted for a 30 day period following publication.

The administrative regulation shall include: place, time, and date of hearing; the manner in which persons submit notification to attend the hearing and written comments; that notification shall be sent no later than 5 workdays prior to the hearing date; the deadline for submitting written comments; and the name, position, address, and telephone and fax numbers of the person to whom notification and written comments shall be sent.

The administrative body shall notify the Compiler, by phone and letter, if the hearing is cancelled and no written comments are received. If the hearing is held or written comments are received, the administrative body shall file a statement of consideration with the Compiler within 15 days following the last day of the comment period.

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

After the public hearing and public comment period processes are completed, 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 30 days after being referred by LRC, whichever occurs first.
STATEMENT OF EMERGENCY
12 KAR 6:011E

This emergency administrative regulation is being promulgated to repeal 12 KAR Chapter 6 in its entirety. The statutes providing authority to regulate the Tobacco Seedlings Program were repealed in 1996 by Ky. Acts ch. 267, sec. 1. Thus, pursuant to KRS 13A.120(2)(b) and (d), these administrative regulations are unauthorized and must be repealed. Since there is no authority to enforce the Tobacco Seedlings Program, immediate action needs to be taken to repeal and remove the administrative regulations, therefore, an ordinary administrative regulation will not suffice. This emergency administrative regulation will not be replaced by an ordinary administrative regulation because the immediate result of this emergency administrative regulation will be the repeal of 12 KAR 6:010, 12 KAR 6:015, 12 KAR 6:020, and 12 KAR 6:025.

ERNIE FLETCHER, Governor
M. SCOTT SMITH, Dean and Director
UNIVERSITY OF KENTUCKY
Agriculture Experiment Station
Division of Regulatory Services
(Emergency Repealer)


RELATES TO: KRS 250.750-250.790
STATUTORY AUTHORITY: KRS 250.750-250.790
EFFECTIVE: May 20, 2004
NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation acts specifically to repeal 12 KAR 6:010, 12 KAR 6:015, 12 KAR 6:020, 12 KAR 6:025, the Tobacco Seedlings Program, KRS 250.750 to 250.790 were repealed in 1996. Therefore the provisions in 12 KAR 6:010, 12 KAR 6:015, 12 KAR 6:020, and 12 KAR 6:025 are obsolete.

Section 1. The following administrative regulations are hereby repealed:

(1) 12 KAR 6:010, Dealer registration;
(2) 12 KAR 6:015, Permit to label tobacco seedlings or finished tobacco plants for distribution in Kentucky; reports of sales;
(3) 12 KAR 6:020, Identification of tobacco seedlings or finished tobacco plants not for sale; and
(4) 12 KAR 6:025, Notice of violation and stop sale.

M. SCOTT SMITH, Dean and Director
APPROVED BY AGENCY: May 10, 2004
FILED WITH LRC: May 20, 2004 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on July 21, 2004, at 1:30 p.m. in Room 109, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing at least 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received 5 workdays prior to the hearing, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted August 2, 2004. Send written notification of intent to hear at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: David Buckingham, Seed Regulatory Coordinator/PS, Regulatory Services, 103 Regulatory Services Building (Office: 130), Lexington, Kentucky 40546-0275, phone (859) 257-2785, ext. 241, fax (859) 323-9931, email: dbucking@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: David Buckingham
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation acts specifically to repeal regulations regarding the Tobacco Seedlings Program, 12 KAR 6:010, 6:015, 6:2020, 6:025.
(b) The necessity of this administrative regulation: These administrative regulations are no longer necessary as they are obsolete under current state law.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This deletes unnecessary administrative regulations.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulations only purpose is to repeal regulations regarding the Tobacco Seedlings Program, 12 KAR 6:010, 6:015, 6:2020, 6:025.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment.
(b) The necessity of the amendment to this administrative regulation: Refer to (2)(a).
(c) How the amendment conforms to the content of the authorizing statutes: Refer to (2)(a).
(d) How the amendment will assist in the effective administration of the statutes: Refer to (2)(a).
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are no individuals, businesses, organizations, or state and local governments that will be affected.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: No group or groups will be affected as this regulation repeals obsolete regulations.
(a) Provide an estimate of how much it will cost to implement this administrative regulation:
(1) Initially: There will be no cost.
(b) On a continuing basis: There will be no cost.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There will be no funding source necessary.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees, either directly or indirectly.
(9) TIERING: Is tiering applied? Tiering is not applied. This regulation only serves the purpose of repealing obsolete regulations.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There are no federal statutes or regulations that will be affected.
2. State compliance standards. There are no state compliance standards that will be affected.
3. Minimum or uniform standards contained in the federal mandate. There are no minimum or uniform standards contained in any
federal mandate that will be affected.

4. Will this administrative regulation impose stricter requirements, or additional different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose either stricter or additional responsibilities or requirements.

5. Justification or the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no justification as stricter standards and additional responsibilities or requirements are not imposed.

STATEMENT OF EMERGENCY

200 KAR 2:006E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed administrative regulation should be enacted on an emergency basis in order to reasonably compensate employees for gasoline expenses incurred while traveling on official state business. It is necessary to promulgate this administrative regulation on an emergency basis because the normal process will take several months, which will negatively impact the financial wellbeing of employees and other individuals traveling as part of their duties for the Commonwealth. The retail price of gasoline has risen over eighty (80) cents per gallon since the mileage reimbursement rate was last changed. A flexible schedule is being added to the administrative regulation that will permit the reimbursement rate to fluctuate as gasoline prices change. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which was filed with the Regulations Compiler on June 15, 2004.

ERNIE FLETCHER, Governor
ROBERT B. RUDOLPH, JR., Secretary

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Emergency Amendment)

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

RELATES TO: KRS 44.060, 45.101
STATUTORY AUTHORITY: KRS 44.060, 45.101
EFFECTIVE: June 15, 2004

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45.101 authorizes the Finance and Administration Cabinet to promulgate an administrative regulation that establishes requirements and reimbursement rates for the travel expenses of state employees. This administrative regulation establishes the eligibility requirements relating to rates and forms for reimbursement of travel expense and other official expenses out of the State Treasury.

Section 1. Definitions. (1) "Agency" means a budget unit.

(2) "Agency head" means the elected or appointed head of a budget unit.

(3) "Approval" means approval granted in either written or electronic format.

(4) "Cabinet" means the Finance and Administration Cabinet.

(5) "Division" means the Division of Statewide Accounting Services, Office of the Controller, Finance and Administration Cabinet.

(6) "High rate area" means a city, state, or metropolitan area in which it has been recognized that higher meal costs and lodging rates have historically prevailed, and that has been designated by the Secretary of the Finance and Administration Cabinet as a high rate area and included in the cabinet's policies and procedures manual incorporated by reference in 200 KAR 5:021.

(7) "Incidental expense" means unexpected minor expenses arising from travel situations, or minor expenses authorized by an agency head to be reimbursed to an employee as a matter of efficiency or convenience.

(8) "Incidental receipt" means any preprinted invoice, from a hotel or motel or type of lodging, showing the date of service, the amount charged for the service, the location where the service was performed and a description of the expenditure.

(9) "Others in the official service of the commonwealth" means individuals who are not state employees as defined in KRS Chapter 18A, but who are traveling on official business for the commonwealth, or who officially represent a state agency, at the direction or request of a state official authorized to give the direction or make the request and does not include contractors who shall be entitled to reimbursement for travel and related expenses only as provided in their contracts with the commonwealth.

(10) "Pre-receipt" means any preprinted invoice, from a hotel, motel, restaurant or other establishment, showing the date of service, the amount charged for the service, the location where the service was performed and a description of the expenditure.

(11) "Pre-receipt" means address of the employee designated in the official records of the Department of Personnel (Cabinet).

(12) "Secretary" means the Secretary of the Finance and Administration Cabinet.

(13) "Subsistence" means amounts deemed to have been expended by a state officer, agent, employee, or other person authorized to receive reimbursement out of the State Treasury for meals, including tax and tips, while traveling on official state business, but shall not include any meals which may be included in charges for lodging or in registration fees paid by or on behalf of a state officer or employee.

(14) "Subsistence or incidental receipt" means an itemized receipt for meals or incidental expenses showing the date of service, amount charged, and the name of the establishment.

(15) "Travel service" means the software used by the commonwealth to process travel authorizations and travel reimbursement documents.

Section 2. General. (1) Affected agencies. Except as otherwise provided by law, this administrative regulation shall apply to all departments, agencies, boards, and commissions, and institutions of the executive branch of state government, except state-supported universities. It shall not apply to the legislative and judicial branches and their employees.

(2) Enforcement.

(a) Each agency head shall be responsible for ensuring that travel reimbursement conforms to the provisions of this administrative regulation and that all travel expense from that agency is economical as is feasible.

(b) A person who travels on official state business shall:

1. Identify if a travel policy which establishes whether reimbursement is being requested based on Section 7 or 8 of this administrative regulation;

2. Prior to trip, create a Travel Authorization (TE, TEL, TEO, or TEC), if required;

3. Upon travel, create a Travel Payment Voucher (TP or TP) document for reimbursement of business related expenses;

4. Maintain records and receipts to support the [his] claim; and

5. Take [Provide himself with] sufficient personal funds to defray the [his] travel expense.

(c) The secretary or [his] designee may:

1. Disallow[] or reduce the amount of a claim if it violates the provisions of this administrative regulation; or

2. Require written justification for amounts claimed by an agency for its employee.

(d) The secretary or his designee may authorize reimbursement for an employee's actual and necessary expenses for authorized travel if the head of the agency, or [his] designee, submits a written determination that establishes the reimbursement is:

1. Required to avoid an undue economic hardship on the employee; or

2. Economically advantageous for the commonwealth.

(3) Eligibility. Except as provided by state law or by this administrative regulation, reimbursement shall not be claimed for expenses of any person other than state officers, members of boards and commissions, employees, bona fide wards, or other persons in the official service of the commonwealth. Only necessary expenses of official travel authorized by an agency head or designee shall be reimbursed.

(4) Interpretation. All final interpretations of this administrative regulation shall be made by the secretary. These determinations
Section 3. Work Station. (1) The official work station of an employee assigned to an office shall be the street address where the office is located.

(2) The official work station of field employees shall be established by the agency head, based solely on the best interests of the commonwealth.

(3) If an employee is permanently reassigned or is stationed at a new location two (2) months, the new location shall become that employee's official work station.

Section 4. Authorizations. (1) For travel in Kentucky, or outside Kentucky, but within the United States or its possessions, or Canada, the person requesting reimbursement shall obtain authorization from the agency head or a designated representative as authorized by Secretory's Order S97-451.

(2) Travel to a bordering state that does not require airfare or an overnight stay shall be authorized in the same manner as travel in Kentucky.

(3) Travel expenses shall be reimbursed if travel was authorized in advance as provided by subsections (4), (5), and (6) (c), (d), (e), and (f) of this section.

(4) (d) If direct billing is to be utilized for state park and motor pool expenses, authorization shall be requested on a Travel Authorization (TE or TEO) document.

(5) (4) For travel outside of Kentucky, authorization shall be requested on Travel Authorization (TEO) document.

(6) (6) For travel outside the United States, its possessions or Canada the person requesting reimbursement shall have obtained authorization from:

(a) The agency head or a designated representative;

(b) The secretary or a designated representative; and

(c) The governor or a designated representative.

(7) (6) A travel request for travel specified in subsections (4) and (5) of this section shall be received by the agency or cabinet at least five (5) working days before the start of travel.

Section 5. Transportation. (1) Economy shall be required.

(a) State officers, agents, employees, and others in the official service of the commonwealth shall use the most economical, standard transportation available and the most direct and usually traveled routes. Expenses added by use of other transportation or routes shall be assumed by the individual.

(b) Round-trip, excursion or other negotiated reduced-rate rail or plane fares shall be obtained if practical.

2.a. Tickets prepaid by the commonwealth shall be purchased through agency business travel accounts provided by a major charge card company or commercial travel agencies.

b. Tickets purchased through the Internet shall be paid for by the traveler and reimbursed on a [his] Travel Payment Voucher (TP or TPI).

3. Exceptions may be made with the approval of the agency head if other arrangements will be in the best interest of the commonwealth.

4. Agencies off shall be billed monthly by the charge card company.

5. Related payments shall be processed on Vendor Payment Voucher (P1) document.

(2) State vehicles. State-owned vehicles with their credit cards shall be used for state business travel when available and feasible. Mileage payment shall not be claimed if state-owned vehicles are used.

(3) Privately-owned vehicles. Mileage claims for use of privately-owned vehicles shall be allowed if a state vehicle was not available or feasible.

(4) Buses, subways. For city travel, employees shall be encouraged to use buses and subways. Taxi fare shall be allowed when more economical transportation is not feasible.

(5) Airline travel. Commercial airline travel shall be the lowest negotiated coach or tourist class. Additional expense for first-class travel shall not be reimbursed by the state. Payment shall be made in accordance with subsection (1)(b) of this section.

(6) Special transportation.

(a) The cost of hiring cars or other special conveyances in lieu of ordinary transportation shall be allowed if written justification from the employee is submitted and approved by the agency head or his designated representative.

(b) Privately-owned aircraft may be used if it is determined to be to the advantage of the state, measured both by travel costs and travel time.

Section 6. Accommodations. (1) Lodging shall be the most economical, as determined by considering location of the lodging.

(2) Facilities providing special government rates or commercial rates shall be used if feasible.

(3) State-owned facilities shall be used for meetings and lodging if available, practicable and economical.

(4) Location. Cost for lodging within forty (40) miles of the claimant's official work station or home shall be reimbursed if approved in advance by the agency head, or a designated representative.

(5) Group lodging, by contract.

(a) State agencies and institutions may contract with hotels, motels and other establishments for four (4) or more employees to use a room or rooms on official business. Group rates shall be requested.

(b) The contract may also apply to meals and gratuities. The contract rates and the costs of rooms and meals per person shall not exceed limits set in Section 7 of this administrative regulation.

(c) The traveler shall not claim reimbursement or subsistence for room and meals paid direct to an establishment providing these services.

(d) Payment shall be made on a Vendor Payment Voucher (P1) document and shall not include personal charges of employees or others in the official service of the commonwealth.

(e) Payment shall be made to the hotel, motel, or other establishment.

(f) Contracted group meeting rooms and lodging and meal charges shall be exempt from Kentucky sales tax and the agency sales-use tax number assigned by the Department of Revenue (Cabinet) shall be specified on the payment document.

(g) Tax exempt numbers shall not be used by individual employees to avoid point of sale payment of Kentucky sales tax connected with lodging costs. Sales tax payments shall be reimbursed on Travel Payment Voucher (TP or TPI) document.

(6) State parks. A state agency or institution using state park facilities may pay for rooms and meals by an Internal Travel Voucher (ITV) document to transfer funds, within the limits of this administrative regulation.

Section 7. Reimbursement Rates. (1) The following persons shall be exempted from the provisions of this section:

(a) Governor;

(b) Governor's staff;

(c) Lieutenant governor;

(d) State employees traveling on assignment with the governor, lieutenant governor, elected constitutional officers, or cabinet secretaries;

(e) Elected constitutional officers;

(f) Cabinet secretaries;

(g) State officers or employees authorized to travel outside the United States (its possessions or Canada);

(h) Members of statutory boards and commissions; and

(i) Others in the official service of the Commonwealth.

(2) Lodging.

(a) Except as provided in paragraph (b) of this subsection, a state officer or employee shall be reimbursed for the actual cost of lodging if the:

1. Lodging is determined to be the most economical; and

2. State officer or employee has provided the hotel, motel, or other establishment's receipt to be reimbursed for the [his] travel expenses.

(b) Reimbursement for lodging shall not exceed the cost of a single room rate, except that if employees share lodging, each employee shall be reimbursed the lesser of single rate or one-half (1/2) the double rate.

(3) Subsistence and incidentals.

(a) Breakfast and lunch. A state officer or employee shall be eligible for reimbursement for subsistence for breakfast and (c)
lunch[ or dinner] expenses while traveling in Kentucky, if [he] authorized work requires an overnight stay and absence during the mealtime hours established by paragraph (d) or (e) of this subsection. An employee shall be in travel status during the entire mealtime. For example, to be eligible for breakfast reimbursement, an employee shall leave at or before 6:30 a.m. and return at or after 9 a.m. This requirement shall apply to all meals.

(b) Dinner expenses. A state officer or employee shall be eligible for reimbursement for dinner expenses while traveling in Kentucky, if [he] authorized work requires an absence:
1. At a destination more than forty (40) miles from the individual’s [he] work station and home; and
2. During the mealtime hours established by paragraph (d) or (e) of this subsection.

(c) A state officer or employee shall be eligible for reimbursement for meals while on authorized travel outside Kentucky, but within the United States, its possessions or Canada, at the reimbursement rates established in paragraphs (d) and (e) of this subsection. An employee shall be in travel status during the entire mealtime. For example, to be eligible for breakfast reimbursement, an employee shall leave at or before 6:30 a.m. and return at or after 9 a.m. This requirement shall apply to all meals.

(d) Reimbursement for non-high-rate areas:
1. Breakfast: authorized travel 6:30 a.m. through 9 a.m. - with receipt, not to exceed seven (7) dollars.[i]
   Lunch: authorized travel 11 a.m. through 2 p.m. - with receipt, not to exceed eight (8) dollars.[i]
   Dinner: authorized travel 5 p.m. through 9 p.m. - with receipt, not to exceed fifteen (15) dollars.
2. Reimbursement for high-rate areas:
   Breakfast: authorized travel 6:30 a.m. through 9 a.m. - with receipt, not to exceed eight (8) dollars.[i]
   Lunch: authorized travel 11 a.m. through 2 p.m. - with receipt, not to exceed nine (9) dollars.[i]
   Dinner: authorized travel 5 p.m. through 9 p.m. - with receipt, not to exceed nineteen (19) dollars.
3. A state officer or employee authorized to travel outside the United States, its possessions, or Canada shall be reimbursed for their actual and necessary expenses for subsistence.
4. A state officer or an employee may, with prior approval of the agency head or designee, be reimbursed for the actual cost charged for meals, if the individual [he] is assigned to attend meetings and training sessions.

(e) Gratuities may be reimbursed if:
1. The total payment of the meal and gratuity do not exceed the limits established in paragraphs (d) or (e) of this subsection; and
2. The gratuity does not exceed twenty (20) percent of the cost of the meal.

(f) [He] Lodging receipts, or other credible evidence, shall be attached to the Travel Payment Voucher (TP or TP1).

(g) Transportation expenses.
(a) Reimbursement for authorized use of a privately-owned vehicle shall:
1. Be adjusted based on the American Automobile Association (AAA) Daily Fuel Gauge Report for Kentucky for regular grade gasoline cost reported on June 1, 2004, and adjusted thereafter on January 1, April 1, July 1, and October 1 of each calendar year based on the average retail price of regular grade gasoline for the week beginning on the second Sunday of the prior month as follows:
   a. If the fuel cost is between one (1) cent and one dollar forty-nine and nine-tenths cents ($1.499), the employee shall be reimbursed thirty-two (32) cents per mile.
   b. If the fuel cost is between one dollar fifty-one cents ($1.501) and one dollar sixty-nine and nine-tenths cents ($1.699), the employee shall be reimbursed thirty-three and thirty-three cent-three (33 3/4) per mile.
   c. If the fuel cost is between one dollar seventy cents ($1.70) and one dollar eighty-nine and nine-tenths cents ($1.899), the employee shall be reimbursed thirty-four (34) cents per mile.
   d. If the fuel cost is between one dollar ninety-one cents ($1.91) and two dollars and nine-tenths cents ($2.099), the employee shall be reimbursed thirty-five (35) cents per mile.
   e. If the fuel cost is between two dollars ten cents ($2.10) and two dollars twenty-nine and nine-tenths cents ($2.299), the employee shall be reimbursed thirty-six (36) cents per mile.
   f. If the fuel cost is greater than two dollars twenty-nine and nine-tenths cents ($2.299), the amount the employee is reimbursed shall increase one (1) cent for every twenty (20) cents increase in the rate, [made at the rate of thirty-two (32) cents per mile; and]
   g. Not exceed the cost of commercial coach round-trip airfare [fare].
(b) Mileage for in-state [in-state] travel shall be based on the "Kentucky Official Highway Map", mileage software or MapQuest website. Out-of-state mileage shall be based on the most recent edition of the "Rand McNally Road Atlas", mileage software or MapQuest website.
(c) Reimbursement for the actual cost of commercial transportation shall be made upon submission of receipts with the Travel Payment Voucher (TP or TP1).
(d) Reimbursement for use of privately-owned aircraft shall be made if, prior to use, written justification was submitted to and approved by the agency head, or a designated representative.
(e) A maximum of twenty (20) [twelve (12)] dollars per night for parking or camping charges for camping vehicles shall be reimbursed.
(f) Actual parking, bridge and highway toll charges shall be reimbursed.
(g) A toll receipt for authorized in-state travel by two (2) axle vehicles shall not be required.
(h) Reimbursement shall be made for reasonable incidental expenses [charges] for:
1. Baggage handling;
2. Delivery of baggage to or from a common carrier, lodging or storage;
3. Overweight baggage charges, if the charges relate to official business.

(i) Registration fees required for admittance to meetings shall be reimbursed.
(j) If a registration fee entitles the registrant to meals, claims for those meals shall be reduced accordingly.
(k) Telephone and telegraph costs for necessary official business shall be reimbursed.
(l) Telephone calls to agency central offices shall be made through:
1. Agency 800 and 888 numbers, if available;
2. A state government telephone credit card; or
3. Lowest available service.
(m) Other incidental expenses may be allowed by the agency head or [his] designee if they are determined to be necessary expenses of official travel.

Section 8. Actual and Necessary Expenses. (1) The following persons shall be eligible for actual and necessary expenses:
(a) Governor;
(b) Governor's staff;
(c) Lieutenant governor;
(d) Elected constitutional officers;
(e) Cabinet secretaries;
(f) State employees traveling on assignment with the governor, lieutenant governor, elected constitutional officers, or cabinet secretaries;
(g) State officers and employees authorized to travel outside the United States, its possessions or Canada;
(h) Members of statutory boards and commissions; and
(i) Others in the official service of the Commonwealth.
(2) (a) Actual and necessary expenses of official business travel shall be reimbursed only upon submission of receipts, items of expense not documented with a receipt shall not be reimbursed [for items over ten ($10) dollars].
(b) Actual and necessary expenses for official business travel shall include:
1. Lodging;
2. Meals;
3. Commercial transportation;
4. Taxes related to travel and necessary expenses; and
5. Reasonable gratuities.
(c) A credit card receipt shall be accepted for a meal if the receipt prepared by the establishment clearly shows that it is a receipt for a meal.
(d) Reimbursement for official use of a privately-owned vehicle shall:
1. Be adjusted based on the American Automobile Association (AAA) Daily Fuel Gauge Report for Kentucky for regular grade gasoline cost reported on June 1, 2004, and adjusted thereafter on January 1, April 1, July 1, and October 1 each calendar year based on the average retail price of regular grade gasoline for the week beginning on the second Sunday of the prior month as follows:
a. If the fuel cost is between one dollar forty-nine and nine-tenths cents ($1.49) and one dollar forty-nine and nine-tenths cents ($1.69), the employee shall be reimbursed thirty-two (32) cents per mile.
b. If the fuel cost is between one dollar fifty (1.50) and one dollar sixty-nine and nine-tenths cents ($1.69), the employee shall be reimbursed thirty-three (33) cents per mile.
c. If the fuel cost is between one dollar seventy-cents ($1.70) and one dollar eighty-nine and nine-tenths cents ($1.89), the employee shall be reimbursed thirty-four (34) cents per mile.
d. If the fuel cost is between one dollar ninety (1.90) and two dollars nine and nine-tenths cents ($2.09), the employee shall be reimbursed thirty-five (35) cents per mile.
e. If the fuel cost is between two dollars ten (2.10) and two dollars twenty-nine and nine-tenths cents ($2.29), the employee shall be reimbursed thirty-six (36) cents per mile.
f. If the fuel cost is greater than two dollars twenty-nine and nine-tenths cents ($2.29), the amount the employee is reimbursed shall increase one (1) cent for every twenty (20) cent increase in the rate, thirty-two (32) cents per mile.
2. Not exceed the cost of commercial coach round-trip airfare [face].
(e)(1) The governor and cabinet secretaries may be reimbursed for actual and necessary costs of entertaining official business guests, upon certification of these expenses to the secretary or [his] designee.
2. The secretary or the secretary’s [his] designee may:
a. Question a claim for reimbursement; and
b. Reduce the amount to be reimbursed, if the secretary [he] determines that it is excessive.
(f) An employee of the Economic Development Cabinet or the Commerce [Tourism] Cabinet shall be reimbursed for actual and necessary costs of entertaining official business guests of the Commonwealth if the costs were:
1. Related to the promotion of industry, travel, or economic development;
2. Substantiated by receipts; and
3. Certified by the head of the cabinet.

Section 9. Mileage. (1) Mileage commuting between home and work station shall not be paid.
(2) If an employee’s point of origin for travel is the employee’s residence, mileage shall be paid for the shorter of mileage between:
(a) Residence and travel destination;
(b) Work station and travel destination.
(3) Vicinity travel, and authorized travel within a claimant’s work station shall be listed on separate lines on the Travel Payment Voucher (TP or TP1) document.

Section 10. Travel Documents. (1) Travel software shall have three (3) types of authorizations:
(a) TE or TEI for in-state travel;
(b) TEO for out-of-state travel; and
(c) TEC for out-of-country travel.
(2) A traveler shall create:
(a) Travel authorization (TE or TEI) document if a state park facility or a motor pool vehicle will be used or if a registration fee is to be paid in advance.
(b) Travel authorization (TEO) document for an out-of-state trip.
(c) Travel authorization (TEC) document for an out-of-country trip.
(3) A contract for group accommodations shall be made on the standard form used by the establishment providing the services.
(4) Authorization for reimbursement of others in the official service of the Commonwealth shall be requested on:
(a) A Vendor Payment Voucher (P1) document; or
(b) A Travel Payment Voucher (TP or TP1) document.
(5) A Travel Payment Voucher (TP or TP1) document shall be used to claim reimbursement for travel expenses.
(6) The Travel Payment Voucher (TP or TP1) document shall be limited to the expenses made by one (1) person for the:
(a) Traveler [Himself; and
(b) If applicable, another person:
1. Who is a ward of the commonwealth; or
2. For whom the traveler [he] is officially responsible.
(7) A Travel Payment Voucher (TP or TP1) document for expenses made for a person specified in subsection (6)(b) of this section shall include the person’s:
(a) Name; and
(b) Status or official relationship to the claimant’s agency.
(8)(a) A Travel Payment Voucher (TP or TP1) document shall be submitted:
1. For one (1) major trip; or
2. Every two (2) weeks for employees that are in travel status for an extended period.
(b) A Travel Payment Voucher (TP or TP1) document shall include:
1. Social Security number of the claimant; and
2. Purpose of each trip.
(c) A Travel Payment Voucher (TP or TP1) document shall be signed and dated, or entered electronically and approved by the:
1. Claimant; and
2. Agency head or authorized representative.
(d) If monthly expenses total less than ten (10) dollars, a Travel Payment Voucher (TP or TP1) may include expenses for six (6) months of a fiscal year.
(e)(8)(a) A Travel Payment Voucher (TP or TP1) document shall be:
1. Legibly printed in ink or typed; or
2. Processed electronically through travel software.
(f) A receipt shall provide the following information for each expense:
1. Amount;
2. Date;
3. Location; and
4. Type.
(g) Receipts shall be maintained at the agency if documents are processed electronically.
(h) If leave interrupts official travel, the dates of leave shall be stated on the Travel Payment Voucher (TP or TP1).
(i) Lodging receipts, or other credible evidence, shall be attached to the Travel Payment Voucher (TP or TP1).

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Travel Payment Voucher (TP or TP1) document (1999);
(b) Travel Authorization (TE or TEI) document for in-state travel (1999);
(c) Travel Authorization (TEO) for out-of-state travel (1999);
(d) Travel Authorization (TEC) document for out-of-country travel (1999);
(e) Vendor Payment Voucher (P1) (1999);
(f) Internal Travel Voucher (ITV) document (1999);
(g) Kentucky Official Highway Map (2004 [1998]);
(h) Rand McNally Road Atlas (2001 [1998]); and
(i) Secretary's Order S97-451, November 1, 1996.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Statewide Accounting Services, Office of the Controller, Finance and Administration Cabinet, Capitol Annex Building, Room 394, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

R. B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: June 15, 2004
FILED WITH LRC: June 15, 2004 at 11 a.m.
CONTACT PERSON: Ed Ross, Controller, Finance and Administration Cabinet, Room 393 Capitol Annex: Frankfort, Kentucky 40601, phone (502) 564-2210, fax (502) 564-5597.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Ed Ross, 502-564-2210, 502-564-6597 fax

(1) Provide a brief summary of:
(a) What this administrative regulation does: Reimburses state employees' travel expenses.

(b) The necessity of this administrative regulation: KRS 45.101 authorizes the Revised and Administration Cabinet to promulgate administrative regulations relating to eligibility, requirements, rates and forms for reimbursement of travel expenses and other expenses incidental to official activities out of the State Treasury.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifies eligibility, requirements, rates and forms for reimbursement of travel and other official expenses out of the State Treasury.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment will correct and clarify existing language and necessary document references, amend the mileage reimbursement for personal vehicles, increase camping vehicles reimbursement, and change the authorization and reimbursement process for travel to a bordering state that does not include an overnight stay or airfare.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to correct and clarify existing language and document references. The amended reimbursement rates are needed to adjust for increased prices, including gasoline. The mileage reimbursement rate will be flexible to permit the rate to fluctuate as gasoline prices change. The addition of classifying travel to bordering states that does not require an overnight stay as in-state travel for reimbursement and reimbursement purposes is necessary to save the man-hours required to approve out of state travel. In addition, requiring actual receipts for per diem requests will save the Commonwealth money while reimbursing travelers for actual expenses.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation specifies eligibility, requirements, rates and forms for reimbursement of travel expenses and other official expenses out of the State Treasury.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will correct and clarify existing language and necessary document references.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Except as otherwise provided by law, this administrative regulation shall apply to all departments, agencies, boards, and commissions, and institutions of the executive branch of state government, except state-supported universities. It shall not apply to the legislative and judicial branches and their employees.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Employees will be required to submit "actual and necessary" expense receipts for items, a decrease from the previous requirement of receipts for items over $10. Employees' reimbursement for overnight camping will be increased by $8. Employees' reimbursement for the use of their personal vehicles will be based on a mileage rate determined quarterly based on the American Automobile Association Daily Fuel Gauge Report for Kentucky. Travelers will no longer be required to receive out-of-state approval for travel to a neighboring state, unless traveling by commercial aircraft or staying overnight. For example, one may travel from Covington to Cincinnati for a meeting and following the policy and procedures for in-state travel.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially, administrative costs should be minimal. The increase in the mileage rate reimbursed for the use of personal vehicles is expected to cost between $250,000 and $300,000 for each $0.01 increase in the reimbursement rate. The average cost on June 1, 2004 was $1.93 per gallon, which correlates to a reimbursement rate of $0.35 per mile, which will become effective immediately. The offsetting cost savings from requiring receipts for per diem reimbursements is estimated to be between $300,000 and $500,000.

(b) On a continuing basis: Administrative costs should be minimal. The increase in the mileage rate reimbursed for the use of personal vehicles is expected to cost between $250,000 and $300,000 for each $0.01 increase in the reimbursement rate. This cost may decrease as gasoline costs decrease.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Various governmental sources.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

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

STATEMENT OF EMERGENCY

200 KAR 5:021E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed administrative regulation should be promulgated on an emergency basis in order to prevent the loss of federal and state funds through improved guidance to state agencies participating in the procurement card program. The Finance and Administration Cabinet Manual of Policies and Procedures is incorporated by reference in 200 KAR 5:021. One (1) of the policies contained in the manual, FAP 111-58-00 Procurement Card Program, is amended to incorporate specific duties of the Finance and Administration Cabinet, agencies' fiscal officers, and agencies' procurement card program administrators. It is necessary to promulgate this administrative regulation on an emergency basis because state agencies have been directed to immediately take steps necessary to ensure that all procurement card purchases are for the use and benefit of the Commonwealth. The normal process for promulgation will take several months, which could cost the state money in illegal purchases before agencies implement additional internal controls. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which was filed with the Regulations Complier on June 15, 2004.

ERNIE FLETCHER, Governor
ROBERT B. RUDOLPH, Jr., Secretary

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Emergency Amendment)

200 KAR 5:021E. Manual of policies and procedures.

RELATES TO: KRS Chapter 45A
STATUTORY AUTHORITY: KRS 45A.045(2)
EFFECTIVE: June 15, 2004
NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.045(2) requires the Finance and Administration Cabinet to publish a manual of policies and procedures, which is to be incorporated by reference as an administrative regulation pursuant to KRS Chapter 13A. This administrative regulation incorporates the Finance and Administration Cabinet Manual of Policies and Procedures.

Section 1. Incorporation by Reference. (1) "Finance and Administration Cabinet of Policies and Procedures (Revised 9/19/04 [74680])" is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Finance and Administration Cabinet's website, or at the Finance and Administration Cabinet, Division of Administrative Policy and Audit, Administrative Policy
Branch, Room 395, Capitol Annex, Frankfort, Kentucky 40601,
Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT B. RUDOLPH, Jr., Secretary
APPROVED BY AGENCY: June 15, 2004
FILED WITH LRC: June 15, 2004 at noon
CONTACT PERSON: Marisa Neal, Finance and Administration
Cabinet Room, 395, Capitol Annex, Frankfort, Kentucky 40601,
phone (502) 564-0853, fax (502) 564-2613.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Marisa Neal
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative
regulation incorporates by reference the Finance and Administration
(b) The necessity of this administrative regulation: KRS
45A.045(2) requires the Finance and Administration Cabinet to pub-
lish a manual of policies and procedures, which is to be incorporated
by reference as an administrative regulation pursuant to KRS
Chapter 13A. This administrative regulation incorporates the Fi-
ance and Administration Cabinet Manual of Policies and Proce-
dures.
(c) How this administrative regulation conforms to the content of
the authorizing statutes: The Finance and Administration Cabinet is
required by KRS 45A.045 to promulgate administrative regulations
governing purchases by state agencies and to publish a manual of
policies and procedures.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This adminis-
trative regulation informs all parties regulated by the Finance and
Administration Cabinet of the policies and procedures for awarding
contracts and selling to the commonwealth, and it informs state
agencies of procurement, accounting and other procedural require-
ments.
(2) If this is an amendment to an existing administrative regu-
lation, provide a brief summary of:
(a) How the amendment will change this existing administrative
regulation: The proposed amendment revises the Finance and Ad-
ministration Cabinet Manual of Policies and Procedures. It revises
the policies and procedures that support the commonwealth’s pro-
curement card program. The proposed amendment requires state
agencies to award each contract for a competitively solicited com-
modities or services that was posted on the commonwealth’s EP-
procurement website from a bid evaluation in procurement desk-
top. This procedure will result in notification of awards being auto-
matically posted on the commonwealth’s EPprocurement website for
14 days. The proposed amendment repeals the policy for moving
services that requires state agencies to contact the Finance and
Administration Cabinet when procuring moving services. The pro-
posed amendment promulgates a new policy governing the usage of
cellular telephones.
(b) The necessity of the amendment to this administrative regu-
lation: The amendment is needed to update policies and procedures
to provide guidance for procurement card program participants and
parties regulated by the Finance and Administration Cabinet. The
amendment is needed to ensure that bidders know when contracts
are awarded and to establish the date that they should have known
about an award pursuant to KRS 45A.285. The Finance and Ad-
ministration Cabinet no longer offers moving services. The acquisi-
tion, assignment and use of cellular telephone equipment and serv-
cices must be controlled by the Finance and Administration Cabinet
because of the cost and potential for abuse.
(c) How the amendment conforms to the content of the author-
izing statutes: See (1)(c) above.
(d) How the amendment will assist in the effective administration
of the statutes: See (1)(d) above.
(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this administra-
tive regulation: This administrative regulation applies to all state
agencies, and all individuals, firms, organizations, and political sub-
divisions doing business with the commonwealth.
(4) Provide an assessment of how the above group or groups
will be impacted by either the implementation of this administrative
regulation, if new, or by the change if it is an amendment: The
amendment will assist state agencies implement internal controls for
the procurement card program and cellular telephones. The
amendment will have limited impact on agencies that have not used
the electronic bid evaluation document, and no impact on those
agencies that do use the document. It will ensure that all parties
have an opportunity to know when contracts from solicitations and
requests for proposals that are posted on the EProcurement website
are awarded. Agencies shall procure moving services in accordance
with FAP 111-55-00 in the same manner as other nonprofessional
services.
(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: $0
(b) On a continuing basis: $0
(c) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: No
funding necessary.
(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regula-
tion, if new, or by the change if it is an amendment: No increase in
fees or funding will be necessary.
(8) State whether or not this administrative regulation estab-
lishes any fees or directly or indirectly increases any fees: No
(9) TIERING: Is tiering applied? Yes, several policies differenti-
ate among state agencies based on small purchase limits.

STATEMENT OF EMERGENCY
302 KAR 20:115E

302 KAR 20:115E requires that the Commonwealth of Kentucky
prohibit the entry of all livestock, wild and exotic animals from any
state in which a diagnosis of the viral disease vesicular stomatitis is
made in its livestock by embarguing that state. Kentucky has a multi-
billion dollar livestock industry. The equine industry and beef cattle
industry alone are valued at more than $1 billion each. Revenues
generated by the livestock portion of Kentucky’s agricultural industry
contribute to local economics, create new jobs, new businesses and
increased tax revenues for both local and state treasurers. Should
an embargo remain in place, there will be a negative economic im-
 pact on the livestock industry, particularly the equine industry. The
equine show season is underway and the inability to allow equines
into Kentucky will cause economic damage to the local and state
 economy. This in return will cost the state badly-needed tax reve-
unes. This proposed administrative regulation need’s to be placed in
effect immediately because it will minimize the economic impact on
Kentucky’s livestock industry while continuing to provide our live-
stock population with the protection required for our animal industry.
This emergency administrative regulation shall be replaced by an
ordinary administrative regulation. The ordinary administrative
regulation was filed with the regulations compiler on May 27, 2004.

ERNIE FLETCHER, Governor
RICHIE FARMER, Commissioner

DEPARTMENT OF AGRICULTURE
Division of Animal Health
(Emergency Amendment)

302 KAR 20:115E. Vesicular stomatitis.

RELATES TO: KRS 257.030
STATUTORY AUTHORITY: KRS 257.030
EFFECTIVE: May 27, 2004
NECESSITY, FUNCTION, AND CONFORMITY: Sets forth the
requirements for entry into Kentucky livestock that has been ex-
posed to vesicular stomatitis.

Section 1. General Provisions. (1) Prohibited entry into Ken-
tyx:
(a) Livestock, wild or exotic animals shall not be permitted entry
into Kentucky from any designated area or region (state) in which
vesicular stomatitis has been diagnosed. Any designated area or region shall be defined by the Kentucky State Veterinarian.

(b) Livestock, wild or exotic animals which have been in a vesicular stomatitis designated area or region shall not be permitted entry into Kentucky until they have been out of the designated area or region a minimum of thirty (30) days or the vesicular stomatitis designated area or region is released from restriction [Livestock, wild or exotic animals shall not be permitted entry into Kentucky which have been in any state, during the thirty (30) days prior to the animal's entry into Kentucky, which has had vesicular stomatitis diagnosed in the state].

(c) Livestock, wild or exotic animals shall not be permitted entry into Kentucky from any state which does not have in place adequate requirements, as determined by the chief livestock health official in Kentucky, governing the entry of such animals from states which have had vesicular stomatitis diagnosed.

(2) Vaccination.

(a) Livestock, wild or exotic animals in Kentucky shall not be vaccinated with an autogenous vesicular stomatitis virus vaccine and issued a conditional license by the United States Department of Agriculture's Animal and Plant Health Inspection Service shall not be permitted entry into Kentucky.

(b) Livestock, wild or exotic animals which have been vaccinated with an autogenous vesicular stomatitis virus vaccine and issued a conditional license by the USDA's Animal and Plant Health Inspection Service shall not be permitted entry into Kentucky.

(3) Testing. All equidae, including suckling foals, originating from a state which has a common border with a state in which vesicular stomatitis has been diagnosed, shall be negative to either a serum neutralization test, a complement fixation test, or a C-ELISA test for a vesicular stomatitis as directed by the Office of the Kentucky State Veterinarian within ten (10) days or a complement fixation test for the New Jersey strain of vesicular stomatitis within thirty (30) days prior to the animal's entry into Kentucky. (The testing must be completed in a laboratory approved by the USDA's National Veterinary Services Laboratory.) The certificate of veterinary inspection shall include the following:

(a) Testing laboratory;
(b) Test date;
(c) Accession number;
(d) Type of test and test results; and
(e) Complete name, address, city and state of both the consignor and consignee.

(4) Other requirements. All other entry requirements as found in 302 KAR 20:040 and other requirements as deemed appropriate and necessary by the Kentucky State Veterinarian shall be met in full.

RICHIE FARMER, Commissioner
APPROVED BY AGENCY: May 27, 2004
FILED WITH RC: May 27, 2004 at 3 p.m.
CONTACT PERSON: Mark Farrow, Chief of Staff, Kentucky Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-5125, fax (502) 564-5016.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dr. Robert Stout, State Veterinarian

(1) Provide a brief summary of:
(a) What this administrative regulation does: Changes requirement for entry into Kentucky for animals which have been diagnosed with vesicular stomatitis.
(b) The necessity of this administrative regulation: To prevent entry of vesicular stomatitis diagnosed animals into Kentucky.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: Allows designation of areas or regions, reduces time period for animals originating from a state bordering a state in which vesicular stomatitis has been diagnosed.
(b) The necessity of the amendment to this administrative regulation: See (1)(a)(b)(c) and (d).
(c) The necessity of the amendment to the administrative regulation: Same as (1)(c).
(d) How the amendment will assist in the effective administration of the statutes: Same as (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons and groups wishing to move animals into Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: They will be required to comply with changes in the administrative regulation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

STATEMENT OF EMERGENCY
803 KAR 2:308E

This emergency administrative regulation amends Section 2, to incorporate by reference the revocation of 29 Code of Federal Regulations (C.F.R.) Part 1910.139, as published in the December 31, 2003, Federal Register, Volume 61, Number 250, pages 75775-75780. This emergency administrative regulation also updates the incorporation by reference of the Code of Federal Regulations to July 1, 2003, as well as to meet KRS Chapter 13A considerations. It is necessary to promulgate this emergency administrative regulation in order to comply with 29 C.F.R. Part 1953, which mandates that the Kentucky Occupational Safety and Health Program remain at least as effective as the federal program. Additionally, 29 C.F.R. Part 1953 requires that the state program enact this program change within six (6) months of the publication of the December 31, 2003, Federal Register, Volume 61, Number 250. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will apply to all parties equally.

ERNIE FLETCHER, Governor
PHILIP ANDERSON, Chairman

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Emergency Amendment)

803 KAR 2:308E: Personal protective equipment.

RELATES TO: KRS Chapter 338 [338.051; 338.061], 29 C.F.R. Part 1910
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. Part 1910
EFFECTIVE: June 15, 2004
NECESSITY: FUNCTION, AND CONFORMITY: EO 2003-64, effective December 16, 2003. Created the Environmental and Public Protection Cabinet, abolished the Labor Cabinet, and transferred the Department of Workplace Standards to the Environmental and Pub-
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FILED WITH LRC: June 15, 2004 at 10 a.m.
CONTACT PERSON: David Stumbo, Health Standards Specialist, Kentucky Department of Labor, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, fax (502) 564-1682.

REGULATORY ANALYSIS AND TIERING STATEMENT

Contact person: David Stumbo

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This emergency administrative regulation, in Section 2, incorporates by reference the December 31, 2003, Federal Register, Volume 68, Number 250, which revokes 29 Code of Federal Regulations (C.F.R.) Part 1910.139, "Respiratory Protection for M. Tuberculosis." Additionally, this emergency administrative regulation updates the incorporation by reference of the Code of Federal Regulations to July 1, 2003, and updates the administrative regulation to meet KRS Chapter 13A requirements.
   (b) The necessity of this administrative regulation: The Kentucky Occupational Safety and Health Program is mandated by 29 C.F.R. Part 1953 to be at least as effective as the federal Occupational Safety and Health Administration. As published in the December 31, 2003, Federal Register, Volume 61, Number 250, page 75780, the Occupational Safety and Health Administration (OSHA) revoked 29 C.F.R. Part 1910.139, "Respiratory Protection for M. Tuberculosis." This standard formerly provided respiratory protection for employees against inhalation of airborne M. Tuberculosis. Due to this revocation, employee respiratory protection against M. Tuberculosis is now regulated under 29 C.F.R. Part 1910.134, "Respiratory Protection." This change by OSHA provides additional protections of employee health not found under 29 C.F.R. Part 1910.139, "Respiratory Protection for M. Tuberculosis." Consequently, the Kentucky Occupational Safety and Health Program must implement this change by June 30, 2004, in order to keep the state program as equally effective as the federal program and satisfy the requirements of 29 C.F.R. Part 1953.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: This emergency administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation will provide enhanced protection of employee health and meet the mandate required by 29 C.F.R. 1953.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Kentucky Department of Labor and copied at: Kentucky Labor Cabinet, Division of Education and Training, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Office of the Federal Register, National Archives and Records Service, General Services Administration, [Office hours are 8 a.m. to 4:30 p.m. (ET), Monday through Friday.]

PHILIP ANDERSON, Chairman
APPROVED BY AGENCY: May 25, 2004
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previously it was necessary for affected parties to determine which of the 2 regulations, 29 C.F.R. 1910.134, "Respiratory Protection," or "29 C.F.R. 1910.139, "Respiratory Protection for M. Tuberculosis," should be followed. Affected parties also had to keep track of the differing requirements of the 2 standards. With this amendment, employees and employers will no longer need to determine which regulation to follow to keep track of their differing requirements. This simplification will result in increased compliance with 29 C.F.R. 1910.134, "Respiratory Protection," and increased protection of employee health.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: These amendments affect all private and public sector employees, but do not affect workers employed in general industry activities covered by KRS Chapter 338. Operations most directly affected are healthcare and correctional industries.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: As a result of this amendment, employee protection against M. Tuberculosis will be enhanced. Additional provisions of 29 C.F.R. 1910.134, "Respiratory Protection," and 1910.139 will be afforded to all affected employees, reducing the likelihood of their contracting tuberculosis, a life-threatening disease. The general public will also benefit from this amendment since it acts to control the spread of a communicable disease.

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

(a) Initially: The "Summary of the Final Economic Analysis and Regulatory Flexibility Certification" section of the December 31, 2003, Federal Register, Volume 68, Number 250, on pages 75778-75779, states: "...the total (national) annualized estimated costs for this action are $11.7 million," for "an estimate of 638,000 affected employees."

(b) On a continuing basis: The "Summary of the Final Economic Analysis and Regulatory Flexibility Certification" section of the December 31, 2003, Federal Register, Volume 68, Number 250, on pages 75778-75779, states: "...the total (national) annualized estimated costs for this action are $11.7 million," for "an estimate of 638,000 affected employees."

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor a need for increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This emergency administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: is tiering applied? Tiering is not applied. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at facilities that pose higher risks to worker safety and health or at sites where the Kentucky Occupational Safety and Health Program has received referrals, worker complaints, or where workplace fatality or an accident resulting in the hospitalization of 3 or more employees has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pub.L. 91-536, the Occupational Safety and Health Act of 1970, Section 18(c)(2).


4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This emergency administrative regulation will not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

5. Is there a permit or certification for the imposition of the stricter standard, or additional or different responsibilities or requirements? This emergency administrative regulation will not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

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 emergency regulation affects any unit, part, or division of local government employees engaged in general industry work.

3. State, in detail, the aspect, or service of local government to which this administrative regulation applies, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation. This emergency administrative regulation affects the safety and health of all local government employees engaged in general industry work. Consequently, this emergency administrative regulation may relate to any unit, part, or division of local government, but those agencies having employees who must use respiratory protection against M. Tuberculosis will be directly affected. Operations which may be directly affected include healthcare and correctional facilities.

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

Revenues (+/-):

Expenditures (+/-):

Other explanation: The "Summary of the Final Economic Analysis and Regulatory Flexibility Certification" section of the December 31, 2003, Federal Register, Volume 68, Number 250, on pages 75778-75779, provides the following data: "...the total (national) annualized estimated costs for this action are $11.7 million," for "an estimate of 638,000 affected employees."

STATEMENT OF EMERGENCY

806 KAR 17:490E

On December 8, 2003, President Bush signed Pub.L. 108-173, known as the Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA). MMA included provisions amending various federal statutes relating to Medicare and federal taxation. In part, these amendments allow individuals to receive tax benefits beginning with calendar year 2004 by subscribing to a high deductible health plan and by enrolling in a health savings account. In part, MMA was intended to encourage uninsured individuals to purchase health insurance; typically a high deductible health plan is less costly. Without immediate clarification of the Kentucky Insurance Code, insurers offering health benefit plans in Kentucky are prevented from qualifying their high deductible product type as high deductible health plans under federal law. Without immediate clarification, Kentucky citizens are not able to take advantage of this substantial federal tax benefit or the increased availability of affordable health insurance and insurers are not able to offer their products as
high deductible health plans. In order to prevent an imminent threat to the public welfare, in that the public will be unable to access affordable health insurance and the tax benefits created under MMA without immediate clarification to the Kentucky Insurance Code provided by this emergency administrative regulation, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the regulations compiler on May 27, 2004.

ERNIE FLETCHER, Governor
LAUJANA S. WILCHER, Secretary

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department Of Public Protection
Office Of Insurance
Division Of Health Insurance Policy And Managed Care
(New Emergency Administrative Regulation)

806 KAR 17:490E. Hospice benefit requirements.

RELATES TO: KRS 304.14-130, 304.32-160, 304.38-050
STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-250(8)
EFFECTIVE: May 27, 2004
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) provides that the Commissioner of Insurance may promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-250(8) requires all health benefit plans to cover hospice care at least equal to the Medicare benefits. EO 2003-064, filed December 23, 2003, created the Environmental and Public Protection Cabinet. EO 2004-031, filed January 6, 2004, abolished the Department of Insurance and transferred all its “duties, functions, responsibilities, records, equipment, staff and support budgets” to the Office of Insurance. This administrative regulation clarifies the requirement that a health benefit plan shall provide a hospice benefit at least equal to the Medicare hospice benefit.

Section 1. Definitions. (1) “Health benefit plan” is defined in KRS 304.17A-005.
(2) “Health savings account” is defined in 26 U.S.C. 223(d).
(3) “High deductible health plan” means a health benefit plan that qualifies as a high deductible health plan as defined in 26 U.S.C. 223(c)(2).
(4) “Hospice” means an entity defined in 42 C.F.R. 418.3 and approved by Medicare or licensed pursuant to KRS Chapter 218B.
(5) “Hospice benefit” means services described in 42 C.F.R. Part 418, Subpart F if provided by a hospice.

Section 2. Application of Deductible to a Hospice Benefit. A hospice benefit provided for a person covered under a high deductible health plan with a health savings account shall be subject to deductible amounts as established in the health benefit plan.

GLENN JENNINGS, Acting Executive Director
JAMES ADAMS, Commissioner
LAUJANA S. WILCHER, Secretary
APPROVED BY AGENCY: May 26, 2004
FILED WITH LRC: May 27, 2004 at noon
CONTACT PERSON: Melea Kelch, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, phone (502) 564-6032, fax (502) 564-1456.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melea Kelch
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation clarifies the requirement found in KRS 304.17A-250(8) that all health benefit plans cover hospice care at least equal to the Medicare benefit.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify the intent and interpretation of KRS 304.17A-250(8) to allow Kentucky citizens to obtain high deductible health plans with health savings accounts.
(c) How does this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the commissioner of insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation clarifies the requirement found in KRS 304.17A-250(8).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the effectuation of KRS 304.17A-250(8) by clarifying this statute and allowing insurers to offer a health benefit plan that qualifies as a high deductible health plan and allows an insured to establish a health saving account.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation? N/A
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all Kentucky health insurers, wishing to offer a high deductible health plan. Additionally, this regulation should benefit Kentucky citizens with health insurance by encouraging insurers to offer less costly high deductible health plans and by permitting Kentucky citizens to take advantage of federal tax benefits by contributing to a health savings account.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Both groups should feel a very positive impact. Because the language in the statute was unclear, insurers have not been able to offer high deductible health plans. Now, insurers will have a new product to market and Kentucky citizens have a new choice of product in the insurance market with substantial tax benefits.
(5) Provide an estimate of how much it will cost to implement this regulation:
(a) Initially: No cost.
(b) On a continuing basis. There should be no cost on a continuing basis.
(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? The budget of the Kentucky Office of Insurance.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. N/A
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees.
(9) TIERING. Is tiering applied? No, the requirement regarding hospice coverage will apply to all Kentucky Health Insurers who wish to offer high deductible health plans with health savings accounts.

STATEMENT OF EMERGENCY
815 KAR 35:006E

This emergency administrative regulation establishes the eligibility requirements and application procedures for the licensing of electrical contractors, electricians and master electricians for the issuance of one (1) year certificates as established in 2003 Ky. Acts ch. 119. An ordinary administrative regulation is not sufficient because there is an immediate need to create procedures governing the licensure of electrical contractors, electricians and master electricians to protect the human health and environment of the citizens of Kentucky. The emergency regulation also reflects amendments deemed necessary by the Legislative Research Commission to
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bring the provisions within the statutory authority of the Office of Housing, Buildings and Construction. This emergency administrative regulation will be replaced by an ordinary administrative regulation and the ordinary administrative regulation will be filed simultaneously with this emergency administrative regulation.

EITHER FLETCHER, Governor
MARK YORK, Deputy Secretary

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Office of State Fire Marshal
(New Emergency Administrative Regulation)

815 KAR 35:060E. Licensing of electrical contractors, electricians, and master electricians pursuant to KRS 227A.060.

RELATES TO: KRS 227A.010, 227A.060, 227A.080, 227A.100;
STATUTORY AUTHORITY: KRS 227A. 040(1)(8), 227A.060, 227A.100(9);
EFFECTIVE: June 15, 2004;
NECESSITY, FUNCTION, AND CONFORMITY: KRS 227A.060 requires the Office of Housing, Buildings and Construction to promulgate administrative regulations to establish a process for the licensing of electrical contractors, electricians, and master electricians. This administrative regulation establishes the eligibility requirements and application procedures for the licensing of electrical contractors, electricians, and master electricians.

Section 1. Application Procedure. An applicant for licensure pursuant to KRS 227A.060 shall:
(1) Complete an application as required by Section 2 of this administrative regulation;
(2) Pay the application fee required by Section 3 of this administrative regulation;
(3) Provide verifiable evidence of experience and training as specified in Section 4 of this administrative regulation; and
(4) Provide evidence of passage of the examination required by Section 5 of this administrative regulation.

Section 2. Application Requirements. The applicant shall complete an application form which shall include the following information:
(1) Applicant’s name;
(2) Applicant’s home address;
(3) Applicant’s business address;
(4) Applicant’s home and business telephone numbers;
(5) Applicant’s date of birth;
(6) Applicant’s Social Security number or employer identification number;
(7) Applicant’s email address;
(8) Licenses applied for;
(9) For master electrician or electrician, a listing of the applicant’s experience in the electrical industry, including business name and address, job title and supervisor’s name;
(10) For master electrician or electrician, a listing of all approved training or apprenticeship programs the applicant has completed;
(11) A statement confirming that the applicant is not in default on any educational loan guaranteed by the KHEAA in accordance with KRS 164.772(3);
(12) For master electrician or electrician licenses, a passport sized photograph of the applicant;
(13) For electrical contractor licenses, the name and license number of the master electrician who will be affiliated with the applicant; and
(14) For electrical contractor licenses, the name of the insurer providing the applicant’s liability and workers’ compensation coverage and the policy number of each coverage.

Section 3. Application and Renewal Fees. (1) The application fee shall be:
(a) $200 for an electrical contractor’s license;
(b) $100 for a master electrician’s license; or
(c) Fifty (50) dollars for an electrician’s license.

(2) Application fees shall not be refundable.
(3) License renewal fees shall be:
(a) $200 for an electrical contractor’s license;
(b) $100 for a master electrician’s license; or
(c) Fifty (50) dollars for an electrician’s license.
(4) The reinstatement fee for any lapsed license pursuant to KRS 227A.100(4) shall be equal to the license renewal fee.
(5) The late renewal fee shall be fifty (50) dollars.
(6) Renewal fees for inactive licenses shall be one-half (1/2) the fee for an active license.

Section 4. Verification of Experience. (1) An applicant shall submit verification of experience for licensure as a master electrician or electrician.

(2) Verification shall be submitted in the form of:
(a) Tax returns or other official tax documents which indicate the applicant’s experience or the nature of the applicant’s business activities, including Federal Schedule C, Form W-2, Form 1099, or local occupational tax returns;
(b) Copies of business licenses issued by a county or municipal government which did not issue electrical contractor’s, master electrician’s or electrician’s licenses prior to June 24, 2003 if the business license indicates the applicant operated as an electrical contractor or worker;
(c) A sworn affidavit, on the applicant’s letterhead, certifying that the author of the letter has personal knowledge that the applicant has worked as a master electrician or an electrician from at least one (1) of the following:
1. An electrical workers union;
2. A certified electrical inspector; or
3. An employer which employed the applicant as an electrician or a master electrician;
(d) Records of a branch of the United States Armed Forces which indicate the applicant performed a function which primarily involved electrical work. Experience gained while in the military shall be deemed to have been earned in Kentucky.

Section 5. Examinations. (1) Applicants for an electrical contractor’s license shall pass the Experior Business and Law Electrical Examination No. 10010 with a score of at least seventy (70) percent.
(2) Applicants for a master electrician’s license shall pass the Experior Master Electrician Examination No. 20111 with a score of at least seventy (70) percent; and
(3) Applicants for an electrician’s license shall pass the Experior Journeyman Electrical Examination No. 20211 with a score of at least seventy (70) percent.

Section 6. Appeal Procedure. (1) Applicants denied a license may appeal the decision of the Office of Housing, Buildings and Construction to the Electrical Advisory Board. The applicant shall submit written notice of the appeal to the Office of Housing, Buildings and Construction within ten (10) days of receiving notice that the license application has been denied.
(2) The appeal shall be conducted pursuant to KRS Chapter 138 by a hearing officer appointed by the Electrical Advisory Board.
The hearing officer shall submit findings of fact, conclusions of law and a recommended order to the Electrical Advisory Board, which may adopt it, amend it or substitute its own decision based upon the evidence.

Section 7. Proof of Insurance. (1) Applicants for an electrical contractor’s license shall prove proof of compliance with liability insurance requirements by providing an insurance certificate showing general liability insurance coverage of at least $500,000 issued by an authorized Kentucky insurer or other insurer certified by the Kentucky Department of Insurance.
(2) The applicant shall provide proof of workers’ compensation insurance by providing:
(a) An insurance certificate from an authorized Kentucky insurer or other workers’ compensation coverage provider; or
(b) A letter certifying that the applicant is not required to obtain workers’ compensation coverage.
(3) Electrical contractors shall require their liability and workers compensation insurers to provide notice to the Office of Housing,
Buildings and Construction if:
(a) A policy is cancelled, terminated, or nonrenewed; or
(b) The policy limits are lowered.
(4) Electrical contractors shall advise the Office of Housing, Buildings and Construction of any change in their insurance coverage, including cancellation or termination of any policy or any change in the insurer providing the coverage.

Section 8. Renewal Requirements. (1) Licenses shall be valid for one (1) year and shall be renewed on or before the last day of the licensee's birth month. For electrical contractor licenses issued to corporations, partnerships or business entities without a birth month, the renewal month shall be the month the license is issued.
(2) The Office of Housing, Buildings and Construction may issue an initial license to an applicant for a period of up to twenty-three (23) months and may charge a pro rata renewal fee to reflect the added term of the initial license. The pro rata license renewal fee shall be refundable.
(3) An initial license shall not be for a term of longer than one (1) year plus sufficient months to reach the applicant’s next birth month or renewal month.

Section 9. Inactive License Status. (1) An applicant may request a license be placed in inactive status. A licensee shall not perform any electrical work requiring a license if the license is inactive.
(2) An electrical contractor licensee in inactive status shall not be required to maintain liability insurance or provide proof to the Office of Housing, Buildings and Construction of compliance with workers' compensation laws.
(3) Certified electrical inspectors may be licensed as an electrical contractor, master electrician or electrician, but shall maintain that license as inactive while having an active electrical inspector certification.
(4) Performing electrical work which requires a license while holding an inactive license shall be grounds for revocation or suspension of all electrical licenses and certifications held by the licensee.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Form SFM-EC-2, "Electrical Contractor's License Application (June, 2004 Edition)", Office of Housing, Buildings and Construction; and
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Housing, Buildings and Construction, Electrical Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK YORK, Deputy Secretary
As authorized by LaJuan Wilcher, Secretary

FLOYD VAN COOK, Executive Director
FRANK L. DEMPSEY, General Counsel
APPROVED BY AGENCY: June 8, 2004
FILED WITH LRC: June 15, 2004 at 11 a.m.
CONTACT PERSON: Frank L. Dempsey, Office of General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0365, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Frank L. Dempsey
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the procedures and requirements for the licensing of electrical contractors, electricians and master electricians under the grandfathering provisions of KRS 227A.080.
(b) The necessity of this administrative regulation: This administrative regulation establishes the eligibility requirements and application procedures for the licensing of electrical contractors, electricians and master electricians for the issuance of licenses as established in KRS 227A.080.
(c) How this administrative regulation conforms to the content of the authorizing statutes: It sets the standards and procedures that are to be followed in implementing KRS 227A.010-227A.140, for the licensing of electrical contractors, electricians and master electricians.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It sets forth the standards and procedures authorized by the statute in implementation of the requirements for licensing of electrical contractors, electricians and master electricians.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: Not applicable. This is a new regulation.
(b) The necessity of the amendment to this regulation:
(c) How the amendment conforms to the content of the authorizing statute:
(d) How the amendment will assist in the effective administration of the statutes.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Every business or individual currently acting as an electrician or electrical contractor will be affected by this administrative regulation. To date the Office of Housing, Buildings and Construction has received approximately 25,000 applications for grandfathered electrical licenses. While it is likely that most of the current participants in the electrical industry have taken advantage of the grandfathering opportunity, there will doubtless be many additional applicants. This administrative regulation will also affect newly-trained members of the electrical trade.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative, if new, or by the change if it is an amendment: Businesses and individuals working in the electrical industry will be required to be licensed as electrical contractors, master electricians and/or electricians. They will be required to provide proof that they meet the statutory qualifications each of the license categories.
(5) Provide an estimate of how much it will cost to implement this administrative regulation: Costs to administer issuing licenses are expected to range from $100,000 to $150,000 per year.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding will be from license fees.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Since this is a new statutory initiative, this administrative regulation sets the license application and renewal fees as well as the reinstatement and late renewal fees required in the statute.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes electrical contractor, master electrician, and electrician license application fees, license renewal fees, reinstatement fees and late renewal fees.

TIERING: Is tiering applied? Tiering is applied. Different examinations are required for electrical contractor, master electrician and electrician license applicants. This relates the different type of knowledge required to hold the electrical contractor license. Also, a higher level of electrical knowledge is required to be qualified for the master electrician license. The least were chosen and tiered on that basis. Tiering was also applied to the fee structure. Inactive license renewal fees are set at 50% of active renewal fees. This was done because inactive renewals do not require the same level of administrative activity as regular renewals. Since the administrative cost to the office is lower, it was determined that the fee should be lower.

STATEMENT OF EMERGENCY
800 KAR 5:020E
This emergency administrative regulation is being promulgated to meet a deadline established pursuant to state law and to protect
human health. KRS 216B.040(2)(e)2a, requires the Cabinet for Health and Family Services to promulgate an administrative regulation, updated annually, to establish the State Health Plan. Because the last update became effective June 16, 2003, it is necessary to promulgate this update as an emergency to meet the statutory deadline. Additionally, pursuant to KRS 13A.190(1)(a), this emergency administrative regulation is being filed to protect human health as it establishes review criteria for a pilot project for primary angioplasty in hospitals without open heart surgery capabilities and for hospital-owned MRI services. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the regulations compiler.

ERNIE FLETCHER, Governor
JAMES W. HOL Singer, Jr., M.D., Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Certificate of Need
(Emergency Amendment)

900 KAR 6:020E. State Health Plan for facilities and services.

RELATES TO: KRS 216B.010-216B.130
STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1),
216B.010, 216B.015(27) [(19)], 216B.040(2)(a)2a, EO 2004-444
EFFECTIVE: June 4, 2004

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-444, effective May 11, 2004, recognized the Cabinet for Health and Family Services and placed the Office of Certificate of Need under the Cabinet for Health and Family Services. KRS 216B.040(2)(a)2a requires the cabinet to promulgate an administrative regulation, updated annually, to establish [KRS 216B.015(19) requires the Cabinet for Health Services to oversee development and annual updating of] the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The 2004-2006 [2003-update to the 2001-2003] State Health Plan shall be used to:
(1) Review a certificate of need application pursuant to KRS 216B.040; and
(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(28)(b)(20)(a) and 216B.061(1)(d).

Section 2. [Updating of Inventories and Need Analysis. (1) The cabinet shall update the inventory of licensed or certificated need approved health services and health facilities and the need analysis established in the State Health Plan on a periodic basis to reflect any changes in inventory or need projections for health services and health facilities. The most current update shall be used in making certificate of need decisions.
(2) Notice of an update shall be published in the cabinet's certificate of need newsletter.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Certificate of Need [Cabinet for Health Services], 275 East Main Street, HSIE-D, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES W. HOL Singer, Jr, M.D., Secretary
JOHN GRAY, Executive Director
APPROVED BY AGENCY: June 2, 2004
FILED WITH LRC: June 4, 2004 at 4 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, Cabinet for Health and Family Services, 275 East Main Street, 5 West, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John Gray

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation incorporates by reference the 2004-2006 State Health Plan.
(b) The necessity of this administrative regulation: KRS 216B.015(26) requires that the State Health Plan be prepared triennially and updated annually. This administrative regulation incorporates the 2004-2006 State Health Plan by reference.
(c) How this administrative regulation complies with the content of the authorizing statutes: The preparation and promulgation of the State Health Plan is required by KRS Chapter 216B.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: As stated above, the preparation and promulgation of the State Health Plan is required by KRS Chapter 216B.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment will replace the 2003 Update to the 2001-2003 State Health Plan with the 2004-2006 State Health Plan.
(b) The necessity of the amendment to this administrative regulation: KRS 216B.015(26) requires that the State Health Plan be prepared triennially. The last triennial State Health Plan was prepared in 2001, so a new triennial State Health Plan is required for 2004.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment carries out the requirement of KRS 216B.015(26) that the State Health Plan be prepared triennially.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide an updated State Health Plan for purposes of certificate of need review of the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect health care providers governed by the Certificate of Need law, citizens who use health care in Kentucky, health planners in the Certificate of Need Program, and local communities that plan for, use, or develop community health care facilities.

(4) Provide an assessment of how the above groups or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above groups will be impacted by the changes in the 2004-2006 State Health Plan that allow for expanded provision of hospital owned MRI diagnostic services, and by access to services through the Emergency Angioplasty Pilot Project.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None
(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all 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.
ARMS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARMS, June 8, 2004)

11 KAR 5:034. CAP grant student eligibility.

RELATES TO: KRS 164.744(2), 164.753(4), 164.7535
STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honoraria as provided in KRS 164.740 to 164.7891 [164.786]. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. KRS 164.7535 authorizes the authority to provide grants to assist financially needy part-time and full-time undergraduate students to attend educational institutions in Kentucky. This administrative regulation establishes student eligibility requirements for the college access program.

Section 1. In order to qualify for disbursement of a college access program grant, a student shall:

1. Be a resident of Kentucky;
2. Be enrolled at an educational institution as at least a part-time student as determined by the educational institution, in an eligible program of study and not have previously earned a first baccalaureate or professional degree;
3. Demonstrate financial need in accordance with 11 KAR 5:130 [5:120] through 11 KAR 5:145 for CAP grant assistance;
4. Have remaining KHEAA grant limit.
   a. A student enrolled as a full-time student in each academic term of a two (2) year eligible program of study shall be limited to five (5) semesters of CAP grant program eligibility.
   b. A student enrolled as a full-time student in each academic term of a four (4) year eligible program of study shall be limited to nine (9) semesters of CAP grant program eligibility (including any KHEAA grant limitation used in a two (2) year eligible program of study);
5. Not receive financial assistance in excess of need to meet educational expenses;
6. Maintain satisfactory progress in an eligible program of study according to the published standards and practices of the educational institution at which the student is enrolled;
7. Satisfy all financial obligations to the authority under any program administered by the authority pursuant to KRS 164.740 to 164.7891 [164.786] and to any educational institution, except that ineligibility for this reason may be waived by the executive director of the authority, at the recommendation of a designated staff review committee, for cause;
8. Be a citizen of the United States or an eligible noncitizen;
9. Be receiving at least part-time [full-time] credit at an educational institution in an eligible program of study and paying at least part-time [full-time] tuition and fees to that institution, if the student is studying abroad or off-campus; and
10. Have been eligible to receive a CAP Grant in the preceding year, if the student is enrolled in an equivalent undergraduate program of study, as defined by the Council on Postsecondary Education.

MARCIA CARPENTER, Chair
APPROVED BY AGENCY: February 5, 2004
FILED WITH LRC: March 22, 2004 at 2 p.m.
CONTACT PERSON: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7290, fax (502) 696-7293.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARMS, June 8, 2004)


NECESSITY, FUNCTION, AND CONFORMITY: 20 U.S.C. 1070d-31 et seq., establishes the Robert C. Byrd Honors Scholarship Program and requires the secretary to make grants to states to provide scholarships to outstanding high school graduates who show promise of continued excellence, 20 U.S.C. 1070d-35 and 1070d-37, and 34 C.F.R. 654.30 and 654.41(1) require the authority, as the state agency designated to receive the grant, to establish criteria and application procedures for the selection of eligible scholars. This administrative regulation establishes application procedures and selection criteria for the administration of the Robert C. Byrd Honors Scholarship Program in Kentucky.

Section 1. Definitions. (1) "ACT score" means the composite score achieved on the American College Test at a national test site on a national test date.
(2) "Authority" is defined in KRS 164.740(1).
(3) "Award year" means the period of time from July 1 of one (1) year through June 30 of the following year.
(4) "Eligible student" is defined in KRS 164.740(5).
(5) "Federal act" is defined in KRS 164.740(7).
(6) "High school" means a school located within or outside of the Commonwealth enrolling students for secondary school instruction that is:
   a. Operated by a state;
   b. A private, parochial, or church secondary school that has been recognized as accredited, or voluntarily complying with accreditation standards, by one (1) of the fifty (50) state departments of education or one (1) of the seven (7) independent regional accrediting associations;
   c. A high school graduate" means an individual who receives:
      a. A high school diploma;
      b. A General Education Development (GED) Certificate; or
      c. Any other evidence recognized by the Commonwealth as the equivalent of a high school diploma.
(7) "Participating Institution" is defined in KRS 164.740(1).
(8) "SAT score" means the composite score achieved on the Scholastic Aptitude Test at a national test site on a national test date.
(9) "Scholar" means an individual who is selected as a Byrd Scholar.
(10) "Secretary" is defined in KRS 164.740(9).

Section 2. Eligibility Criteria. (1) Initial eligibility. To be eligible for selection as a scholar, an individual shall meet the initial eligibility criteria established in 34 C.F.R. 654.40, which is adopted without change. [An individual shall meet the following criteria to be eligible to be selected as a scholar: initial eligibility is governed by 34 C.F.R. 654.40, 68 FR 4269, effective September 26, 1993; adopted without change.]
(2) Continued eligibility. To remain eligible for additional awards under this program for subsequent award years, a scholar shall meet the continued eligibility criteria established in 34 C.F.R. 654.51, which is adopted without change. [A scholar
shall meet the following criteria to remain eligible to receive additional awards under this program for subsequent award years. Continued eligibility is governed by 34 C.F.R. 654.51, 68 FR 42669, effective September 25, 1993, adopted without change.

Section 3. Initial Application Procedures. Applications submitted by individual students shall not be accepted. In order for an eligible student to be considered for an award under this program:

1. The eligible student shall not have applied for consideration in a prior year; and
2.(a) For high school seniors, the eligible student’s participating high school shall nominate the eligible student, and shall submit to the authority a completed application by February 15 on the Robert C. Byrd Honors Scholarship Program 2004-2005 Application form. The application shall be accompanied by the following supporting documentation pertaining to the eligible student:
   1. A certified transcript showing the cumulative grade point average for seven (7) semesters of high school;
   2. An official ACT score or SAT score;
   3. A high school guidance counselor’s recommendation, not exceeding fifty (50) words, pertaining to the student’s promise of continued academic achievement; and
   4. A listing of honors, activities, and community service performed during high school;
   (b) For a GED recipient, a GED coordinator shall nominate the eligible student, and submit to the authority a completed application by June 30 on the Robert C. Byrd Honors Scholarship Program 2004-2005 Application (for GED Recipients) form. The application shall be accompanied by the following supporting documentation pertaining to the eligible student:
      1. An official General Education Development score certification; and
      2. The GED coordinator’s recommendation, not exceeding fifty (50) words, pertaining to the student’s promise of continued academic achievement.

Section 4. Nomination Procedures. Each participating high school shall select and submit applications as follows:

1. Number of nominations per school. A participating high school shall submit nominations according to the following guidelines:
   (a) High schools with enrollments of 1,500 or more may nominate a maximum of five (5) applicants;
   (b) High schools with enrollments of 1,000-1,499 may nominate a maximum of four (4) applicants;
   (c) High schools with enrollments of 500-999 may nominate a maximum of three (3) applicants; and
   (d) High schools with enrollments of less than 500 may nominate a maximum of two (2) applicants.
2. A participating high school shall nominate only eligible students who:
   (a) Have a minimum:
      1. ACT score of twenty-three (23); or
      2. SAT score of 1060; and
   (b) Have a minimum 3.5 grade point average for seven (7) semesters of high school.
3. A GED coordinator shall nominate only eligible students who have a minimum GED score of 2700.

Section 5. Selection Procedures. (1) Applications shall be reviewed to ensure compliance with the requirements set forth in Sections 2, 3, and 4 of this administrative regulation.

1. The authority shall sort acceptable applications according to the six (6) congressional districts in order to ensure proportional distribution.
2. The authority shall evaluate and score applications on a scientific basis by a stratified random technique, with consideration to demonstrated outstanding academic achievement and promise of continued achievement and reasonable geographic representation throughout the state.
3. At least one (1) scholar shall be selected among the GED recipients.
4. A scholar shall be selected from eligible applicants without regard to:
   (a) The applicant’s race, color, national origin, sex, religion, disability, economic background, educational expenses, or financial need;
   (b) Whether the scholar attended a high school located within or outside of the Commonwealth; or
   (c) Whether the participating institution that the scholar plans to attend is public or private or is within or outside the Commonwealth.
5. A selected scholar shall agree in writing that he shall repay to the authority the total amount of the scholarship funds received for the academic term during which he receives an award if the scholar is ineligible during the academic term as determined by the participating institution or the authority.

Section 6. Notification Procedures. The authority shall notify eligible students, tentatively selected as scholars, of their status within forty-five (45) days after the application submission deadline.

Section 7. Award Amount. (1) The amount of the annual award shall be governed by 34 C.F.R. 654.50[68 FR 42669, effective September 25, 1993] and 34 C.F.R. 654.51(b), which are [68 FR 42669, effective September 25, 1993] adopted without change.

2. A scholar shall receive an aggregate maximum of $6,000 over four (4) years if he or she maintains eligibility.

Section 8. Disbursements. (1) The first payment shall be made at the beginning of the fall term after the participating institution has certified that the scholar is enrolled on a full-time basis and that the total amount of financial aid awarded to a scholar for a year of study, including the scholarship amount; awarded pursuant to this administrative regulation, does not exceed the eligible student’s total cost of attendance.

2. The award shall be paid in at least two (2) disbursements in the amount of:
   (a) One-half (1/2) in the fall term; and
   (b) One-half (1/2) in the spring term.
3. The warrant shall be made payable to the scholar, but shall be sent to the school for delivery to the scholar.
   (4)(a) Except as provided in paragraph (b) of this subsection, the award shall be utilized within twelve (12) months of the time of initial award.
   (b) The authority executive director may authorize a postponement of the award utilization. The postponement shall be for up to twelve (12) additional months from the date the scholar:
      a. Otherwise would have enrolled in the institution after the scholarship award was made; or
      b. Intermittent enrollment.
2. A postponement shall be granted only if:
      a. There is sufficient good cause; and
      b. The scholar requests in writing, before the payment is certified by the participating institution, that the award be delayed to postpone or interrupt his enrollment.
3. A scholar who postpones or interrupts his enrollment at a participating institution in accordance with paragraph (b) of this subsection shall not be eligible to receive scholarship funds during the period of postponement or interruption, but shall be eligible to receive scholarship payments upon enrollment or reenrollment at a participating institution.
4. The authority may extend the twelve (12) month suspension period without terminating the scholar’s eligibility if the scholar demonstrates to the satisfaction of the authority that extended postponement or interruption of enrollment beyond the twelve (12) month suspension is due to exceptional circumstances beyond the scholar’s control or necessary for the scholar to meet a commitment.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

   (a) The “Robert C. Byrd Honors Scholarship Program 2004-2005 Application”, November 2003; and

2. This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 100 Airport Road, Frankfort, Kentucky 40601,
Monday through Friday, 8 a.m. to 4:30 p.m. The application shall be available on the authority's website, www.KHEAA.com.

MARCIA CARPENTER, Chair
APPROVED BY AGENCY: February 5, 2004
FILED WITH LRC: March 22, 2004 at 2 p.m.
CONTACT PERSON: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7290, fax (502) 696-7293.

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARR2S, June 8, 2004)

16 KAR 2:010. Kentucky teaching certificates.

RELATES TO: KRS 158.6451, 161.020, 161.028(1)(a)-(c), 161.030.
STATUTORY AUTHORITY: KRS 161.028(1)(a), (b), (f), (g), (h), 161.030.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualifications for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. KRS 161.028(1)(a) requires the Education Professional Standards Board to establish the standards for obtaining and maintaining a teaching certificate. KRS 161.028(1)(b) requires the board to set standards for programs for the preparation of teachers and other professional school personnel. [a teacher education institution be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board.] KRS 161.028(1)(f) requires the Education Professional Standards Board to issue and renew any certificate. This administrative regulation establishes the Kentucky certification to be issued for teaching positions.

Section 1. Definitions. (1) "Approved program of preparation" means a program which has been approved by the Education Professional Standards Board under 16 KAR 5:010 for a specific certification or which has been approved for certification by the state education agency of another state.
(2) "Assessments" means the tests of knowledge and skills authorized by KRS 161.030 and established in 16 KAR 6:010.
(3) "Base certificate" means a stand-alone license to teach which encompasses authorization to teach introductory and interdisciplinary courses in related fields.
(4) "Beginning teacher internship" means one (1) year of supervision, assistance, and assessment required by KRS 161.030 and established in 16 KAR 7:010.
(5) "Certificate endorsement" means an addition to a base or restricted base certificate, which is limited in scope and awarded on the basis of completion of an endorsement program or a combination of educational requirements, assessments, and experience as outlined in Section 5 of this administrative regulation.
(6) "Certificate extension" means an additional base or restricted base certificate in a content area or grade range.
(7) "Experienced teacher standards" means the standards established in 16 KAR 1:010 that identify what an experienced teacher shall know and do.
(8) "New teacher standards" means the standards established in 16 KAR 1:010 that identify what a new teacher shall know and be able to do.
(9) "Professional teaching certificate" means the document issued to:
(a) An individual upon successful completion of the beginning teacher internship; or
(b) An applicant for whom the testing and internship requirement is waived under KRS 161.030 based on preparation and experience completed outside Kentucky.
(10) "Provisional teaching certificate" means the document issued to an individual for the duration of the beginning teacher internship program.
(11) "Restricted base certificate" means a stand-alone license to teach in a specific subject area of certification which is the only subject area which can be taught under this limited certificate.
(12) "Statement of eligibility" means the document issued to an applicant upon completion of an approved program of preparation and successful completion of the assessments.

Section 2. Certificate Issuance. (1) A statement of eligibility for a provisional teaching certificate shall be issued to an applicant who has successfully completed:
(a)1. At least a bachelor's degree with:
(a) A cumulative grade point average of 2.50 on a 4.0 scale; or
(b) A grade point average of 3.00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework; or
(2) As required by Section 4(2)(g)16 and (4)(e) of this administrative regulation, a master's degree with:
(a) A cumulative grade point average of 2.50 on a 4.0 scale; or
(b) A grade point average of 3.00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework;
(b) An approved program of preparation; and
(c) The assessments corresponding to the certificate identified in Section 4 of this administrative regulation for which application is being made.
(2) Upon confirmation of employment in an assignment for the grade level and specialization identified on a valid statement of eligibility, a Provisional Teaching Certificate shall be issued for the duration of the beginning teacher internship established under KRS 161.030.
(3) Upon successful completion of the internship, a Professional Teaching Certificate shall be issued, valid for a four (4) year period.

Section 3. Professional Teaching Certificate Renewal. (1) The renewal shall require completion of a fifth-year program of preparation which is consistent with:
(a) The experienced teacher standards established in 16 KAR 1:010; or
(b) The standards adopted by the Education Professional Standards Board for a particular professional education specialty and established in an applicable administrative regulation.
(2) The first five (5) year renewal shall require:
(a) Completion of a minimum of fifteen (15) semester hours of graduate credit applicable to the fifth-year program established in 16 KAR 8:020 by September 1 of the year of expiration of the certificate; or
(b) Completion of the professional development plan and a partial portfolio for the continuing education option established in 16 KAR 8:030.
(3) The second five (5) year renewal shall require:
(a) Completion of the fifth-year program established in 16 KAR 8:020 by September 1 of the year of expiration of the certificate; or
(b) Completion of the professional development plan and a full portfolio for the continuing education option established in 16 KAR 8:030.
(4) Each subsequent five (5) year renewal shall require completion of the renewal requirements established in 16 KAR 4:060.

Section 4. Grade Levels and Specializations. (1) Preparation for a teaching certificate shall be based on:
(a) The new teacher standards established in 16 KAR 1:010;
(b) The accreditation and program approval standards established in 16 KAR 5:010, including the content standards of the relevant national specialty program associations; and
(c) The goals for the schools of the Commonwealth specified in KRS 158.6451 and the student academic expectations established in 703 KAR 4:060.
(2) A base certificate shall be issued specifying one (1) or more of the following grade levels and specialization authorizations:
(a) Interdisciplinary early childhood education, birth to primary, established in 16 KAR 2:040;
(b) [4-1] Elementary school: primary through grade five (5) to in
clude preparation in the academic disciplines taught in the elementary school.  
1. The elementary certificate shall be valid for teaching grades six (6) through twelve (12) in a school organization in which grade six (6) is housed with grade five (5) in the same building.  
2. A candidate for the elementary certificate may simultaneously prepare for certification for teaching exceptional children.  
(a) Grades five (5) through nine (9) with the equivalent of one (1) major to be selected from:  
   a. English and communications;  
   b. Mathematics;  
   c. Science; or  
   d. Social studies;  
(b) Middle school option 1: grades five (5) through nine (9) with the equivalent of one (1) major to be selected from:  
   a. English and communications;  
   b. Mathematics;  
   c. Science; or  
   d. Social studies;  
(c) Grades five (5) through twelve (12) with the equivalent of one (1) major to be selected from:  
   a. English and communications;  
   b. Mathematics;  
   c. Science; or  
   d. Social studies;  
3. A candidate who chooses to simultaneously prepare for teaching in the middle school and for an additional base or restricted base certificate issued under this subsection or subsection (3) of this section, including certification for teaching exceptional children, shall be required to complete one (1) middle school teaching field;  
(d) Secondary school: grades eight (8) through twelve (12) with the equivalent of one (1) or more of the following specializations:  
   a. English;  
   b. Mathematics;  
   c. Social studies;  
   d. Science;  
   e. Biology;  
   f. Chemistry;  
   g. Physics; or  
   h. Earth science;  
   i. Grades five (5) through twelve (12) with the equivalent of one (1) or more of the following specializations:  
      a. Agriculture;  
      b. Business and marketing education;  
      c. Family and consumer science;  
      d. Industrial education;  
      e. Technology education;  
   j. All grade levels with the equivalent of one (1) or more of the following specializations:  
      a. Art;  
      b. Foreign language;  
      c. Health;  
      d. Physical education;  
      e. Integrated music;  
      f. Vocal music;  
      g. Instrumental music; or  
      h. School media librarian;  
   (g) Grades primary through twelve (12) for teaching exceptional children and for collaborating with teachers to design and deliver programs for preprimary children, for one (1) or more of the following disabilities:  
      a. Learning and behavior disorders;  
      b. Moderate and severe disabilities;  
      c. Hearing impaired;  
      d. Hearing impaired with sign proficiency;  
      e. Visually impaired;  
      f. Communication disorders, valid at all grade levels for the instruction of exceptional children and youth with communication disorders, which shall require a master's degree in communication or speech language pathology, in accordance with 16 KAR 2:050, Section 2; or  
   (h) Communication disorders - SLPA only, valid at all grade levels for the instruction of exceptional children and youth with communication disorders, which shall require a baccalaureate degree in communication or speech language pathology, in accordance with 16 KAR 2:050, Section 3.  
3. A restricted base certificate shall be issued specifying one (1) or more of the following grade level and specialization authorizations:  
   a. Psychology, grades 8-12;  
   b. Sociology, grades eight (8) through twelve (12);  
   c. Journalism, grades eight (8) through twelve (12);  
   d. Speech/media communications, grades eight (8) through twelve (12);  
   e. Theater, primary through grade twelve (12);  
   f. Dance, primary through grade twelve (12);  
   g. Computer information systems, primary through grade twelve (12);  
   h. English as a second language, primary through grade twelve (12);  
   i. An endorsement to certificates identified in subsection (2) or (3) of this section shall be issued specifying one (1) or more of the following grade level and specialization authorizations:  
      a. Computer science, grades eight (8) through twelve (12);  
      b. English as second language, primary through grade twelve (12);  
      c. Gifted education, primary through grade twelve (12);  
      d. Driver education, grades eight (8) through twelve (12);  
      e. Reading and writing which shall require a master's degree in reading, primary through grade twelve (12);  
      f. Instructional computer technology, primary through grade twelve (12);  
      g. Other instructional services - school safety, primary through grade twelve (12);  
      h. Other instructional services - environmental education, primary through grade twelve (12);  
      i. Other instructional services - school nutrition, primary through grade twelve (12). The endorsement for school nutrition shall be obtained by either:  
   1. Completion of the requirements of Section 5(2) of this administrative regulation; or  
   2. Obtaining the school food service and nutrition specialist (SFSN) credential issued by the American School Food Service Association (ASFSA); or  
   (j) Learning and behavior disorders, grades eight (8) through twelve (12);  
   1. This endorsement shall be issued following completion of the requirements of Section 5(2) of this administrative regulation; and  
   2. This endorsement shall only be issued to candidates with preparation and certification for a base or restricted base certificate for the secondary grades eight (8) through twelve (12).  
Section 5. Additional Certification.  
1. A certificate extension may [shall] be issued for any base or restricted base certificate area offered in Section 4(2) or (3) of this administrative regulation and shall require:  
   a. A valid base or restricted base certificate, including a statement of eligibility;  
   b. Successful completion of the applicable assessments; and  
   c. Recommendation from an approved preparation program upon demonstration of competency in the relevant teaching methodology verified via coursework, field experience, portfolio, or other proficiency evaluation.  
   (2) A certificate endorsement may [shall] be issued for any area listed in Section 4(4) of this administrative regulation and shall require:  
   a. A valid base or restricted base certificate, including a statement of eligibility;  
   b. Successful completion of the applicable assessments; and  
   c. Recommendation from an approved preparation program.  
(3)(a) In order to assist districts in meeting the "highly qualified" teacher requirements of the No Child Left Behind Act of 2001, 20 U.S.C. 6301 et seq., the Education Professional Standards Board establishes a time-limited [an experimental] option for professionally certified teachers to add certificate endorsements and or extensions.  
(b) For applications received from the effective date of this administrative regulation through June 30, 2006, a certificate extension or certificate endorsement may be issued if an educator submits a completed application and meets the following requirements:  
1. [a] A valid Kentucky professional teaching certificate;  
2. [b] Current employment in a certified position or a bona fide offer of employment in a certified position in a Kentucky public school;
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LYDIA COFFEY, Chair
APPROVED BY AGENCY: April 13, 2004
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EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, June 8, 2004)


STATUTORY AUTHORITY: KRS 161.020, 161.028(1)(a), (e), 161.030
NECESSITY, FUNCTION, CONFORMITY: [KRS 167.290 to 167.290 establish the statutory framework for special education programs in local school districts. 34 C.F.R. Part 300 recognizes the state education agency as the authority in determining certification or licensure requirements for individuals providing special education or related services. KRS 161.030 identifies the Education Professional Standards Board as the state education agency with certification authority for Kentucky.] KRS 161.020 and 161.028 require the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate for all public school positions, including those for teaching exceptional children. This administrative regulation establishes the certification requirements for teachers of exceptional children.

Section 1. Certification Requirements for Assignment of Special Education Personnel. (1) Mild mental disability (MMD). A teacher [Teachers] holding the following certification shall be assigned to serve pupils with mild mental disabilities at any grade level [within the grade-range limitations of the teacher's certificate]:
(a) Certification for learning and behavior disorders, grades K-12, or seven (7) through twelve (12); or
(b) Certification for teaching the educable mentally retarded, educable mentally handicapped, emotionally disturbed, or neurologically impaired, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12).
(2) Orthopedic impairment (OI).
(a) A teacher [Teachers] holding the following certification shall be assigned to serve pupils with orthopedic impairments at any grade level [within the grade-range limitations of the teacher's certificate]:
1. Certification for orthopedically handicapped or physically handicapped, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12); or
2. Certification for teaching exceptional children.
(b) A teacher [Teachers] possessing one (1) of the certificates identified in paragraph (a) of this subsection shall be assigned based on the learning characteristics and services needs of the child.
(3) Other health impairment (OHI).
(a) A teacher [Teachers] shall be assigned to serve pupils identified as other health impaired at any grade level [within the grade-range limitations of the teacher's certificate] based upon the learning characteristics and services needs of the child; and
(b) A teacher [All-teachers] assigned to pupils identified as other health impaired shall possess a certificate for teaching exceptional children.
(4) Specific learning disability (LD). A teacher [Teachers] holding the following certification shall be assigned to serve pupils with learning disabilities at any grade level [within the grade-range limitations of the teacher's certificate]:
(a) Certification for learning and behavior disorders, grades K-12, P-12, or seven (7) through twelve (12); or
(b) Certification for teaching the educable mentally retarded, educable mentally handicapped, emotionally disturbed, or neuro-
logically impaired, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12).

(5) Developmental delay (DD). A teacher [Teachers] holding the following certification shall be assigned to serve pupils with developmental delay at any grade level [within the grade-range limitations of the teacher's certificate]:

(a) Certification for learning and behavior disorders, grades K-12, P-12, or seven (7) through twelve (12); or

(b) Certification for teaching the educable mentally retarded, educable mentally handicapped, emotionally disturbed, or neurologically impaired, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12).

(6) Emotional-behavioral disability (EBD). A teacher [Teachers] holding the following certification shall be assigned to serve pupils identified as emotional-behavioral disabled at any grade level [within the grade-range limitations of the teacher's certificate]:

1. Certification for learning and behavior disorders, grades K-12, P-12, or seven (7) through twelve (12);

2. Certification for teaching the educable mentally retarded, educable mentally handicapped, emotionally disturbed, or neurologically impaired, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12); or

3. Certification for teaching exceptional children.

(b) A teacher [Teachers] possessing one (1) of the certificates identified in paragraph (a) of this subsection shall be assigned based on the learning characteristics and services needs of the child.

(7) Functional mental disability (FMD). A teacher [Teachers] holding the following certification shall be assigned to serve pupils with functional mental disabilities at any grade level [within the grade-range limitations of the teacher's certificate]:

(a) Certification for trainable mentally handicapped, grades K-12;

(b) Certification for teaching the trainable mentally retarded, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12);

(c) Certification for teaching the severely and profoundly handicapped at any grade level; or

(d) Certification for teaching the moderately and severely disabled, grades P-12.

(8) Multiple disabilities (MD). A teacher [Teachers] shall be assigned [within the grade-range limitations of the teacher’s certificate] pupils with multiple disabilities consistent with the nature of each of the student’s different disabilities and based on the learning characteristics and services needs of the child; and

(a) A teacher [All-teachers] assigned to pupils with multiple disabilities shall possess a certificate for teaching exceptional children.

(9) Deaf-blindness. A teacher [Teachers] shall be assigned to serve pupils identified with deaf-blindness at any grade level [within the grade-range limitations of the teacher’s certificate] based on the learning characteristics and services needs of the child; and

(a) A teacher [All-teachers] assigned to pupils with deaf-blindness shall possess a certificate for teaching exceptional children.

(10) Autism.

(a) A teacher [Teachers] shall be assigned to serve pupils identified with autism at any grade level [within the grade-range limitations of the teacher’s certificate] based on the learning characteristics and services needs of the child; and

(b) A teacher [All-teachers] assigned to pupils with autism shall possess a certificate for teaching exceptional children.

(11) Traumatic brain injury (TBI).

(a) A teacher [Teachers] shall be assigned to serve pupils identified as having a traumatic brain injury at any grade level [within the grade-range limitations of the teacher’s certificate] based on the learning characteristics and services needs of the child; and

(b) A teacher [All-teachers] assigned to pupils identified as having a traumatic brain injury shall possess a certificate for teaching exceptional children.

(12) Hearing impaired (HI). A teacher [Teachers] holding the following certification shall be assigned to serve pupils with hearing impairments at any grade level [within the grade-range limitations of the teacher’s certificate]:

(a) Certification for teaching the hard of hearing, deaf, or hearing impaired, grades K-12, one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12); or

(b) Certification for teaching the hearing impaired, grades P-12.

(13) Visually impaired (VI). A teacher [Teachers] holding the following certification shall be assigned to serve pupils with visual impairments at any grade level [within the grade-range limitations of the teacher’s certificate]:

(a) Certification for teaching the partially seeing, blind, or visually impaired, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12); or

(b) Certification for teaching the visually impaired, grades P-12.

(14) Communication disorders. A teacher [Teachers] holding the following certification shall be assigned to serve pupils who have been identified as needing instruction for speech or language disorders at any grade level [within the grade-range limitations of the teacher’s certificate]:

(a) Certification for speech and hearing, grades one (1) through twelve (12);

(b) Certification for speech and communication disorders, grades K-12; or

(c) Certification for communication disorders, grades P-12.

Section 2. Certification Requirements for Assignment of Interdisciplinary Early Childhood Education Teachers for the Provision of Special Education Services. (1) A teacher [Teachers] holding the following qualifications shall be assigned to serve birth to primary pupils who have been identified as needing special education services:

(a) Certification for interdisciplinary early childhood education offered under KAR 2:140 and KAR 2:040;

(b) Exemption identified in KAR 2:040; or

(c) Qualifications set forth in KAR 3:416 Section 7(1)(a).

(2) A special education certificate identified in Section 1 of this administrative regulation shall not be precluded from providing services in the teacher's certification area to birth to primary pupils with disabilities if that certification is valid for the primary ages.

Section 3. Probationary and Emergency Provisions. (1) If no regularly certified teacher as delineated in Sections 1 and 2 of this administrative regulation is available to provide the special education services, the local district may employ a teacher certified on a probationary status under KAR 2:160.

(2) If no probationary certified special education teacher is available, the district may employ a teacher certified on an emergency status under the requirements of KRS 161.100 and KAR 2:120.

Section 4. Waiver Requests for Teacher Assignment. (1) Local school districts which need to assign teachers to teach classes or pupils, with the exception of pupils receiving services for communication disorders, not consistent with the above criteria shall request a waiver for the teacher assignment through the Kentucky Department of Education, Office of Special Instructional Services, Division of Exceptional Children and be approved by the Education Professional Standards Board.

(2) The Education Professional Standards Board and Department of Education shall give consideration for this approval based on information provided by the local school district in its request. The request shall:

(a) Be made prior to September 15 or within fifteen (15) school days of the need for assignment if it occurs after September 15 of the school year for which a waiver is requested; and

(b) Include:

1. The teacher’s name, school assignment, certificate number, class plan assignment, and current certification;

2. A listing of pupils currently served by [age and] category of exceptionality;

3. A listing of pupils the district is requesting to be served by [age and] exceptionality; and

4. Any other relevant information which the district wishes to have considered in the decision-making process.

(3) Following consideration by the Department of Education and
approval by the Education Professional Standards Board, the local district shall be promptly notified of the decision on the waiver request.

(4) The assignment shall not exceed the length of the school year for which it was initiated.

LYDIA COFFEY, Chair
APPROVED BY AGENCY: April 13, 2004
FILED WITH LRC: April 14, 2004 at noon
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EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, June 8, 2004)

16 KAR 6:010. Written examination prerequisites for teacher certification.

RELATES TO: KRS 161.028(1)(a)-(k), 161.030(3), (4)
STATUTORY AUTHORITY: KRS 161.028(1)(a), (k), 161.030(3), (4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(a) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030(3) requires that a new teacher, including an out-of-state teacher with less than two (2) years experience, successfully complete appropriate assessments prior to initial certification in Kentucky. KRS 161.030(3) and (4) requires the Education Professional Standards Board to select the appropriate assessments required prior to teacher certification [test]. Determine the passing scores, establish a reasonable fee for the assessments, and establish a procedure for a person to repeat a test and be informed of his strengths and weaknesses in each area. This administrative regulation establishes the written examination prerequisites for teacher certification, including the required tests, the minimum acceptable level of achievement on each test, the fee for each test, and the procedure for retaking the test.

Section 1. A teacher applicant for certification shall successfully complete the appropriate written tests identified in this administrative regulation prior to Kentucky teacher certification.

Section 2. The Education Professional Standards Board shall require the specialty tests and passing scores identified in this section for each new teacher applicant, and each teacher seeking an additional certificate, who completes application for certification on or after September 1, 2003. The pedagogy tests identified in Section 3 are required for new teachers only.

(1) An applicant for interdisciplinary early childhood education, birth to primary, certification shall take an Education Professional Standards Board Interdisciplinary Early Childhood Specialty Test, with a passing score of 150.

(2) Until August 31, 2005, an applicant for elementary certification shall take Elementary Education: Curriculum, Instruction, and Assessment (0011) with a passing score of 163 or Elementary Education: Content Knowledge (0014) with a passing score of 148. Beginning September 1, 2005, the applicant shall take Elementary Education: Content Knowledge (0014) with a passing score of 148.

(3) An applicant for middle school certification shall take one (1) or two (2) middle school specialty tests based on the applicant's area or areas of specialization with passing scores as identified in this subsection:

(a) Middle School Mathematics (0069) - 143;
(b) Middle School Science (0435) - 139;
(c) Middle School English Language Arts (0049) - 153; or
(d) Middle School Social Studies (0089) - 144.

(4) An applicant for certification for teachers of exceptional children in Communication Disorders, Learning and Behavior Disorders, Hearing Impaired, Hearing Impaired with Sign Proficiency, Visually Impaired, or Moderate and Severe Disabilities shall take each specialty test based on the applicant's specialty with the corresponding passing score as identified in this subsection:

(a) Communication disorders:
   1. Until August 31, 2006, Special Education: Application of Core Principles Across Categories of Disabilities (0352) - 146 or Education of Exceptional Students: Core Content Knowledge (0353) - 157, Beginning September 1, 2006, Education of Exceptional Students: Core Content Knowledge (0353) - 157; and
   2. Speech Language Pathology (0330) - 600;
(b) Learning and behavior disorders:
   1. Until August 31, 2006, Special Education: Application of Core Principles Across Categories of Disabilities (0352) - 146 or Education of Exceptional Students: Core Content Knowledge (0353) - 157, Beginning September 1, 2006, Education of Exceptional Students: Core Content Knowledge (0353) - 157; and
   2. Until August 31, 2006, Special Education: Teaching Students with Behavioral Disorders/Emotional Disturbances (0371) - 157 or Education of Exceptional Students: Mild to Moderate Disabilities (0542) - 172, Beginning September 1, 2006, Education of Exceptional Students: Mild to Moderate Disabilities (0542) - 172;
(c) Moderate and severe disabilities:
   1. Until August 31, 2006, Special Education: Application of Core Principles Across Categories of Disabilities (0352) - 146 or Education of Exceptional Students: Core Content Knowledge (0353) - 157, Beginning September 1, 2006, Education of Exceptional Students: Core Content Knowledge (0353) - 157; and
   2. Special Education: Teaching Students with Mental Retardation (0321) - 146;
(d) Hearing impaired:
   1. Until August 31, 2006, Special Education: Application of Core Principles Across Categories of Disabilities (0352) - 146 or Education of Exceptional Students: Core Content Knowledge (0353) - 157, Beginning September 1, 2006, Education of Exceptional Students: Core Content Knowledge (0353) - 157; and
   2. Education of Deaf and Hard of Hearing Students (0271) - 167;
(e) Hearing impaired with sign proficiency:
   1. Until August 31, 2006, Special Education: Application of Core Principles Across Categories of Disabilities (0352) - 146 or Education of Exceptional Students: Core Content Knowledge (0353) - 157, Beginning September 1, 2006, Education of Exceptional Students: Core Content Knowledge (0353) - 157;
   2. Education of Deaf and Hard of Hearing Students (0271) - 167; and
3. One (1) [3] of the following tests with a passing score of "Intermediate Level":
   a. Sign Communication Proficiency Interview (SCPI); or
(f) Visually impaired:
   1. Until August 31, 2006, Special Education: Application of Core Principles Across Categories of Disabilities (0352) - 146 or Education of Exceptional Students: Core Content Knowledge (0353) - 157, Beginning September 1, 2006, Education of Exceptional Students: Core Content Knowledge (0353) - 157; and
   2. Teaching Students with Visual impairments (0280) - 660.

(5) An applicant for certification at the secondary level shall take the specialty tests corresponding to the applicant's specialty with the passing scores identified in this subsection:

(a) Biology:
   1. Biology: Content Knowledge Part 1 (0231) - 156; and
   2. Biology: Content Essays (0233) - 141;
(b) Chemistry:
   1. General Science: Content Knowledge Part 2 (0432) - 146; and
   2. Chemistry: Content Knowledge (0241) - 138;
(c) English:
   1. English Language and Literature: Content Knowledge (0041) - 160; and
   2. English Language, Literature and Composition Essays (0042) - 155;
(d) Social Studies:
   1. Social Studies: Content Knowledge (0081) - 151; and
   2. Social Studies: Interpretation of Materials (0083) - 155;
(e) Mathematics:
   1. Mathematics: Content Knowledge (0061) - 125; and
2. Mathematics: Proofs, Models, and Problems (0063) - 141;
   (f) Physics:
   1. General Science: Content Knowledge, Part 2 (0432) - 146;
   and
   2. Physics: Content Knowledge (0261) - 114;
   (g) Earth science:
   1. General Science: Content Knowledge, Part 2 (0432) - 146;
   and
   2. Earth Science: Content Knowledge (0571) - 145;
   (h) Physical science:
   1. General Science: Content Knowledge, Part 2 (0432) - 146;
   and
   2. Either: a. Chemistry: Content Knowledge (0241) - 138;
   b. Physics: Content Knowledge (0261) - 114; or
   c. Earth Science: Content Knowledge (0571) - 145.
   (6) An applicant for certification in all grades in the following
   specialty areas shall take the specialty test or tests with the passing
   scores as identified in this subsection.
   (a) Art:
   1. Content Knowledge (0133) - 154; and
   2. Art Making (0131) - 154;
   (b) French:
   1. French: Content Knowledge (0173) - 159; and
   2. French: Productive Language Skills (0171) - 167;
   (c) German:
   1. General Science: Content Knowledge (0181) - 157;
   (d) Health:
   1. Health Education (0550) - 630; or
   2. Latin (0600) - 630;
   (f) Integrated music:
   1. Music: Content Knowledge (0113) - 150; and
   (g) Vocal music:
   1. Music: Content Knowledge (0113) - 150; and
   (h) Instrumental music:
   1. Music: Content Knowledge (0113) - 150; and
   (i) Physical education:
   1. Physical Education: Content Knowledge (0091) - 147; and
   2. Physical Education: Movement Forms-Analysis and Design
   (0092) - 151;
   (j) Spanish:
   1. Spanish: Content Knowledge (0191) - 160; and
   2. Spanish: Productive Language Skills (0192) - 158; or
   (k) School Media Librarian: Library Media Specialist [Specialist]
   (0310) - 640 [no passing score].
   (7) An applicant for career and technical education certification
   to teach in grades 5-12 with one (1) or more of the following
   specializations shall take the specialty tests with the passing scores as
   identified in this subsection:
   (a) Agriculture: Agriculture (0700) - 520;
   (b) Business and Marketing Education - Business Education
   (0100) - 580;
   (c) Family and Consumer Sciences - Home Economics Education
   (0120) - 570;
   (d) Technology Education - Technology Education (0050) - 600;
   or
   (e) Industrial education. An applicant [Applicant] for industrial
   education with one (1) or more trade and industry specializations
   shall complete the assessments established in 16 KAR 6:020.
   (8) An applicant for a restricted base certificate in the following
   specialty areas shall take the specialty test or tests with the passing
   scores identified in this subsection:
   (a) English as a Second Language: English to Speakers of
   Other Languages [Teaching English as a Second Language] (0360)
   - 620;
   (b) Speech/Media Communications: Speech Communication
   (0220) - 580; or
   (c) Theater: Theater (0640) - 630.
   (9) An applicant for an endorsement in the following specialty
   areas shall take the specialty test or tests with the passing scores
   identified in this subsection:
   (a) English as a Second Language: English to Speakers of
   Other Languages [Teaching English as a Second Language] (0360)
   - 620; or
   (b) Learning and Behavior Disorders, grades 8-12: Until August
   31, 2006, Teaching Students with Behavioral Disorders/Emotional
   Disturbances (0371) - 157. Beginning September 1, 2006, Education
   of Exceptional Students: Mild to Moderate Disabilities (0542) - 172.

Section 3. [The Education Professional Standards Board shall require the specialty tests and passing scores identified in this section for each new teacher applicant, and each teacher seeking an additional certificate, who completes application for certification before September 1, 2003. A test completed more than five (5) years prior to application for certification, and applied under this section, shall not be acceptable. A passing score on a test completed on or after January 1, 2002 shall be valid for a teacher who makes application under this section before September 1, 2003.]

1. An applicant for interdisciplinary early childhood education, birth to primary, certification shall take an Education Professional Standards Board Interdisciplinary Early Childhood Specialty Test, with a passing score of 150.
2. An applicant for elementary certification shall take Elementary Education: Curriculum, Instruction, and Assessment (0041) with a passing score of 163.
3. An applicant for middle school certification shall take one (1) or two (2) middle school specialty tests based on the applicant's area or areas of specialty with passing scores as identified in this subsection:
   (a) Middle School Mathematics (0069) - 143;
   (b) Middle School Science (0439) - 139;
   (c) Middle School English Language Arts (0049) - 153;
   (d) Middle School Social Studies (0089) - 144.
4. An applicant for certification for teacher of exceptional children in Communication Disorders, Learning and Behavior Disorders, Hearing Impaired, Hearing Impaired with Sign Proficiency, Visually Impaired, or Moderate and Severe Disabilities shall take each specialty test based on the applicant's specialty with the corresponding passing score as identified in this subsection:
   (a) Communication disorders:
   1. Special Education: Application of Core Principles Across Categories of Disabilities (0352) - 146; and
   2. Speech Language Pathology (0330) - 660;
   (b) Learning and behavior disorders:
   1. Special Education: Application of Core Principles Across Categories of Disabilities (0352) - 146; and
   2. Special Education: Teaching Students with Behavioral Disorders/Emotional Disturbances (0371) - 157;
   (c) Moderate and severe disabilities:
   1. Special Education: Application of Core Principles Across Categories of Disabilities (0352) - 146; and
   2. Special Education: Teaching Students with Mental Retardation
   (0321) - 146; and
   (d) Hearing Impaired:
   1. Special Education: Application of Core Principles Across Categories of Disabilities (0352) - 146; and
   2. Education of Deaf and Hard of Hearing Students (0271) - 167;
   (e) Hearing Impaired with Sign Proficiency:
   1. Special Education: Application of Core Principles Across Categories of Disabilities (0352) - 146; and
   2. Education of Deaf and Hard of Hearing Students (0271) - 167; and
   (f) Social work. One (1) of the following tests with a passing score of "Intermediate Level":
   a. Sign Communication Proficiency Interview (SCP); or
   b. Educational Sign Skills Evaluation (ESSE); or
   (g) Visually Impaired:
   1. Special Education: Application of Core Principles Across Categories of Disabilities (0352) - 146; and
   2. Teaching Students with Visual Impairments (0280) - 660.
5. An applicant for certification at the secondary level shall take the specialty tests corresponding to the applicant's specialty with the passing scores identified in this subsection:
   (a) Biology:
   1. Biology: Content Knowledge Part 1 (0231) - 146; and
   2. Biology: Content Essays (0323) - 144;
   (b) Chemistry:
1. General Science: Content Knowledge Part 2 (0432) — 146;
2. Chemistry: Content Knowledge (0241) — 138;
   (a) English:
   1. English Language and Literature: Content Knowledge (0441)
      150; and
   2. English Language, Literature, and Composition Essays (0042)
      155;
   (d) Social Studies:
      1. Social Studies: Content Knowledge (0081) — 151; and
      2. Social Studies: Interpretation of Materials (0083) — 155;
   (e) Mathematics:
      1. Mathematics: Content Knowledge (0061) — 126; and
      2. Mathematics: Proofs, Models, and Problems (0063) — 141;
   (f) Physics:
      1. General Science: Content Knowledge, Part 2 (0432) — 146;
      and
   2. Physics: Content Knowledge (0261) — 144;
   (g) Earth Science:
      1. General Science: Content Knowledge, Part 2 (0432) — 146;
      and
   2. Earth Science: Content Knowledge (0571) — no passing score;
   (h) Physical Science:
      1. General Science: Content Knowledge, Part 2 (0432) — 146;
      and
   2. Either:
      a. Chemistry: Content Knowledge (0241) — 138; or
      b. Physics: Content Knowledge (0261) — 144.
(5) An applicant for certification in all grades in the following specialty areas shall take the specialty test or tests with the passing scores identified in this subsection:
   (a) Art:
      1. Content Knowledge (0133) — 154; and
   2. Art Making (0131) — 164;
   (b) French:
      1. French: Content Knowledge (0173) — 169; and
   2. French: Productive Language Skills (0171) — 167;
   (c) German:
      1. German: Content Knowledge (0181) — 157;
   (d) Health:
      1. Health Education (0550) — 630;
   (e) Latin:
      1. Latin: Content Knowledge (0600) — 630;
   (f) Integrated Music:
      1. Music: Content Knowledge (0113) — 150; and
   (g) Vocal Music:
      1. Music: Content Knowledge (0113) — 150; and
   (h) Instrumental Music:
      1. Music: Content Knowledge (0113) — 150; and
   (i) Physical Education:
      1. Physical Education: Content Knowledge (0091) — 147; and
   2. Physical Education: Movement Forms Analysis and Design (0092) — 161;
   (j) Spanish:
      1. Spanish: Content Knowledge (0191) — 160; and
   2. Spanish: Productive Language Skills (0192) — 158;
   (k) School Media Librarian: Library Media Specialist (0310) — no passing score.
(7) An applicant for career and technical education certification to teach in grades 6-12 with one (1) or more of the following specializations shall take the specialty tests with the passing scores as identified in this subsection:
   (a) Agriculture: Agriculture (0700) — no passing score;
   (b) Business and Marketing Education: Business Education (0100) — 580;
   (c) Family and Consumer Sciences: Family Economics Education (0120) — 570;
   (d) Technology Education: Technology Education (0050) — 600;
   (e) Industrial Education: Applicants for industrial education with one (1) or more trade and industry specializations shall complete the assessments established in IE 6.020;
   (g) English as a Second Language: Teaching English as a Second Language (0360) — 626;
   (h) Speech/Media Communications: Speech Communication (0220) — no passing score;
   (i) Theater: Theatre (0640) — no passing score.
(9) An applicant for an endorsement in the following specialty areas shall take the specialty test or tests with the passing scores identified in this subsection:
   (a) English as a Second Language: Teaching English as a Second Language (0360) — 626;
   (b) Learning and Behavior Disorders, grades 8-12: Teaching Students with Behavioral Disorders/Emotional Disturbances (0371) — 657.

Section 4. In addition to the specialty area tests established in Section 2 of this administrative regulation, the Education Professional Standards Board shall require the pedagogy tests and passing scores identified in this section for each new teacher applicant beginning September 1, 2003.
(1) An applicant for elementary certification (grades P-5) shall take Principles of Learning and Teaching: Grades K-6 (0522) — 161.
(2) An applicant for middle school certification grades five (5) through nine (9) shall take Principles of Learning and Teaching: Grades 5-9 (0523) — 161.
(3) An applicant applying only for certification for teacher of exceptional children shall not be required to take a separate pedagogy test established in this section. The specialty area tests established in Section 2 of this administrative regulation shall fulfill the pedagogy test requirement for a teacher of exceptional children.
(4) An applicant for certification at the secondary level grades eight (8) through twelve (12) shall take Principles of Learning and Teaching: Grades 7-12 (0524) — 161.
(5) An applicant for certification in all grades with a specialty area (e.g., art, music, etc.) shall take either:
   (a) Principles of Learning and Teaching: Grades K-6 (0522) — 161;
   (b) Principles of Learning and Teaching: Grades 5-9 (0523) — 161; or
   (c) Principles of Learning and Teaching: Grades 7-12 (0524) — 161.
(6) An applicant for career and technical education certification in grades five (5) through twelve (12) shall take either:
   (a) Principles of Learning and Teaching: Grades 5-9 (0523) — 161; or
   (b) Principles of Learning and Teaching: Grades 7-12 (0524) — 161.
(7) An applicant for a restricted base certificate shall take one (1) of the following pedagogy tests corresponding to the grade range of the specific restricted base certificate:
   (a) Principles of Learning and Teaching: Grades K-6 (0522) — 161;
   (b) Principles of Learning and Teaching: Grades 5-9 (0523) — 161; or
   (c) Principles of Learning and Teaching: Grades 7-12 (0524) — 161.

Section 5. In addition to the specialty area tests established in Section 3 of this administrative regulation, the Education Professional Standards Board shall require the pedagogy tests and passing scores identified in this section for each new teacher applicant who completes application for certification beginning January 1, 2002 and before September 1, 2003. A test completed more than five (5) years prior to application for certification, and applied under this section, shall not be acceptable. A passing score on a test completed on or after January 1, 2002 shall be valid for a new teacher who makes application under this section before September 1, 2003.
(1) An applicant for elementary certification shall take Principles of Learning and Teaching: Grades K-6 (0522) — no passing score.
(2) An applicant for middle school certification shall take Principles of Learning and Teaching: Grades 5-9 (0523) — no passing score.
(3) An applicant for certification for teacher of exceptional children shall take either:
(a) Principles of Learning and Teaching: Grades K-6 (0522) — no passing score;
(b) Principles of Learning and Teaching: Grades 5-9 (0523) — no passing score; or
(c) Principles of Learning and Teaching: Grades 7-12 (0524) — no passing score.
(4) An applicant for certification at the secondary level shall take Principles of Learning and Teaching: Grades 7-12 (0524) — no passing score.
(5) An applicant for certification in all grades with a specialty area (e.g., art, music, etc.) shall take either:
   (a) Principles of Learning and Teaching: Grades K-6 (0522) — no passing score;
   (b) Principles of Learning and Teaching: Grades 5-9 (0523) — no passing score; or
   (c) Principles of Learning and Teaching: Grades 7-12 (0524) — no passing score.
(6) An applicant for career and technical education certification in grades 5-12 shall take either:
   (a) Principles of Learning and Teaching: Grades 5-9 (0523) — no passing score; or
   (b) Principles of Learning and Teaching: Grades 7-12 (0524) — no passing score.
(7) An applicant for a restricted base certificate shall take one of the following pedagogy tests corresponding to the grade range of the validity of the specific restricted base certificate: (a) Principles of Learning and Teaching: Grades K-6 (0522) — no passing score; or
   (b) Principles of Learning and Teaching: Grades 5-9 (0523) — no passing score; or
   (c) Principles of Learning and Teaching: Grades 7-12 (0524) — no passing score.

Section 4, 5, 6. Assessment Recency. (1) A passing score on a test established in this administrative regulation and completed on or after January 1, 2002 shall be valid for the purpose of applying for certification for five (5) years from the test administration date.
(2) Beginning September 1, 2003, an applicant for initial or additional Kentucky teacher certification shall comply with the assessment recency requirements established in this section.
(3) A test established in this administrative regulation shall be valid for five (5) years from the test administration date.
(4) A passing score on a test established in this administrative regulation and completed on or after January 1, 2002 shall be valid for five (5) years from the test administration date.
(5) A teacher shall complete application for certification to the Education Professional Standards Board within the validity period of the test and the passing score established in this administrative regulation.
(b) A teacher who fails to complete application for certification to the Education Professional Standards Board as specified in subsection (a) shall be subject to the provisions of this administrative regulation.
(2) The test administration date shall be established by the Educational Testing Service or other authorized test administrator.

Section 5, 6. 1 An applicant for initial certification shall take the assessments on a date established by:
   (a) The Educational Testing Service;
   (b) The Education Professional Standards Board for special administration; or
   (c) The agency established by the Education Professional Standards Board as the authorized test administrator.
(2) An applicant shall authorize test results to be forwarded by the Educational Testing Service, or other authorized test administrator, to the Kentucky Education Professional Standards Board and to the appropriate teacher preparation institution where the applicant received the relevant training.
(3) The test administration date shall be established by the Educational Testing Service or other authorized test administrator.
(b) An applicant shall seek information regarding the dates and location of the tests and make application for the appropriate examination prior to the deadline established and sufficiently in advance of anticipated employment to permit test results to be received by the Education Professional Standards Board and processed in the normal certification cycle.

Section 6, 7. An applicant who fails to achieve at least the minimum score on any of the appropriate examinations may retake the test or tests during one of the scheduled test administrations.

Section 8. The Education Professional Standards Board shall collect data and conduct analyses of the scores and institutional reports provided by the Educational Testing Service to determine the impact of these tests and permit a review of this administrative regulation on an annual or biennial basis.

LYDIA COFFEY, Chair
APPROVED BY AGENCY: April 13, 2004
FILED WITH LRC: April 14, 2004 at noon
CONTACT PERSON: Dr. Susan Leib, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, June 8, 2004)

16 KAR 8:030. Continuing education option for certificate renewal and rank change.

RELATES TO: KRS 161.020, 161.028, 161.030, 161.095, 161.1211

STATUTORY AUTHORITY: KRS 161.020, 161.028(1)(a), (b), (c), (161.030(1), 161.095, 161.1211

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.095 requires the Education Professional Standards Board to promulgate an administrative regulation establishing procedures for a teacher to maintain a certificate by successfully completing meaningful continuing education. KRS 161.026, 161.028(1)(a), and 161.030 vest authority for the issuance and renewal of certification for all professional school personnel in the [Education Professional Standards Board, and KRS 161.028(1)(a) authorizes the board to charge reasonable certification fees. KRS 161.1211 establishes certificate ranks and requires the Education Professional Standards Board to issue rank classifications. This administrative regulation establishes the procedures for the continuing education option for certificate renewal and rank change.

Section 1. Procedures for the first and second renewal of the professional teaching certificate established in 16 KAR 2:010 shall require completion of:
(1) The continuing education option established in this administrative regulation; or
(2) A planned fifth-year program established in 16 KAR 8:020.

Section 2. The continuing education option shall consist of four phases (components):
(1) Building a plan for job-embedded professional development and completion of the on-line module, described in Section 3(2)(e) of this administrative regulation:
   (a) Content exploration and research;
   (b) Student instruction and assessment;
   (c) Professional leadership and publication.

Section 3. 1 A teacher who chooses the continuing education option for certificate renewal and rank change shall:
(a) Attend a program orientation meeting, conducted by the Education Professional Standards Board or its designee, prior to applying for this program; and
(b) Successfully complete a seminar on how to build a plan for
the job-embedded professional development.

(2) The continuing education option shall require the following procedures:

(a) A teacher who chooses to follow the continuing education option for certificate renewal and rank change shall attend a program orientation meeting prior to applying for this program.

(b) The program orientation meeting shall be conducted by the Education Professional Standards Board or its designee.

(2) The teacher shall successfully complete a seminar on how to build a plan for the job-embedded professional development.

(a) The seminar shall be approved by the Education Professional Standards Board for this purpose.

(b) A school district, group of districts, or any Kentucky post-secondary institution with an accredited educator preparation program may make application to the Education Professional Standards Board for approval to sponsor a seminar. The Education Professional Standards Board may sponsor a seminar in any district or group of districts in which a seminar is not otherwise offered.

(c) The seminar shall be led by a continuing education option coach approved by the Education Professional Standards Board.

(d) The seminar shall be a blend of:

1. Web-based instruction; and
2. Face-to-face cohort meetings.

(e) The web-based instruction shall be provided by the Education Professional Standards Board through an online module at www.KyEducators.org.

(f) The face-to-face cohort meetings shall be offered at least two times per month during the plan building seminar.

2. Following completion of phase one (1) of the continuing education option, face-to-face cohort meetings shall continue (the online-module and face-to-face building seminar, the cohort shall continue to meet) on a monthly basis.

(a) Completion of the first phase of the continuing education option allows the candidate to receive first renewal of the candidate's certificate beginning June 30, 2002.

(3) Payment of seminar tuition, (3)

(a) Tuition for the online module provided by the Education Professional Standards Board shall be $150; and [ ]

2. The online module fee shall be paid to the Education Professional Standards Board at the time of enrollment as indicated in the on-line enrollment application.

(b) Tuition for the cohort meetings shall be $600; and [ ]

2. The cohort meeting fee shall be paid to the approved seminar sponsor.

3. Seminar tuition shall be nonrefundable.

2. A cohort meeting fee may be transferred to another seminar sponsor upon agreement between both sponsors.

(4) An individual job-embedded professional development plan shall be designed by the teacher and [ ]The plan shall:

(a) Focus on a professional growth need identified by the teacher with consideration given to the needs identified in the school's consolidated plan, student assessment results, and community resources;

(b) Include goals correlated to each of the ten (10) experienced teacher standards established in 16 KAR 1:010 and [ ]The goals shall include directly related to the teacher's individual professional growth needs established in paragraph (a) of this subsection;

(c) Include a timeline in which the candidate shall complete all phases of the continuing education option. The timeline shall not:

1. Be less than twelve (12) [eighteen (18)] months; and
2. Be more than four (4) years; and

(d) Be reviewed by the continuing education option coach for the seminar cohort.

1. The continuing education option coach shall:

a. Review the plan using the scoring rubric approved by the Education Professional Standards Board;

b. Provide written feedback on each standard to the teacher regarding the quality of the plan; and

c. Notify the Education Professional Standards Board of all reviewed plans.

2. The teacher may resubmit the plan for an additional review if the continuing education option coach has provided evidence of a deficiency or deficiencies in the plan.

3. The teacher shall participate in a job-embedded professional development experience with documented outcomes that demonstrate the accomplishment of the established goals.

(b) A job-embedded professional development experience shall include a combination of:

1. Graduate college coursework;
2. Research;
3. Field-experience;
4. Professional development activities; or
5. Interdisciplinary networking and consultations.

(c) The experience shall be identified in the professional development plan.

(d) The experience may be:

1. A part of an approved school professional development plan; or
2. An experience specifically needed by the teacher.

(e) The evidence of accomplishment of the goals identified in the plan shall be documented in a portfolio.

(b) The portfolio shall be presented to the Education Professional Standards Board for review and scoring.

(c) The documentation in the portfolio shall provide evidence:

1. That all experienced teacher standards have been met;
2. Of the effects on student learning; and
3. Of the professional growth over time in:
   a. Content knowledge;
   b. Instructional and student assessment practices; and
   c. Professional leadership and publication skills.

(d) The portfolio shall be presented using a variety of mediums, which may include video recordings.

(e) The portfolio shall be submitted to the Education Professional Standards Board at least one (1) year in advance of the expiration date of the teacher's certificate.

(f) The portfolio shall be submitted in either:

1. A traditional paper format with videotape or digital video disc (DVD) hard copy; or
2. An electronic format.

(g) The portfolio shall not exceed three (3) four (4) inch binders in size or its electronic equivalent.

Section 4. (1) Initial application for the continuing education option program shall be made through a seminar sponsor approved by the Education Professional Standards Board.

(b) The approved seminar sponsor shall report all enrolled applicants to the Education Professional Standards Board.

2. An enrolled applicant shall register on-line at www.KyEducators.org for the on-line continuing education option plan building module established in Section 3(2) of this administrative regulation.

Section 5. (1) A team of two (2) readers approved by the Education Professional Standards Board shall review and score the continuing education portfolio.

(2) The readers shall be selected by the Education Professional Standards Board from a cadre of educators representing teachers, principals, central office instructional personnel, higher education faculty, professional organization representatives, and the Kentucky Department of Education staff.

(3) The two (2) person reading team shall:

(a) Include a teacher certified in the same grade range and content area as the continuing education option candidate;

(b) Use a scoring rubric that is based on the experienced teacher standards and indicators to review and score the portfolios;

(c) Recommend the teacher for certificate renewal to the Education Professional Standards Board prior to the expiration date of the certificate; or

2. Report results to the Education Professional Standards Board using the scoring rubric to indicate which standards were not met; and

(d) Be trained by the Education Professional Standards Board to score the portfolios in a consistent and reliable manner.

(4) If the two (2) person reading team cannot reach consensus in the review process, a chief reader employed by the Education Professional Standards Board shall score the portfolio and report results to the Education Professional Standards Board.

(5) If the teacher's portfolio does not show evidence that all
ten (10) experienced teacher standards have been met, the teacher
may resubmit a partial portfolio for resoring, which shall contain
documented evidence on the unmet standard or standards.
(b) The resoring process shall follow the same procedures as
the initial scoring process established in this section of this admin-
istrative regulation.
(c) The teacher shall receive feedback from the initial scoring
regarding additional evidence that may be needed to show that
goals were accomplished and that all experienced teacher stan-
dards were met.

Section 8. (1) A teacher following the continuing education op-
tion to the fifth-year program for certificate renewal and rank change
shall complete the program by the end of the second certificate re-
newal period.
(2)(a) For the first renewal, the teacher shall show evidence of
completion of phase one (1) of the continuing education option [the
development of a professional development plan; and
(b) Evidence of meeting a minimum of five (5) experienced teacher standards].

Section 7. Payment of Fees for Scoring the Portfolio. (1) A scoring
fee of $1200 shall be assessed to each continuing education option candidate.
(2) The fee shall be used to pay expenses for the actual cost of
administration of the continuing education option program including the
costs associated with the following:
(a) The evaluation of approved seminar provider programs;
(b) Training the continuing education option coaches who lead the seminars;
(c) Training and compensating the portfolio reading team mem-
bers; and
(d) The initial scoring of the portfolio.
(3) Payment shall be made to the Education Professional Stan-
dards [Standard] Board.
(4) The full fee shall be due at the time that the portfolio, or parts
thereof, as stipulated in Section 6(2) of this administrative regulation,
are submitted to the Education Professional Standards Board for
scoring.
(5) The initial scoring fee shall provide for one (1) scoring of all
parts of the portfolio.
(b) A fee of $120 shall be assessed for each unmet standard
that requires resoring.
(b) The scoring fee, if applicable, shall be paid to the Educa-
tion Professional Standards Board.
(c) The scoring fee, if applicable, shall be paid at the time that
the revised portfolio is submitted for resoring.

Section 8. (1) A teacher who submitted a professional develop-
ment plan prior to June 30, 2002 shall have until December 31, 2004
to complete the continuing education option program.
(2) If the teacher fails to complete the program by December 31,
2004, the teacher shall forfeit all fees and reapply to participate under
the revised guidelines.
(3)(a) A continuing education option candidate who enrolled
prior to June 30, 2002 shall be notified by the Education Profes-
sional Standards Board that his portfolio shall be completed by De-
(b) The notification shall be by registered mail.
(c) The candidate's portfolio shall be scored using the rubric in
effect when the candidate [he] enrolled in the continuing education option
program.
(d) A candidate under this section [The candidate] shall not
be charged an additional fee for resoring a previously submitted
portfolio.
(e) The candidate shall be provided an opportunity to participate
in a cohort established in Section 3 of this administrative regulation.
(f) The candidate shall be offered coaching by an approved con-
tinuing education option coach.

Section 9. (1) Portfolios shall be scored by the Education Pro-
fessional Standards Board on a quarterly basis.
(2) A teacher shall have been enrolled in the continuing educa-
tion option program for at least twelve (12) [eighteen-148] months
prior to submission of the portfolio to the Education Professional
Standards Board for scoring.
(3) A teacher shall submit a portfolio to the Education Profes-
sional Standards Board for initial scoring:
(a) Between January 1 and January 15;
(b) Between April 1 and April 15;
(c) Between July 1 and July 15;
or
(d) Between October 1 and October 15.
(4) The date of portfolio submission shall be either:
(a) The day the portfolio is hand-delivered to the Education
Professional Standards Board offices; or
(b) The date of the postmark.
(5) A portfolio that requires resoring shall be resubmitted in ac-
cordance with the schedule established in subsection (3) of this [the]
section.
(6) All portfolios shall become the property of the Education
Professional Standards Board.
(7)(a) The Education Professional Standards Board shall pro-
vide electronic tracking of all portfolios to identify cases of plagia-
rism.
(b) Instances of plagiarism shall be reported to the Education
Professional Standards Board for disciplinary action.

LYDIA COFFEY, Chair
APPROVED BY AGENCY: April 13, 2004
FILED WITH LRC: April 14, 2004 at noon
CONTACT PERSON: Dr. Susan Leib, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7090.

BOARD OF HAIRDRESSERS AND COSMETOLOGISTS
(As Amended at ARRS, June 8, 2004)

201 KAR 12:250. School equipment for esthetics course.
RELATES TO: KRS 317B.025(6)
STATUTORY AUTHORITY: KRS 317B.020
NECESSITY, FUNCTION AND CONFORMITY: KRS 317B.020(3) [Chapter-317B] requires the board to promulgate admin-
distrative regulations establishing standards for the operation of
the schools and salons; establish the quality of equipment, supplies,
materials, records, and furnishings required in esthetics salons or
classrooms; and set the requirements for cosmetology schools
offering esthetics courses for the proper education and training of
students. This administrative regulation establishes those standards
and requirements.

Section 1. A school of cosmetology shall not be approved to
offer an esthetics course if it provides and maintains [that does not provide and maintain] the following minimum equipment and
supplies:
(1) A private changing area;
(2) A minimum of one (1) fully-equipped machine in the esthetics
area;
(3) A chair or stool in the clinic area for every student enrolled;
(4) A minimum of one (1) facial bed or facial chair;
(5) A minimum of one (1) table or utility cart;
(6) One (1) sink in the clinic area with hot and cold running wa-
ter;
(7) One (1) steamer for hot towels;
(8) One (1) autoclave for sterilizing implements; and
(9) A closed cabinet for clean towels and linens;
(10) A closed container for used towels and linens;
(11) One (1) covered waste container; and
(12) Supplies including the following:
(a) Seventy (70) percent alcohol at every station;
(b) One (1) makeup station;
(c) Makeup for basic and camouflage application;
(d) Emollients;
(e) Moisturizers;
(f) Powders;
(g) Concealers;
Section 2. A [All] cosmetology school [schools] approved for an esthetics course shall have a room to be used for demonstration and study. The room shall include the necessary charts, visual aids, blackboard, and other equipment to carry out the curriculum.

Section 3. A cosmetology school approved to offer an esthetic course shall maintain a ratio of one (1) esthetic instructor or cosmetology/esthetic instructor for every twenty (20) students enrolled in an esthetics course, and this ratio shall be maintained at all times.

BEA COLLINS, Chairman
APPROVED BY AGENCY: April 6, 2004
FILED WITH LRC: April 14, 2004 at 3 p.m.
CONTACT PERSON: Dena Moore, Executive Secretary, Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

BOARD OF HAIRDRESSERS AND COSMETOLOGISTS
(As Amended at ARRS, June 8, 2004)

201 KAR 12:260. License fees, examination fees, renewal fees, restoration fees and miscellaneous fees.

RELATES TO: KRS 317A.050, 2004 Ky. Acts ch. 96, sec. 5 [Chapter 317A]
STATUTORY AUTHORITY: KRS 2004 Ky. Acts ch. 96, sec. 5 [Chapter 317A]
NECESSITY, FUNCTION, AND CONFORMITY: 2004 Ky. Acts ch. 96, sec. 5 requires the board to promulgate administrative regulations establishing a reasonable schedule of fees and charges for examinations, licenses, and renewal of licenses.
[KRS Chapter 317A requires the board to establish fees for licenses within the limits established by KRS Chapter 317A.] This administrative regulation establishes fees relating to cosmetology and nail technology [licenses].

Section 1. The initial license fees shall be as follows:
(1) Apprentice cosmetologist - twenty-five (25) dollars;
(2) Cosmetologist - thirty-five (35) dollars;
(3) Nail technician - twenty-five (25) dollars;
(4) Apprentice instructor - thirty-five (35) dollars;
(5) Cosmetology instructor - fifty (50) dollars;
(6) Beauty salon - thirty-five (35) dollars;
(7) Nail salon - thirty-five (35) dollars; and
(8) Cosmetology school - $1500.
(9) Student enrollment permits - fifteen (15) dollars; and
(10) School of cosmetology, transfer of ownership - $1,500.

Section 2. The annual renewal license fees shall be as follows:
(1) Apprentice cosmetologist - twenty (20) dollars;
(2) Cosmetologist - twenty (20) dollars;
(3) Nail technician - twenty (20) dollars;
(4) Apprentice instructor - twenty-five (25) dollars;
(4) Cosmetology instructor - thirty-five (35) dollars;
(5) Cosmetology instructor - thirty-five (35) dollars;
(6) Beauty salon - twenty-five (25) dollars;
(7) Nail salon - twenty-five (25) dollars; and
(8) Cosmetology school - $150.

Section 3. Applications for examination required by KRS Chapter 317A shall be accompanied by an examination fee as follows:
(1) Apprentice cosmetologist - seventy-five (75) dollars;
(2) Cosmetologist - seventy-five (75) dollars;
(3) Nail technician - seventy-five (75) dollars;
(4) Cosmetology instructor - $100;
(5) Out-of-state cosmetologist - $120; and
(6) Out-of-state cosmetology instructor - $200.

Section 4. The fees for retaking an examination or any portion of an examination that an applicant has not successfully completed shall be as follows:
(1) Apprentice cosmetologist - thirty-two (32) dollars;
(2) Cosmetologist - thirty-two (32) dollars;
(3) Nail technician - thirty-two (32) dollars;
(4) Cosmetology instructor - fifty (50) dollars;
(5) Out-of-state cosmetologist - sixty (60) dollars; and
(6) Out-of-state cosmetology instructor - $100.

Section 5. The fee for the restoration of an expired license where the period of expiration does not exceed five (5) years from date of expiration, shall be as follows:
(1) Apprentice cosmetologist - seventy-five (75) dollars;
(2) Cosmetologist - seventy-five (75) dollars;
(3) Nail technician - seventy-five (75) dollars;
(4) Beauty salon - seventy-five (75) dollars;
(5) Nail salon - seventy-five (75) dollars; and
(6) Cosmetology school - $750.

Section 6. Miscellaneous fees shall be as follows:
(1) Demonstration permits for guest artists - fifty (50) dollars;
(2) Certification of licenses - twenty (20) dollars;
(3) Duplicate licenses - twenty-five (25) dollars;
(4) Reciprocity application - $100;
(5) Out-of-state - $100;
(6) Inactive licenses for cosmetologist, nail technician and cosmetology instructors - twenty (20) dollars; and
(7) Continuing education provider application - $300.

BEA COLLINS, Chairman
APPROVED BY AGENCY: April 6, 2004
FILED WITH LRC: April 14, 2004 at 3 p.m.
CONTACT PERSON: Dena Moore, Executive Secretary, Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

DIVISION OF OCCUPATIONS AND PROFESSIONS
Board of Licensure for Massage Therapy
(As Amended at ARRS, June 8, 2004)

201 KAR 42:020. Fees.

RELATES TO: KRS 309.35
STATUTORY AUTHORITY: KRS 309.355(3), 309.357
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(3) requires the board to promulgate administrative regulations to implement KRS 309.355 to 309.364. KRS 309.357 requires
the board to establish reasonable fees for the licensure, renewal and reinstatement of massage therapists. This administrative regulation establishes the fees relating to massage therapy (MT) licensure.

Section 1. Fee Payments. (1) All fees established in Section 2 of this administrative regulation shall be:
(a) Made payable as required by KRS 309.356 to the State Treasury; and
(b) Paid by:
1. Cashier’s check;
2. Certified check;
3. Money order; or
4. Personal check.
(2) A payment for an application fee that is incorrect shall be returned to the applicant and the application shall not be posted until the correct fee is received.

Section 2. Fees. (1) The fee for an initial massage therapist license shall be $125 paid according to the following schedule:
(a) Fifty (50) dollars of the $125 shall be nonrefundable and due at the time of application.
(b) The remaining seventy-five (75) dollar balance of the $125 fee shall be due at the time the license is approved.
(2) [a] The biennial renewal fee for a massage therapist license renewed on or before the renewal date shall be $100.
(b) If the license is renewed after the renewal date and within sixty (60) days of the renewal date, the fee for late renewal shall be $150.
(c) If the license is not renewed within sixty (60) days after the renewal date, the license shall be terminated. The fee for reinstatement of a terminated license shall be $200.
(3) Reinstatement fees:
(a) If a license is renewed within sixty (60) days of the date of reinstatement, the renewal fee shall be $150.
(b) If a license is renewed after sixty (60) days of the date of reinstatement, the renewal fee shall be $200.

This is to certify that the Chair of the Kentucky State Board of Licensure for Massage Therapy has approved this administrative regulation prior to its filing by the Kentucky State Board of Licensure for Massage Therapy with the Legislative Research Commission as required by KRS Chapter 13A, to carry out and enforce provisions of KRS 309.350 to 309.364.

THERESA M. CRISLER, Chair
APPROVED BY AGENCY: March 8, 2004
FILED WITH LRC: March 15, 2004 at 10 a.m.
CONTACT PERSON: Kristen Webb, Director, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-4233, fax (502) 564-4818.

BOARD OF LICENSURE FOR MASSAGE THERAPY
(As Amended at ARRS, June 8, 2004)

201 KAR 42:035. Application process and curriculum requirements.

RELATES TO: KRS 309.358, 309.359, 309.360
STATUTORY AUTHORITY: KRS 309.355(3)(a)-309.360
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(3) requires the board to promulgate administrative regulations to implement KRS 309.350 to 309.364. KRS 309.358 and 309.360 require the board to issue a license as a massage therapist to a qualified applicant, and after June 24, 2005, requires that the board may issue a license to an applicant. This administrative regulation establishes the application process and curriculum requirements for licensure.

Section 1. An applicant for licensure as a massage therapist shall:
(1) File a completed, signed, and dated application and required documentation with the board, meeting the requirements set forth in KRS 309.358 and 309.360; and
(2) Pay by certified check or money order an application fee as established by 201 KAR 42:09C, made payable to the Kentucky State Treasurer.

Section 2. To comply with KRS 309.358(1)(d) and 309.360(1), an applicant shall submit to the board, at the time of application, a curriculum statement, official transcript or certificate that shows the completion of at least 500 classroom hours, consisting of the following minimum requirements:
(1) 100 hours of sciences to include anatomy, physiology, pathology and kinesiology;
(2) 200 hours of massage or bodywork theory, technique, and practice focusing on:
(a) Gliding strokes;
(b) Kneading;
(c) Direct pressure;
(d) Deep friction;
(e) Joint movement;
(f) Superficial warming techniques;
(g) Percussion;
(h) Compression;
(i) Vibration;
(j) Jostling;
(k) Shaking; and
(l) Rocking; and
(3) 200 hours of approach to the business of massage, including:
(a) Contraindications;
(b) Benefits;
(c) Business;
(d) History;
(e) Ethics;
(f) Legalities of massage; and
(g) Courses designated to meet the school’s specific program objectives.

Section 3. To comply with KRS 309.360(4), an applicant shall submit to the board, at the time of application, a curriculum statement, official transcript or certificate that shows completion of 200 hours of formal training, which shall include:
(1) 100 hours of sciences to include anatomy, physiology, pathology and kinesiology;
(2) Ninety eight (98) hours of massage or bodywork theory and application; and
(3) Two (2) hours of ethics.

Section 4. To comply with KRS 309.358(2)(d), an applicant shall submit to the board, at the time of application, a curriculum statement, official transcript or certificate that shows the completion of at least 600 classroom hours, consisting of the following minimum requirements:
(1) 200 hours of sciences to include anatomy, physiology, pathology, and kinesiology;
(2) 200 hours of massage or bodywork theory, technique, and practice focusing on:
(a) Gliding strokes;
(b) Kneading;
(c) Direct pressure;
(d) Deep friction;
(e) Joint movement;
(f) Superficial warming techniques;
(g) Percussion;
(h) Compression;
(i) Vibration;
(j) Jostling;
(k) Shaking; and
(l) Rocking; and
(3) 200 hours of approach to the business of massage, including:
(a) Contraindications;
(b) Benefits;
(c) Business;
(d) History;
Section 5. A person who is licensed, certified or registered in another state or country shall provide evidence of training and supervision that meets the requirements of KRS 309.358 and this administrative regulation.

Section 6. Appeals. An applicant may appeal [for] a [board] decision denying [regarding] his or her licensure application in accordance with KRS 309.362(2) [Chapter 138].

(2) This material may be inspected, copied; or obtained, subject to applicable copyright law, at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Chair of the Kentucky State Board of Licensure for Massage Therapy has approved this administrative regulation prior to its filing by the Kentucky State Board of Licensure for Massage Therapy with the Legislative Research Commission as required by KRS Chapter 13A, to carry out and enforce provisions of KRS 309.350 to 309.364.

THERESA M. CRISPER, Chair
APPROVED BY AGENCY: March 8, 2004
FILED WITH LRC: March 17, 2004 at 2 p.m.
CONTACT PERSON: Kristen Webb, Director, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-4233, fax (502) 564-4818.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, June 8, 2004)
301 KAR 1:171. Grass carp supplier [transportation, propagation, rearing and stocking] requirements.

RELATES TO: KRS 150.010, 150.025, 150.180, 150.990
STATUTORY AUTHORITY: KRS [13A.382], 150.025
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish the procedures for transporting and conserving wildlife. This administrative regulation establishes the procedures for acquiring, transporting and producing triploid grass carp.

Section 1. Definitions. (1) "Diploid grass carp" means a fish of the genus and species Ctenopharyngodon idella that is reproductively fertile and has not been genetically altered and therefore has the normal set of somatic chromosomes as determined by blood sample.
(2) "Triploid grass carp" means a fish of the genus and species Ctenopharyngodon idella that is reproductively sterile because it has been genetically altered so as to have an additional or extra set of somatic chromosomes as determined by blood sample.

Section 2. Acquisition of Triploid Grass Carp (Ctenopharyngodon idella) by a Supplier. (a) A person wishing to supply triploid grass carp shall:
(1) (a)(1) Obtain a live fish and bait dealers license as established in 301 KAR 1:125;
(2) (a)(2) Obtain a fish transportation permit as established in 301 KAR 1:125 that lists triploid grass carp as the species to be transported;
(3) (a)(3) If the triploid grass carp will be propagated, obtain a fisheries commercial propagation permit as established in 301 KAR 1:115; and
(4) (a)(4) Provide the Division of Fisheries with written assurances on a monthly basis that each grass carp sold or delivered for use in Kentucky waters has been tested and certified by the U.S. Fish and Wildlife Service's Triploid Grass Carp Certification Program to be a triploid fish. Failure to supply these written assurances shall be cause for license [and/or permit] revocation.

Section 3. Propagation of Triploid Grass Carp. (1) A person shall apply to the Division of Fisheries for a Fisheries commercial propagation permit for propagating triploid grass carp.
(2) A fisheries commercial propagation permit for triploid grass carp shall not be issued until the Division of Fisheries personnel have made an on-site inspection of the applicant's propagation facility to determine that adequate containment measures exist to preclude escape for all life stages of any diploid grass carp into public waters.
(3) The Division of Fisheries shall determine and specify the number of broodstock diploid (sterile) grass carp that may be obtained from out-of-state sources.
(4) A person shall utilize the U.S. Fish and Wildlife Service's Triploid Grass Carp Certification Program to certify all grass carp sold or transported are triploids.
(5) Diploid grass carp resulting from the production of triploids shall be destroyed on site by the propagator.

Section 4. Eradication of Diploid Grass Carp. (1) The Division of Fisheries may take random samples of grass carp shipped into and within Kentucky and from other stocks held by suppliers.
(2) A triploid grass carp licensee or permittee shall have his or her license or permit revoked if diploid grass carp are discovered.
(3) The licensee or permittee shall be responsible for removing and destroying all grass carp from a shipment containing diploid fish that were stocked in Kentucky waters, and shall reimburse the pond owner the full purchase price of the fish, including transportation costs. [This administrative regulation is necessary to control the acquisition, use, and proliferation of triploid (sterile) grass carp.

Section 1. (1) Individuals wishing to acquire triploid grass carp (Ctenopharyngodon idella) for aquatic vegetation control purposes shall only purchase triploid grass carp from suppliers who are certified by the Division of Fisheries.
(2) Suppliers may become certified by providing the Division of Fisheries with written assurances that each grass carp sold and/or delivered for use in Kentucky waters will be tested and certified (in writing) to be a triploid fish.

Section 2. (1) Each supplier shall obtain a triploid grass carp transportation permit. If grass carp are to be held and/or reared, a triploid grass carp holding and rearing permit shall also be required.
(2) Each supplier shall submit monthly reports to the Division of Fisheries office in Frankfort, listing the names and addresses of his triploid grass carp customers, the number and size of triploid grass carp sold, the size of the pond stocked, and the date of the transaction. Monthly report forms will be provided by the Division of Fisheries.
(3) Individuals wishing to produce triploid grass carp transportation permits and propagation permits shall not be renewed until all monthly reports for the preceding year for that individual have been received by the Division of Fisheries office in Frankfort.

Section 3. (1) Individuals wishing to produce triploid grass carp shall apply to the Division of Fisheries for a grass carp propagation permit.
(2) Grass carp propagation permits shall be issued only if the Division of Fisheries personnel have made an on-site inspection of the applicant's propagation facility and find it to have adequate containment measures that will preclude escape of diploid grass carp into public waters. The applicant shall also demonstrate how ployal tests will be conducted and provide assurances that each grass carp produced will be tested for ployally before it is sold or transported.
(3) The Division of Fisheries shall determine and specify the number of diploid-grass carp that may be obtained from out-of-state sources, however, all diploid-grass carp resulting from the production of triploids must be destroyed on site.
Section 4. (1) The Division of Fisheries may take random samples of grass carp shipped into and within Kentucky and from other stocks held by suppliers. Should diploid (fertile) fish be discovered, all of the supplier's triploid grass carp permits shall be revoked.

(2) The supplier shall also be responsible for removing and destroying all grass carp from the shipment containing diploid fish that were stocked in Kentucky waters, and shall reimburse the pond owner the full purchase price of the fish, including transportation costs.

C. THOMAS BENNETT, Commissioner
BEN FRANK BROWN, Chairman
W. JAMES HOST, Secretary
APPROVED BY AGENCY: December 8, 2003
FILED WITH LRC: April 14, 2004 at 9 a.m.
CONTACT PERSON: Ellen Benzing, Attorney, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(As Amended at AARRS, June 8, 2004)

301 KAR 5:020. License agent requirements and responsibilities.

RELATES TO: KRS 150.195, 150.990
STATUTORY AUTHORITY: KRS 150.195
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.195(4) authorizes the department to promulgate administrative regulations governing the issuance of licenses. This administrative regulation establishes the requirements for issuing licenses and electronically reporting license sale data and license revenue; details the procedures for suspending or revoking license agent status; and specifies the methods for appealing a suspension or revocation of agent status.

Section 1. Issuing Licenses. (1) A license agent may [shall-not] issue a license to a person who provides [does-not-provide] the agent with:

(a) His date of birth; and
(b) An identification number, which shall be:
   1. A driver's license number;
   2. A state identification card number;
   3. A Social Security number; or
   4. [The number from an identification form printed by the POS device; or]
   5. If the purchaser is under age sixty-five (65) and buying a senior/disabled license, the number from an unexpired [a] disability authorization card issued to the person to whom the license is issued and proof of Kentucky residency; or
   5. If the purchaser is age sixty-five (65) or over and buying a senior/disabled license, proof of age and Kentucky residency.

(2) A license agent shall not knowingly enter false information while processing a license.

(3) A license agent may [shall-not] issue:
   (a) A junior hunting license if [unless] the parent or guardian of the license recipient signs the license at the time of purchase.
   (b) A Peabody or Addington Enterprises-Robinson Forest user permit to a person who does not sign the liability waiver required by 301 KAR 4:100 or 301 KAR 4:200; or
   (c) A senior/disabled license to:
      1. A person age sixty-five (65) or over who does not provide proof of age and Kentucky residency; or
      2. A person under the age of sixty-five (65) who does not show a disability authorization card issued to the person to whom the license is issued and a second item of personal identification.

Section 2. Agent Commission and Depositing of Funds. (1) The license agent shall retain as a commission:

(a) Fifty (50) cents for each Peabody or Addington Enterprises-Robinson Forest permit issued pursuant to 301 KAR 4:100 or 301 KAR 4:200.

(b) Fifty (50) cents each for other transactions.

(2) A license agent shall promptly deposit transaction fees, less the commissions described in subsection (1) of this section, into the bank account required by 301 KAR 5:010.

Section 3. Uploading License Sale Information. (1) The department shall provide each license agent a schedule of dates when license sale information will be uploaded from his POS device.

(2) A license agent shall:
   (a) Ensure [Connect] his POS device is connected to a telephone line on the date of the scheduled upload;
   (b) Leave the POS device connected to the telephone line until the upload has been completed;
   (c) Retain the receipts printed with each transaction until notified by the department after the information about that transaction has been successfully uploaded; and
   (d) Telephone the department within twenty-four (24) hours if the amount of funds to be transferred, as reported by the POS device, does not agree with the license agent's records.

Section 4. Electronic Transfer of Funds to the Department. (1) The department shall provide each license agent a schedule of dates when an electronic fund transfer from his bank account will be initiated.

(2) At the close of banking hours on the day of the scheduled electronic fund transfer, a license agent shall have sufficient funds in his account to cover the amount of the transfer.

Section 5. Voiding Licenses. (1) A license agent may void a license if:

(a) The license does not print correctly; or
(b) After the license is printed, the purchaser:
   1. Discover's that he was issued an incorrect license; or
   2. Will not pay for the license; or
   3. Otherwise refuses to accept the license.

(2) An agent shall retain all [a] voided licenses [license] and return them to the department as stipulated in Section 6 of this administrative regulation.

Section 6. Materials Retained and Returned to the Department. (1) A license agent shall retain:

(a) A voided license;
(b) Kentucky Migratory Bird Harvest Information Program Form as referenced in 301 KAR 5:040; and [The completed identification form required by 301 KAR 5:030]
(c) [The signed waiver of liability form required by 301 KAR 4:100 and 301 KAR 4:200;]
(d) Ruined or unusable license stock [and]
(e) Discarded printer ribbons;

(2) A license agent shall return the materials listed in this section to the department on the working day after each scheduled or unscheduled upload of information.

(3) The department shall charge the license agent for a voided license not returned as stipulated in subsection (2) of this section, and shall not issue credit for a voided license received later than (30) days after the upload in which the void was reported.

Section 7. Suspensions and Revocation of Agent Status. (1) In addition to any penalties provided by KRS 150.990, the department shall suspend for one (1) year a license agent who twice in a twelve (12) month period:

(a) Causes an electronic fund transfer failure; or
(b) Violates a provision of:
   1. The agent agreement;
   2. KRS 150.195; or
   3. An administrative regulation adopted pursuant to KRS 150.195.

(2) The department shall permanently revoke the agent status of a license agent who:

(a) Commits for the second time an offense for which he has been previously suspended;
(b) Does not deposit the required funds in his agent bank account within twenty-four (24) hours of notification by the department.
of insufficient funds;
(c) Fails to notify the department prior to closing his agent bank account;
(d) Closes his business seasonally without notifying the licensing section supervisor in writing by surface mail, fax or e-mail and settling his account;
(e) Knowingly issues a license containing false information; or
(f) Fails to notify the department within twenty-four (24) hours of discovering the loss or theft of a POS device or paper stock.
(3) Before issuing a final order suspending or revoking the status of an agent, the department shall:
(a) Notify the agent by registered mail that his status is under review; and
(b) Afford the agent the opportunity for an informal meeting with the commissioner or his designee to show cause why his agent status should not be suspended or revoked.
(4) A suspension or revocation shall become effective upon receipt of notification from the department.
(5) A suspended or revoked agent shall:
(a) Surrender upon demand the POS devices and license stock in his possession to an authorized agent of the department;
(b) Allow the department access to financial records dealing with license sales; and
(c) Immediately pay all funds owed to the department.
Section 8. Appeal of Suspension or Revocation of Agent Status.
(1) A license agent who wishes to appeal a suspension or revocation shall request a hearing in writing, postmarked or delivered in person to the department no later than ten (10) days after notification of suspension or revocation.
(2) Upon receipt of the request for a hearing, the department shall:
(a) Appoint a hearing officer qualified to conduct hearings under the provisions of KRS Chapter 13B; and
(b) Schedule a hearing to be held:
1. Prior to the next regularly scheduled meeting of the commission, if the request for a hearing is received more than thirty (30) days before the commission meeting; or
2. Within thirty (30) days, if the request for a hearing is received within thirty (30) days of the next scheduled commission meeting.
(3) The hearing officer shall conduct the hearing and present his recommendation at the commission meeting immediately following the hearing date.
(4) At the hearing, the license agent:
(a) May be represented by counsel; and
(b) May present evidence which he feels should be considered, including the calling of witnesses.
(5) The department may present evidence and call witnesses to support the suspension or revocation.
(6) The commission shall make its decision by majority vote.
(7) An agent may appeal a decision of the commission to Franklin Circuit Court pursuant to KRS 150.195.
(8) The department shall conduct suspension or revocation hearings according to the provisions of KRS Chapter 13B.

C. THOMAS BENNETT, Commissioner
BEN FRANK BROWN, Chairman
W. JAMES HOST, Secretary
APPROVED BY AGENCY: December 8, 2003
FILED WITH LRC: April 14, 2004 at 9 a.m.
CONTACT PERSON: Ellen Benzing, Attorney, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-3400, fax (502) 564-0508.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS, June 8, 2004)

401 KAR 51:001. Definitions for 401 KAR Chapter 51.

RELATES TO: KRS 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Chapter I, Part 50, Appendices A-K, 51.100(s), 51.121, 51.165, 51.166, 53, 60, Appendices A and B, 61, Appendix B, 75, 96, 42 U.S.C. 7410-7671q
EXECUTORY AUTHORITY: KRS 224.10-100(6)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the [Natural Resources] and Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation defines the terms used in 401 KAR Chapter 51. The definitions contained in this administrative regulation that [i] which have corresponding federal definitions have been clarified and simplified but [j] are not more stringent nor otherwise different than the corresponding federal definitions.

Section 1. Definitions. (1) "Acid rain emissions limitation" means a limitation on emissions of SO2 or NOx imposed by the Acid Rain Program under 42 U.S.C. 7651 to 76510.
(2) "Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined according to the following:
(a) Actual emissions as of a particular date equals the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive twenty-four (24) month period, which precedes that date and is representative of normal source operation.
(b) Use of a different time period is allowed if the cabinet determines that a different time period is more representative of normal source operation; and
2. The unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period are used to calculate actual emissions.
(c) The cabinet may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.
(d) For an emissions unit, which has not begun normal operations on the particular date, actual emissions equals the potential to emit of the unit on that date.
(e) This definition does not include:
1. Calculating if a significant emissions increase has occurred;
2. Establishing a PAL under 401 KAR 51:017, Section 23.
(3) "Actuals PAL" or "PAL" means a plant-wide applicability limit established for a major stationary source based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.
(4) "Adverse impact on visibility" means visibility impairment that interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Class I area. This determination:
1. Is to be made on a case-by-case basis;
2. Considers the geographic extent, intensity, duration, frequency and time of visibility impairment and how these factors correlate with the times of visitor use of the Class I area; and
3. Considers the frequency and timing of natural conditions that reduce visibility.
(5) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities that [which] emits or may emit an air contaminant into the outdoor atmosphere.
(6) [69] "Air contaminant" is defined in KRS 224.01-010(1).
(7) [66] "Air pollutant" means air contaminant.
(8) [66] "Air pollution" is defined in KRS 224.01-010(3).
(9) [66] "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.
(10) [67] "Allocate" or "allocation" means the determination by the cabinet of the number of NOx allowances to be credited to a NOx budget unit.
(11) [68] "Allocation period" means each three (3) year period beginning May 1, 2004.
(12) "Allowable emissions" means:
(a) The emissions rate of a stationary source that is calculated using the maximum rated capacity of the source, unless the source is subject to federally-enforceable limits that restrict the operating rate, or hours of operation, or both, and the most stringent of the
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following:
1. The applicable standards of 40 C.F.R. Parts 60 and 61;
2. The applicable SIP emissions limitations, including those with a future compliance date; or
3. The emissions rates specified as a federally enforceable permit condition, including those with a future compliance date; or
(b) For an actual emissions rate of a stationary source that is calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit, and the most stringent provision of paragraph (a)1 to 3 of this subsection.
(13) "Alteration" means:
(a) The installation or replacement of air pollution control equipment at a source; or
(b) A physical change in or change in the method of operation of an affected facility that [which] increases the potential to emit a pollutant [to which a standard applies], [it] emitted by the facility or that [which] results in the emission of an air pollutant (to which a standard applies) not previously emitted.
(14) "Alternative method" means a method of sampling and analyzing for an air pollutant that is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to produce adequate results for its determination of compliance.
(15) "Ambient air" means that portion of the atmosphere external to buildings, to which the general public has access.
(16) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.
(17) "ANSI" means American National Standards Institute.
(18) "AAOC" means Association of Official Analytical Chemists.
(19) "ASTM" means American Society for Testing and Materials.
(20) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, that:
(a) For an existing electric utility steam generating unit (EUSGU), the unit actually emitted during any consecutive twenty-four (24) month period selected by the owner or operator within the five (5) year period immediately preceding the date the owner or operator begins actual construction of the project.
1. The rate is an average that:
   a. Includes fugitive emissions, to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;
   b. is adjusted downward to exclude any noncompliance emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24) month period; and
   c. is based on any consecutive twenty-four (24) month period for which there is adequate information for determining annual emissions, in tons per year, and for adjusting this amount as necessary according to clause b of this subparagraph;
2. Use of a time period other than the twenty-four (24) month period is allowed, if the cabinet determines that a different time period is more representative of normal source operation; and
3. If a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period is used to determine the baseline actual emissions for the emissions units being charged, where a different consecutive twenty-four (24) month period is allowed for each regulated NSR pollutant.
(b) For an existing emissions unit that is not an EUSGU, the unit actually emitted during any consecutive twenty-four (24) month period selected by the owner or operator within the ten (10) year period beginning on or after November 15, 1990, and immediately preceding the earlier of the date the owner or operator begins actual construction of the project or the date a complete permit application is received by the cabinet for a permit required under 401 KAR 51:017 or 401 KAR 51:052.
1. The rate is an average that:
   a. Includes fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions;
   b. is adjusted downward.
   (i) To exclude any noncompliance emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24) month period;
   (ii) To exclude any emissions that would have exceeded an emission limitation with which the major stationary source is required to comply, if the source had been required to comply with the limitations during the consecutive twenty-four (24) month period; and
   (iii) For an emission limitation that is part of a maximum achievable control technology standard proposed or promulgated under 40 C.F.R. Part 63, only if the Commonwealth of Kentucky has taken credit for the emissions reductions in an attainment demonstration or maintenance plan consistent with 40 C.F.R. 51.165(e)(1)(ii)(B) and is based on any consecutive twenty-four (24) month period for which there is adequate information for determining annual emissions, in tons per year, and for adjusting this amount as necessary according to clause b of this subparagraph; and
2. If a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period is used to determine the baseline actual emissions for the emissions units being changed, where a different consecutive twenty-four (24) month period is allowed for each regulated NSR pollutant.
(c) For a new emissions unit, equals zero for determining the emissions increase that will result from the initial construction and operation of the new unit and thereafter, for all other purposes, equals the unit's potential to emit.
(d) For a PAL for a stationary source, is determined as follows:
1. For an existing EUSGU, in accordance with the procedures contained in paragraph (a) of this subsection;
2. For other existing emissions units, in accordance with the procedures contained in paragraph (b) (a) of this subsection; and
3. For a new emissions unit, in accordance with the procedures contained in paragraph (c) (b) of this subsection.
(21) "Baseline area" means an infrastate area, and every part of it, designated as a singular or a combination of an infrastate area, or combination of infrastate areas, which is equal to or greater than one (1) µg/m³ annual average of the pollutant for which the minor source baseline date is established.
(a) Area redesignations under 42 U.S.C. 7407 [7404(d)(1)(A)(ii) or (iii) in which a major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than one (1) µg/m³ annual average of the pollutant for which the minor source baseline date is established.
(b) A baseline area established originally for total suspended particulate (TSP) increments remains in effect to determine the amount of available PM10 increments under the cabinet records the corresponding minor source baseline date.
(22) "Baseline concentration" means the ambient concentration level that exists in the baseline area on the date the applicable minor source baseline date is established.
(a) A baseline concentration is determined for each pollutant for which a minor source baseline date is established and includes.
(b) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph (b) of this subsection; and
(c) The allowable emissions of major stationary sources that commenced construction before the minor source baseline date but were not in operation by the applicable minor source baseline date.
(b) The following are not included in the baseline concentration and thus affect the maximum applicable allowable increase.
1. Actual emissions at a major source, which result from construction commencing after the major source baseline date;
2. Actual emissions increases and decreases at a stationary source occurring after the minor source baseline date.
(23) "Baseline date" means major source baseline date or minor source baseline date and is established for each pollutant for which increments or other equivalent allowances have been established and if the area in which the propose source or modification would construct is designated as attainment or unclassified pursuant to 42
U.S.C. 7407(h)(1)(A)(ii) or (iii) for the pollutant on the date of the source's complete application; and

(a) For a major stationary source, the pollutant would be emitted in significant amounts; or

(b) For a major modification, there would be a significant net emissions increase of the pollutant.

(24) "Begin actual construction" means:

(a) Initiation of physical on-site construction activities on an emissions unit that are of a permanent nature and include installation of building supports and foundations, laying underground pipe work, and construction of permanent storage structures.

(b) For a change in method of operations, those on-site activities other than the preparatory activities, which mark the initiation of the change.

(25) "Best available control technology" or "BACT" means an emissions limitation, including a visible emission standard, based on the maximum degree of reduction for each regulated NSR pollutant that will be emitted from a proposed major stationary source or major modification that:

(a) Is determined by the cabinet on a case-by-case basis after taking into account energy, environmental, and economic impacts and other costs, to be achievable by the source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel control techniques for control of the pollutant; or

(b) Does not result in emissions of a pollutant that would exceed the emissions allowed by an applicable standard of 40 C.F.R. Parts 60 and 61; and

(c) Is satisfied by a design, equipment, work practice, or operational standard or combination of standards approved by the cabinet.

1. The cabinet determines technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible.

2. The standard establishes the emissions reduction achievable by implementation of the design, equipment, work practice or operation; and

3. The standard provides for compliance by means that achieve equivalent results.

(26) [468] "BOD" means biochemical oxygen demand.

(27) [471] "Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

(28) [468] "BTU" means British thermal unit.

(29) "Building, structure, facility, or installation" means all of the pollutant emitting activities that:

(a) Belong to the same industrial grouping, or have having the same two (2) digit major group code, as described in the Standard Industrial Classification Manual, 1987;

(b) Are located on one (1) or more contiguous or adjacent properties;

(c) Are under the control of the same person or persons under common control; and

(d) Do not include the activities of a vessel.

(30) [469] "°C" means degree Celsius (centigrade).

(31) [209] "Cabinet" is defined in KRS 224.01-010(9).

(32) [244] "Cal" means calorie.

(33) [262] "Capital expenditure" means an expenditure for a physical or operational change to an affected facility that:

(a) Exceeds the product of:

1. The applicable "annual asset guidelines repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534; and

2. The affected facility's basis, as defined by 26 U.S.C. 1012; and

(b) Is not reduced by an excluded addition as defined in IRS Publication 534.

(34) [243] "cfm" means cubic feet per minute.

(35) [244] "CH₄" means methane.

(36) "Clean coal technology" means a technology, including technologies applied at the precombustion, combustion, or post-combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of ni-

trogen associated with the utilization of coal in the generation of electricity or process steam that was not in widespread use as of November 15, 1990.

(37) "Clean coal technology demonstration project" means a commercial demonstration of clean coal technology, with a federal contribution of at least twenty (20) percent of the total cost of the project and funding appropriated as follows:

(a) Under the heading "Department of Energy-Clean Coal Technology" up to a total amount of $2,500,000,000; or

(b) To the U.S. EPA for a similar project.

(38) "Clean unit" means an emissions unit that:

(a) Has been issued a major NSR permit that requires compliance with BACT or LAER; is complying with the applicable BACT or LAER requirements; and qualifies as a clean unit pursuant to 401 KAR 51:017, Section 20 or 401 KAR 51:052, Section 11;

(b) Has been designated by the cabinet as a clean unit, based on the criteria in 401 KAR 51:017, Section 21(2) or 401 KAR 51:052, Section 12(2), using a SIP approved permitting process; or

(c) Has been designated as a clean unit by the U.S. EPA in accordance with 40 C.F.R. 52.21(y)(30) to (iv).

(39) [468] "Clinker" means the product of a portland cement kiln from which finished cement is manufactured by milling and grinding.

(40) [262] "CO" means carbon monoxide.

(41) [270] "CO₂" means carbon dioxide.

(42) [262] "COD" means chemical oxygen demand.

(43) "Cofiring pollutant" means an air contaminant for which the emissions rate is increased as a result of undertaking a pollution control project.

(44) [468] "Combined cycle system" means a system comprised of one (1) or more combustion turbines, heat recovery steam generators, or steam turbines configured to increase overall efficiency of electricity generation or steam production.

(45) [90] "Combustion turbine" means an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

(46) [211] "Commences" means that an owner or operator:

(a) Has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility; or

(b) For construction of a major stationary source or major modification in the PSD or NSR program, has all necessary preconstruction approvals or permits.

1. Has begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

2. Has entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(47) [929] "Commence commercial operation" means to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use. Except as provided in 401 KAR 51:195 or 40 C.F.R. 96.5:

(a) For a unit that is a NOx budget unit under 40 C.F.R. 96.4, on the date the unit commences commercial operation, the date remains the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered.

(b) For a unit that is not a NOx budget unit under 40 C.F.R. 96.4, on the date the unit commences commercial operation, the date becomes a NOx budget unit under 40 C.F.R. 96.4 is the unit's date of commencement of commercial operation.

(48) [334] "Commence operation" means, for a NOx budget unit, to have begun a mechanical, chemical, or electronic process, including start-up of a unit's combustion chamber. Except as provided in 401 KAR 51:195 or 40 C.F.R. 96.5:

(a) For a unit that is a NOx budget unit under 40 C.F.R. 96.4 on the date of commencement of operation, the date remains the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered.
For a unit that is not a NOx budget unit under 40 C.F.R. 96.4, on the date of commencement of operation, the date the unit becomes a NOx budget unit under 40 C.F.R. 96.4 is the unit's date of commencement of operation.

"Complete" means, in reference to an application for a major NSR permit, that the application contains information necessary for processing the application. Designating an application complete for permit processing does not preclude the cabinet from requesting or accepting additional information.

"Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

"Compliance supplement pool" means the quantity of NOx allowances provided to Kentucky by the U.S. EPA to be:
(a) Allocated to NOx budget units that achieve early reduction; or
(b) Used to assist NOx budget sources that are unable to meet the compliance deadline as provided in 401 KAR 51:180, Section 5.

"Construction" means:
(a) Fabrication, erection, installation or modification of an air contaminant source; or
(b) For the NSR program, any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit that would result in a change in emissions at an air contaminant source.

"Continuous emissions monitoring system" or "CEMS" means all of the equipment that may be required to meet the data acquisition and availability requirements of 401 KAR 51:017 or 401 KAR 51:052 to sample, condition, if applicable, analyze, and provide a record of emissions on a continuous basis.

"Control period" means:
(a) For the year 2004, the period beginning May 31, 2004, and ending September 30, 2004, inclusive; and
(b) For all other years, the period beginning May 1 of a year and ending September 30 of the same year, inclusive.

"Director" means Director of the Division for Air Quality of the [Natural Resources and] Environmental and Public Protection Cabinet.

"District" is defined in KRS 224.01-010(11).

"Dscf" means dry cubic feet at standard conditions.

"Dscm" means dry cubic meter at standard conditions.

"Electric generating unit" means, for 401 KAR 51:160 to 401 KAR 51:195, a fossil fuel-fired boiler, combustion turbine, or a combined cycle system used to generate twenty-five (25) megawatts or more of electricity, some of which is offered for sale.

"Electric utility steam generating unit" or "EUSGU" means, for the PSD and NSR programs:
(a) [1] A steam electric generating unit that is constructed for the purpose of supplying for sale;

1. [a] More than one-third (1/3) of its potential electric output capacity; and
2. [b] More than twenty-five (25) megawatt electrical output to a utility power distribution system for sale; and

(b) [g] Steam to a steam-electric generator that would produce electrical energy is also considered in determining the electrical energy output capacity of the affected facility.

"Emission standard" means that numerical limit that [which] fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere from an affected facility or from air pollution control equipment installed in an affected facility.

"Emissions unit" means any part of a stationary source including an EUSGU [EUSGE] that emits or will have the potential to emit a regulated NSR pollutant. For 401 KAR 51:017 and 401 KAR 51:052, there are two (2) types of emissions units:
(a) A new emissions unit, which is any emissions unit that is or will be newly constructed and that has existed for less than two (2) years from the date the unit first operated; and
(b) An existing emissions unit, which is any emissions unit that does not meet the requirements in paragraph (a) of this subsection or is a replacement unit.

"Enforceable as a practical matter" means that the emission or other standards contained in a permit or compliance schedule include:
(a) Technically accurate emission standards, and the portions of the source that are subject to the standards;
(b) A time period adequate to demonstrate compliance with the standards; and
(c) The method the source will use to achieve and demonstrate compliance with the limitations and standards, including appropriate monitoring, recordkeeping, and reporting.

"Equivalent method" means a method of sampling and analyzing for an air pollutant that [which] has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

"Excess NOx emissions" means any tonnage of nitrogen oxides emitted by a NOx budget unit during a control period that exceeds the NOx budget emissions limitation for the unit.

"Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

"Existing source" means a source that [which] is not a new source.

"Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

"FF" means degree Fahrenheit.

"Federal land manager" means, for any lands in the United States, the secretary of the department with authority over those lands.

"Federally enforceable" means all limitations and conditions that are enforceable by the U.S. EPA, including:
(a) Requirements developed under 40 C.F.R. Parts 60 and 61;
(b) Requirements in the Kentucky state implementation plan (SIP) approved by the U.S. EPA; and
(c) Any permit requirements established under 40 C.F.R. 52.21 or under regulations approved under 40 C.F.R. Part 51, Subpart I, including operating permits issued under an EPA-approved program incorporated into the SIP, which expressly requires adherence to a permit issued under the program.

"Federa1ly-enforceable permit" means a permit issued under 401 KAR 52:020 or 401 KAR 52:030, as appropriate.

"Fixed capital cost" means the capital needed to provide all the depreciable components.
"Fossil fuel" means natural gas, petroleum, coal, or a form of solid, liquid, or gaseous fuel derived from natural gas, petroleum, or coal.

"Fossil fuel fired" means, for a unit:
(a) The combustion of fossil fuel, alone or in combination with another fuel, if the fossil fuel combusted comprises more than fifty (50) percent of the annual heat input on a BTU basis during a year starting in 1995 or, if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995, or
(b) The combustion of fossil fuel, alone or in combination with another fuel, if the fossil fuel is projected to comprise more than fifty (50) percent of the annual heat input on a BTU basis during a year, and the unit is to be fossil fuel fired as of the date during the year the unit begins combating fossil fuel.

"It" means feet or foot.

"Fuel" means natural gas, petroleum, coal, wood, or a form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

"Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"g" means gram.

"gal" means gallon.

"General fund" is defined in KRS 48.010(13)(a).

"Generator" means a device that produces electricity.

"gr" means grain.

"HCl" means hydrochloric acid.

"Heat input" means the product, [(in MMBTU per unit of time) x (p) of the gross caloric value of the fuel], [(in BTU per lb) x (p)] and the fuel feed rate into a combustion device, [(in mass of fuel per unit of time) x (p)]

Does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources; and
(b) is measured, recorded, and reported to the cabinet by the NOx authorized account representative in accordance with 40 C.F.R. 96.70 to 96.76.

"HF" means hydrogen fluoride.

"Hg" means mercury.

"HMeF" means hydrogen fluoride.

"High terrain" means an area having an elevation of 900 feet or more above the base of the stack of a source.

"hr" means hour.

"Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

"Hydrocarbon combustion flare" means:
(a) A flare used to comply with an applicable New Source Performance Standard (NSPS) or Maximum Achievable Control Technology (MAC) standard, including uses of flares during startup, shutdown, or malfunction permitted under the standard; or
(b) A flare that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than 230 ppmv hydrogen sulfide.

"H₂O" means water.

"H₂S" means hydrogen sulfide.

"H₂SO₃" means sulfuric acid.

"in" means inch.

"Incorporation" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

"Industrial boiler or turbine" means a fossil fuel-fired boiler, combustion turbine, or a combined cycle system having a maximum design heat input of 250 MMBTU per hour or more that is not an electric generating unit.

"Innovative control technology" means a system of air pollution control that has not been adequately demonstrated in practice, but will have a substantial likelihood of achieving:
(a) Greater continuous emissions reduction than any control system in current practice, or
(b) At least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

"Intermittent emissions" means emissions of particular matter into the open air from a process that [which] operates for less than any six (6) consecutive minutes.

"ton" means metric tonne.

"Kg" means kilogram.
9. The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, if the project does not result in an increase in the potential to emit of a regulated pollutant emitted by the unit on a pollutant-by-pollutant basis; or

10. The reactivation of a very clean coal-fired electric utility steam generating unit.

(c) The definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 401 KAR 51:017; Section 23 and 401 KAR 51:052, Section 14 for that pollutant. Instead, the definition at subsection (177) of this section shall apply.

(177) "Major NSR permit" means a permit issued under Kentucky's PSD or NSR program.

(180) [686] "Major source" means a source of an air pollutant with a [which the] potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds, or carbon monoxide, or ODS.

(196) "Major source baseline date" means:

(a) For particulate matter and sulfur dioxide, January 6, 1975; and

(b) For nitrogen dioxide, February 8, 1988.

(120)(a) "Major stationary source" means:

1. A stationary source of air pollutants that emits, or has the potential to emit 100 tons per year or more of a regulated NSR pollutant; or

2. For the PSD program, any of the following stationary sources of air pollutants that emits, or has the potential to emit, 100 tons per year or more of a regulated NSR pollutant: fossil fuel-fired steam electric plants of more than 250 million BTU per hour heat input, coal cleaning plants with thermal dryers, Kraft pulp mills, Portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of generating more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, smelting plants, secondary metal production plants, chemical process plants, fossil fuel boilers, or combination of fossil fuel boilers, totaling more than 250 million BTU per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, tannic ore processing plants, glass fiber processing plants, and coal-leaf production plants.

2. Notwithstanding the stationary source size specified in subparagraph 1b of this paragraph, a stationary source which emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or

3. Any physical change that will occur at a stationary source not otherwise qualifying under this subsection as a major stationary source, if the change will constitute a major stationary source by itself.

(b) A major stationary source that is major for volatile organic compounds is considered major for ozone.

(c) The fugitive emissions of a stationary source are not included in determining if the source is a major stationary source, unless the source belongs to one (1) of the following categories of stationary sources:

1. Coal cleaning plants with thermal dryers;

2. Kraft pulp mills;

3. Portland cement plants;

4. Primary zinc smelters;

5. Iron and steel mills;

6. Primary aluminum ore reduction plants;

7. Primary lead smelters;

8. Municipal incinerators capable of charging more than 250 tons of refuse per day;

9. Hydrofluoric, sulfuric, or nitric acid plants;

10. Petroleum refineries;

11. Lime plants;

12. Phosphate rock processing plants;

13. Coke oven batteries;

14. Sulfur recovery plants;

15. Carbon black plants (furnace process);

16. Primary lead smelters;

17. Fuel conversion plants;

18. Sintering plants;

19. Secondary metal production plants;

20. Chemical process plants;

21. Fossil-fuel boilers, or combination of fossil-fuel boilers, totaling more than 250 million BTUs per hour heat input;

22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

23. Tannic ore processing plants;

24. Glass fiber processing plants;

25. Coal-leaf production plants;

26. Fossil-fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; and

27. Any stationary source category that, as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412.

(121) [687] "Malfunction" means a sudden and infrequent failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner that is not caused entirely or in part by poor maintenance, carelessness, operation, or other upset condition or equipment breakdown that could have been reasonably prevented.

(122) "Mandatory Class I area" means an area identified in 40 C.F.R. 81, Subpart D, if the administrator of the U.S. EPA, in consultation with the Secretary of the United States Department of Interior, has determined visibility to be an important value.

(123) [688] "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated as marginal for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

(124) [689] "Maximum design heat input" means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.

(125) [690] "Maximum potential hourly heat input" means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input and is:

(a) A value calculated according to 40 C.F.R. Part 75 using the maximum fuel flow rate and the maximum gross calorific value, if the unit intends to use 40 C.F.R. Part 75, Appendix D to report heat input; or

(b) A value reported according to 40 C.F.R. Part 75 using the maximum potential flow rate and either the maximum percent CO2 concentration (in percent CO2) or the minimum percent CO2, if the unit intends to use a flow monitor and a diluent gas monitor.

(126) [691] "Maximum potential NOx emission rate" means the emission rate of NOX (in lb per MMBTU) calculated according to 40 C.F.R. 75, Appendix F, Section 3, using the maximum potential NOx concentration as defined in 40 C.F.R. 75, Appendix A, Section 2, and the maximum percent O2 or the minimum percent CO2 under all operating conditions of the unit except for unit startup, shutdown, and malfunction.

(127) [692] "Maximum rated hourly heat input" means a unit specific maximum hourly heat input (MMBTU) which is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.

(128) [693] "Mid-klin firing" means the secondary firing in kilns by injecting solid fuel at an intermediate point in the kiln using a specially designed feed injection mechanism for the purpose of decreasing NOx emissions through:

(a) Burning part of the fuel at a lower temperature; and

(b) Reducing-conditions at the solid waste injection point that may destroy some of the NOx formed upstream in the kiln burning zone.

(129) [694] "min" means minutes.

(130)(A) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 C.F.R. 52.21 or to regulations approved under 40 C.F.R. 51.166 submits a complete application under the relevant regulations.

1. For particulate matter and sulfur dioxide, the trigger date is August 7, 1977; and

2. For nitrogen dioxide, the trigger date is February 8, 1988.
(b) A minor source baseline date established originally for the TSP increments remains in effect to determine the amount of available PM_{10} increments, except that the cabinet may rescind the minor source baseline date if it is shown, to the satisfaction of the cabinet, that the emissions increase from the major modification responsible for triggering that date did not result in a significant amount of PM_{10} emissions.

(c) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:
1. The area in which the proposed source or modification will construct is designated as attainment or unclassifiable pursuant to 42 U.S.C. 7407 (7404)(d)(1)(A)(ii) or (iii) for the pollutant on the date of its complete application under the relevant regulations;
2. For a major stationary source, the pollutant will be emitted in significant amounts or a significant net emissions increase of the pollutant will occur for a major modification.

(131) [(66)] "mg" means milligram.
(132) [(66)] "ug" means microgram.
(133) [(97)] "MJ" means megajoules.
(134) [(98)] "MM" means million.
(135) [(99)] "mm" means millimeter.
(136) [(100)] "mo" means month.
(137) [(44)] "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:10.
(138) [(102)] "Modification" means a physical change in, or a change in the method of operation of, an affected facility that which:
(a) Increases the amount of a regulated air pollutant [iito which a standard applies] emitted into the atmosphere by that facility or
(b) Is not solely:
1. Maintenance, repair, or replacement that the cabinet determines to be routine for a source category;
2. An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;
3. An increase in the hours of operation;
4. Use of an alternative fuel or raw material if, prior to the date a standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility is [shall be] considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as provided prior to the change;
5. Conversion to coal required for energy considerations, as specified in 42 U.S.C. 7411(a)(6);
6. The addition or use of a system or device whose primary function is the reduction of air pollutants, unless an emission control system is removed or is replaced by a system which the cabinet determines to be less environmentally beneficial; or
7. The relocation or change in ownership of a source.
(139) [(103)] "Monitoring device" means the total equipment, required in applicable administrative regulations, used to measure and record [[if applicable]] process parameters.
(140) [(104)] "Monitoring system" means a monitoring system that meets the requirements of 40 C.F.R. Part 98.
(141) [(106)] "MW" means megawatt.
(142) [(106a)] "MW" means megawatt.
(143) [(107)] "Nameplate capacity" means the maximum electrical generating output (in MW) that a generator can sustain over a specified period of time if not restricted by seasonal or other deratings as measured with United States Department of Energy standards.
(144) "Natural conditions" means those naturally-occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.
(145) "Necessary preconstruction approvals or permits" means those permits or approvals required under the administrative regulations approved to the Kentucky SIP and federal air quality control laws and regulations.
(146) [(146)] "Net emissions increase" means, for any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of subparagraphs 1 and 2 of this paragraph exceeds zero:
1. An increase in emissions from a particular physical change or change in method of operation at a stationary source as calculated pursuant to 401 KAR 51:07, Section 1(4) or 401 KAR 51:052, Section 1(2) (f)(3); and
2. Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise credible.
(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if:
1. For construction that commences prior to January 6, 2002, the change occurs between the date ten (10) years before construction on the change commenced and the date that the increase from the change occurs;
2. For construction that commences on and after January 6, 2002, the change occurs between the date five (5) years before construction on the change commenced and the date that the increase from the change occurs.
(c) An increase or decrease in actual emissions is creditable only if:
1. The cabinet or the U.S. EPA has not relied on the change in issuing a permit for the source pursuant to 401 KAR 51:07, or 40 C.F.R. 51.165(a)(1);
2. The permit is in effect at the time the increase or decrease in actual emissions from the particular change occurs;
3. The increase or decrease in emissions did not occur at a clean unit, except as provided in 401 KAR 51:07, Sections 20(7) or 21(9) or 401 KAR 51:052, Sections 11(7) or 12(9);
4. An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. For particulate matter, only PM_{10} emissions are used to evaluate the net emissions increase for PM_{10};
5. An increase in actual emissions is creditable only to the extent that the net level of actual emissions exceeds the old level.
(d) A decrease in actual emissions is creditable only to the extent that:
1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;
2. The decrease is enforceable as a practical matter and after the time that actual construction on the particular change begins;
3. The decrease has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change;
4. The decrease did not result from the installation of add-on control technology or application of pollution prevention practices that were relied on in designating an emissions unit as a clean unit under 40 C.F.R. 52.21(v) or under administrative regulation approved pursuant to 40 C.F.R. 51.165(u) or 51.165(d).

(147) [(408)] "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable administrative regulation, irrespective of a change in emission rate.
(148) [(409)] "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.
(149) [(410)] "ng" means nanograms.
(150) [(411)] "NO" means nitric oxide.
(151) [(412)] "NO_2" means nitrogen dioxide.
(152) "Nonattainment major new source review program" or "NSR program" means a major source preconstruction permit program that has been approved by the U.S. EPA and incorporated into the Kentucky SIP to implement the requirements of 40 C.F.R.
51.185 and 40 C.F.R. Part 51, Appendix S.

(155) [4143] "NOx" means nitrogen oxides.

(156) [4144] "NOx allowance" means an authorization to emit one (1) ton of NOx during a control period under the NOx Budget Trading Program.

(157) [4145] "NOx Allowance Tracking System (NATS)" means the system by which the U.S. EPA records allocations, deductions, and transfers of NOx allowances under the NOx Budget Trading Program.

(158) [4146] "NOx authorized account representative" means the natural person who is authorized by the owner or operator to:

(a) Represent and legally bind the owner and operator in all matters pertaining to the NOx Budget Trading Program in accordance with 40 C.F.R. 96, Subpart B for a NOx budget source and all NOx budget units at the source; and
(b) Transfer or otherwise dispose of NOx allowances held in the general account in accordance with 40 C.F.R. 96, Subpart F, for a general account.

(159) [4147] "NOx budget emissions limitation" means, for a NOx budget unit, the tonnage equivalent of the NOx allowances available for compliance deduction for the unit and for a control period under 401 KAR 51:160 adjusted by deductions of sufficient NOx allowances to account for:

(a) Actual utilization under 40 C.F.R. 96.42(e) for the control period;
(b) Excess NOx emissions for a prior control period under 40 C.F.R. 96.54(d);
(c) Withdrawal from the NOx budget program under 40 C.F.R. 96.86; or
(d) A change in regulatory status for a NOx budget opt-in source under 40 C.F.R. 96.87.

(160) [4148] "NOx budget opt-in source" means an affected facility that has elected to become a NOx budget unit under the NOx Budget Trading Program and whose NOx budget opt-in permit has been issued and is in effect.

(161) [4149] "NOx budget source" means a source that includes one (1) or more NOx budget units.

(162) [4143] "NOx Budget Trading Program" means the multi-state NOx air pollution control and emission reduction program established and administered by the U.S. EPA under 40 C.F.R. 51.121 or 52.34, as a means of mitigating the interstate transport of O₃, O₅ precursors, and NOX.

(163) [4144] "NOx budget unit" means a unit that is subject to the NOx Budget Trading Program emissions limitation under 401 KAR 51:195 or 40 C.F.R. 96.80.

(164) [4145] "NOx budget unit operator" means a person who operates, controls, or supervises a NOx budget unit, a NOx budget source, or a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn and includes a holding company, utility system, or plant manager of a NOx budget unit or source.

(165) [4146] "NOx budget unit owner" means:

(a) A holder of a portion of the legal or equitable title in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn;
(b) A holder of a leasehold interest in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn;
(c) A purchaser of power from a NOx budget unit or from a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn for use within the life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, NOx budget unit owner shall not include a passive lessor, or a person who has an equitable interest through the lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NOx budget unit or the unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn; or
(d) For any general account, a person who has an ownership interest with respect to the NOx allowances held in the general account and who is subject to the binding agreement for the NOx authorized account representative to represent that person's owner.

(166) [4147] "O₃" means oxygen.

(167) [4148] "O₅" means ozone.

(168) [4149] "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(169) [4140] "Operating" means, for a NOx budget unit, having documented heat input for more than 786 hours in the six (6) months immediately preceding the submission of an application for an initial NOx budget permit.

(170) [4150] "Operator" means, for a NOx budget unit, any person who operates, controls, or supervises a NOx budget unit, a NOx budget source, or unit for which an application for a NOx budget opt-in permit is submitted and not denied or withdrawn, and includes [the operator shall include] any holding company, utility system, or plant manager of the unit or source.

(171) [4151] "Opt-in" means to be elected to become a NOx budget unit under the NOx Budget Trading Program through a final NOx budget opt-in permit.

(172) [4152] "Owner" means, for a NOx budget unit, the following persons:

(a) A holder of any portion of the legal or equitable title in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 40 C.F.R. Part 96.83 is submitted and not denied or withdrawn;
(b) A holder of a leasehold interest in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 40 C.F.R. Part 96.83 is submitted and not denied or withdrawn;
(c) A purchaser of power from a NOx budget unit or from a unit for which an application for a NOx budget opt-in permit under 40 C.F.R. Part 96.83 is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner does [shall] not include a passive lessor, or a person who has an equitable interest through the lessor, whose rental payments are not based upon the revenues or income from the NOx budget unit or for a unit for which an application for a NOx budget opt-in permit under 40 C.F.R. Part 96.83 is submitted and not denied or withdrawn; or
(d) With respect to a general account, a person who has an ownership interest with respect to NOx allowances held in the general account and who is subject to the binding agreement for the NOx authorized account representative to represent that person's ownership interest with respect to NOx allowances.

(173) [4153] "Ozone depleting potential" or "ODP", as determined by consulting 40 C.F.R. Part 82, Subpart A, Appendices A and B, means the ratio of the total amount of ozone destroyed by the amount of an ozone-depleting substance to the amount of ozone destroyed by the same mass of trichlorofluoromethane, CFC-11; i.e., the ODP of CFC-11 equals 1.0.

(174) [4154] "Ozone depleting substance" or "ODS" means any chemical compound regulated under 40 C.F.R. Part 82 with decay products, after the photolysis of the ODS by short-wave ultraviolet light, that are able to catalyze the destruction of stratospheric ozone.

(175) [4155] "PAL effective date" means:

(a) The date of issuance of the PAL permit; or
(b) For an increased PAL, the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(176) "PAL effective period" means the period beginning with the PAL effective date and ending ten (10) years later.

(177) "PAL major modification" means any physical change in or a change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(178) "PAL permit" means the permit issued by the cabinet that establishes a PAL for a major stationary source.

(179) "PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

(180) [4156] "Particulate matter" means a material, except uncombined water that [which] exists in a finely divided form as a liq-
uid or a solid as measured by the appropriate approved test method. (1811) (1434)] particulate matter emissions means, except as used at 40 C.F.R. 60, finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 C.F.R. Chapter I, or by a test method specified in the approved state implementation plan. (1821) (1466) "Peak load" means the maximum instantaneous operational load.

(1831) (1466) "Permitted capacity factor" means the annual permitted fuel use divided by the manufacturer's specified maximum fuel consumption multiplied by 8,760 hours per year.

(1841) (1437) "Person" is defined by KRS 224.01-010(17).

(1851) "Plant-wide applicability limitation" or "PAL" means an emission limitation, expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and is established source-wide in accordance with 401 KAR 51:017, Section 23 or 401 KAR 51:025, Section 14.

(1861) (1466) "PM_10" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on 40 C.F.R. 50, Appendix J and designated in accordance with 40 C.F.R. 53, or by an equivalent method designated in accordance with 40 C.F.R. 53.

(1871) (1436) "EMs" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 C.F.R. Chapter I, or by a test method specified in the approved state implementation plan.

(1881) (1466) "Pollution control project" or "PCP" means an activity, set of work practices, or project, including pollution prevention, undertaken at an existing emissions unit that reduces emissions of air pollutants from that unit in accordance with 401 KAR 51:017, Section 22 or 401 KAR 51:025, Section 13. Qualifying activities or projects include:

(a) Conventional or advanced flue gas desulfurization or sorbent injection for control of SO_2;
(b) Electrostatic precipitators, baghouses, high efficiency multi-cyclones, or scrubbers for control of particulate matter or other pollutants;
(c) Flue gas recirculation, low-Nox burners or combustors, selective noncatalytic reduction, selective catalytic reduction, low emission combustion for internal combustion (IC) engines, and oxidation-absorption catalyst for control of NOx;
(d) Control of NOx oxidizers, catalytic oxidizers, condensers, thermal incinerators, hydrocarbon combustion flares, biofiltration, absorbers and adsorbers, and floating roofs for storage vessels for control of VOCs or HAPs;
(e) An activity or project to accommodate switching, or partially switching, to an inherently less polluting fuel, to be limited to the following:

1. Switching from a heavier grade of fuel oil to a lighter fuel oil, or any grade of oil to five one-hundredths (0.05) percent sulfur diesel;
2. Switching from coal, oil, or any solid fuel to natural gas, propane, or gasified coal;
3. Switching from coal to wood, excluding construction or demolition waste, chemical or pesticide treated wood, and other forms of unclean wood;
4. Switching from coal to #2 fuel oil with a five-tenths (0.5) percent maximum sulfur content; and
5. Switching from high sulfur coal to low sulfur coal with a maximum one and two-tenths (1.2) percent sulfur content; and
(f) Activities or projects undertaken to accommodate switching from the use of one ozone depleting substance (ODS) to the use of a substance with a lower or zero ozone depletion potential (ODP), including changes to equipment needed to accommodate an activity or project described in subparagraphs 1 and 2 of this paragraph.

1. The productive capacity of the equipment is not increased as a result of the activity or project; and
2. The projected usage of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS, determined by:

a. Determining the ODP of the substances by consulting 40 C.F.R. Part 82, Subpart A, Appendices A and B;

(1891) (1454) "Calculating the replaced ODP-weighted amount by multiplying the baseline actual usage, using the annualized average of any twenty-four (24) consecutive months of usage within the past ten (10) years, by the ODP of the replaced ODS;"

(1901) (1469) "Calculating the projected ODP-weighted amount by multiplying the projected annual usage of the new substance by its ODP; and"

(1911) (1469) "If the value calculated in clause b of this subparagraph is more than the value calculated in clause c of this subparagraph, then the projected use of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS,"

(1921) (1469) "Pollution prevention" means any activity that through process changes, product reformulation or redesign or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants to the environment, including fugitive emissions, prior to recycling, treatment, or disposal and does not include recycling, other than certain in-process recycling practices, energy recovery, treatment, or disposal.

(1931) (1440) "Portland cement" means a hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium aluminates.

(1941) (1441) "Portland cement kiln" means a system, including solid, gaseous or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce Portland cement clinker.

(1951) (1442) "Potential to emit" or "PTE" means:

(a) The maximum capacity of a stationary source to emit a regulated air pollutant given its physical and operational design, with the following exceptions:

1. [a(a)] A physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed is [shall be] treated as part of its design if the limitation is enforceable as a practical matter; and
2. [b(b)] This definition does not alter or affect the use of this term for other purposes of the Act or the term "capacity factor" as used in the Acid Rain Program.

(b) For the PSD and NSR programs, the maximum capacity of a stationary source to emit a pollutant under its physical or operational design, where:

1. A physical or operational limitation on the capacity of the source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, is treated as part of its design if the limitation or the effect it would have on emissions:

a. Is federally enforceable; or
b. For an actual PAL, is federally enforceable or enforceable as a practical matter; and

2. Secondary emissions are not counted.

(1991) (1443) "ppb" means parts per billion.

(1991) (1444) "ppm" means parts per million.

(1991) (1445) "ppm(ww)" means parts per million (weight by weight).

(1991) (1446) "Precalciner kiln" means a kiln where the feed to the kiln system is preheated in cyclone chambers and utilizes a second burner to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln that [which] forms clinker.

(1991) (1447) "Preheater kiln" means a kiln where the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln that [which] forms clinker.

(1991) (1448) "Preheating improvement program" or "PEM" means all of the equipment necessary to monitor process and control device operational parameters, such as control device secondary voltages and electric currents, and other information, such as gas flow rate, oxygen or carbon dioxide concentrations, and to calculate and record the mass emissions rate on a continuous basis.

(1891) (1474) "Preheater kiln" means a kiln where the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln that [which] forms clinker.

(1991) (1449) "Preheating improvement program" or "PEM" means all of the equipment necessary to monitor process and control device operational parameters, such as control device secondary voltages and electric currents, and other information, such as gas flow rate, oxygen or carbon dioxide concentrations, and to calculate and record the mass emissions rate on a continuous basis.

(2001) (1474) "Preheater kiln" means a kiln where the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln that [which] forms clinker.

(1991) (1449) "Preheating improvement program" or "PEM" means all of the equipment necessary to monitor process and control device operational parameters, such as control device secondary voltages and electric currents, and other information, such as gas flow rate, oxygen or carbon dioxide concentrations, and to calculate and record the mass emissions rate on a continuous basis.

(2001) (1474) "Preheater kiln" means a kiln where the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln that [which] forms clinker.
which a pollution control project is undertaken to reduce emissions of that pollutant.

(201) "Project" means a physical change in or change in method of operation of an existing major stationary source.

(202) "Projected actual emissions" means:

(a) The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five (5) years, in a twelve (12) month period, following the date the unit resumes regular operation after the project, or in any one (1) of the ten (10) years following that date, if:

1. The project involves increasing the emissions unit's design capacity or its potential to emit the regulated NSR pollutant; and
2. Full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(b) To determine projected actual emissions, before beginning actual construction, the owner or operator of the major stationary source:

1. A. Considers all relevant information, including historical operational data and the company's own representations of expected and highest projected business activity; filings with the cabinet and the U.S. EPA; and compliance plans under the Kentucky SIP;
2. Includes fugitive emissions and emissions associated with startups, shutdowns, and malfunctions; and
3. A. Includes in calculating any increase in emissions that results from a project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive twenty-four (24) month period used to establish the baseline actual emissions and that are also unrelated to the project, including any increased utilization due to product demand growth; or
4. Elects to use the emissions unit's potential to emit, in tons per year, in lieu of using subparagraph 1 of this paragraph to determine projected actual emissions.

(203) (448b) "psia" means pounds per square inch absolute.

(204) (449) "psig" means pounds per square inch gage.

(205) "RACT/BACT/LAER Clearancehouse" or "RBLIC" means the U.S. EPA's online [a] collection of previous RACT/BACT/ LAER determinations [technologies maintained on-line by the U.S. EPA].

(206) "Reactivation of a very clean coal-fired EUSGU" means a physical change or change in the method of operation associated with the commencing of commercial operations by a coal-fired utility unit after a period of discontinued operation if the unit:

(a) Has not been in operation for the two (2) year period between November 15, 1988, and November 15, 1990, and the emissions from that unit continue to be carried in the Kentucky emissions inventory after November 15, 1990;

(b) Has been equipped to avoid or to shutdown with a continuous system of emissions control achieving a removal efficiency for sulfur dioxide of no less than eighty-five (85) percent and a removal efficiency for particulates of no less than ninety-eight (98) percent;

(c) Is equipped with low-NOx burners prior to the time of commencement of operations following reactivation; and

(d) Is otherwise in compliance with the requirements of 42 U.S.C. 7401 to 7671a.

(207) "Reasonable further progress" means annual incremental reductions in emissions of the relevant air pollutant as required by 42 U.S.C. 7515 to 7515 or may reasonably be required by the U.S. EPA for the purpose of ensuring the attainment of the applicable ambient air quality standard by the applicable date specified.

(208) (448b) "Reconstruction" means the replacement of components of an existing affected facility to the extent that:

(a) The fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility; and

(b) It is technologically and economically feasible to meet the applicable requirements of 401 KAR Chapters 50 to 65. The "reasonable distance method" means a method of sampling and analyzing for an air pollutant as prescribed by 40 C.F.R. 50, Appendices A to N; 40 C.F.R. 60, Appendices A and B; and 40 C.F.R. 61, Appendix B.

(210) "Regulated NSR pollutant" means the following:

(a) A pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the U.S. EPA;

(b) A pollutant that is subject to any standard promulgated under 41 U.S.C. 7411;

(c) A pollutant that is subject to a standard promulgated under or established by 42 U.S.C. 7671 to 7671a; or

(d) A pollutant that otherwise is subject to regulation under 42 U.S.C. 7401 to 7671q, except that any hazardous air pollutant (HAP) listed in 42 U.S.C. 7412 or added to the list pursuant to 42 U.S.C. 7412(b)(2), which has not been delisted pursuant to 42 U.S.C. 7412(b)(3), is not a regulated NSR pollutant unless the listed HAP is also regulated as a constituent or precursor of a general pollutant listed under 42 U.S.C. 7408.

(211) "Replacement unit" means an emissions unit that does not generate creditable emissions reductions by shutting down the existing emissions unit that is replaced, and that:

(a) 1. Is a reconstructed unit within the meaning of 40 C.F.R. 60 15(b)(1) (a) or that completely takes the place of an existing emissions unit; and
2. Is identical to or functionally equivalent to the replaced emissions unit; and
3. Does not alter the basic design parameters of the process unit.

(b) Replaces a unit that:

1. Is permanently removed from the major stationary source, is otherwise permanently disabled, or is prohibited from operating by a permit that is enforceable as a practical matter; and
2. If brought back into operation, is considered a new emissions unit.

(212)(a) "Repowering" means:

1. Replacement of an existing coal-fired boiler with one (1) of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magne- neto hydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the U.S. EPA in consultation with the Secretary of Energy, a derivative of one (1) or more of these technologies, or another technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990; and
2. An oil or gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991 by the Department of Energy.

(b) A permit application from a source that satisfies this definition shall receive expedited consideration by the cabinet and is granted an extension under 42 U.S.C. 7551h.

(213) "Responsible official" means:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or other person who performs similar policy or decision-making functions for the corporation, or a duly-appointed representative of that person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit; and

1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25,000,000 in second quarter 1980 dollars; or
2. The delegation of authority to the representative is approved in advance by the cabinet;

(b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively;

(c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. The principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operation of a principal geographic unit of the agency; or

(d) For the acid rain portion of a permit for an affected source, the designated representative.

(214) (4462) "Run" means the net period of time, either intermittent or continuous, within the limits of good engineering practice during which an emission sample is collected.

(215) (4463) "S" means at standard conditions.

(216) (4464) "sec" means second.

(217) (4466) "Secondary emissions" means emissions that:

(a) Occur as a result of the construction or operation of a
major stationary source or major modification, and [and
2.) do not come from the major stationary source or major modifi-
cation itself.
(b) Do not include emissions from a non-source support facility that [which]
would not otherwise be constructed or increased its emissions as a
result of the construction or operation of the major stationary source
or major modification; and
(c) Do not include emissions that [which] will be directly
emitted from a mobile source, including emissions from the tailpipe of
a motor vehicle, a train, or vessel.
(218) [(465)] “Severe nonattainment county” or “severe non-
attainment area” means a county or portion of a county designated
as a severe nonattainment area for the one (1) hour national ambient air
quality standard for ozone in 401 KAR 51:010.
(219) [(469)] “Severe nonattainment area” means a county or portion of a county designated
as a severe nonattainment area for the one (1) hour national ambient air
quality standard for ozone in 401 KAR 51:010.
(220) [(468)] “Shutdown” means the cessation of an operation.
(221) “Significant means:
(a) For 401 KAR 51:017, in reference to a net emissions in-
crease, the potential of a source to emit any of the pollutants listed
in the following table, a rate of emissions that would equal or exceed
a corresponding rate listed in the table:

<table>
<thead>
<tr>
<th>POLLUTANT</th>
<th>EMISSIONS RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carbon monoxide</td>
<td>100 tons per year (tpy)</td>
</tr>
<tr>
<td>Ozone depleting substance</td>
<td>100 tpy</td>
</tr>
<tr>
<td>Nitrogen oxides</td>
<td>40 tpy</td>
</tr>
<tr>
<td>Sulfur dioxide</td>
<td>40 tpy</td>
</tr>
<tr>
<td>Particulate matter</td>
<td>25 tpy of particulate matter emissions</td>
</tr>
<tr>
<td>Ozone</td>
<td>40 tpy of volatile organic compounds</td>
</tr>
<tr>
<td>Lead</td>
<td>0.6 tpy</td>
</tr>
<tr>
<td>Asbestos</td>
<td>0.007 tpy</td>
</tr>
<tr>
<td>Beryllium</td>
<td>0.0004 tpy</td>
</tr>
<tr>
<td>Mercury</td>
<td>0.1 tpy</td>
</tr>
<tr>
<td>Vinyl chloride</td>
<td>1 tpy</td>
</tr>
<tr>
<td>Fluorides</td>
<td>3 tpy</td>
</tr>
<tr>
<td>Sulfuric acid mist</td>
<td>7 tpy</td>
</tr>
<tr>
<td>Hydrogen sulfide (H₂S)</td>
<td>10 tpy</td>
</tr>
<tr>
<td>Total reduced sulfur (including H₂S)</td>
<td>10 tpy</td>
</tr>
</tbody>
</table>
| Reduced sulfur compounds (in-
  cluding H₂S)                      | 10 tpy          |
| Municipal waste combustor organ-
  nics (measured as total tetra-
  through octa-chlorinated dibeno-
  p-dioxins and dibenzofurans)     | 3.2 x 10⁻⁶ megagrams per year (Mg/y) (3.5 x 10⁻⁶ tpy) |
| Municipal waste combustor meta-
  ls (measured as particulate matter) | 14 Mg/y (15 tpy) |
| Municipal waste combustor acid
  gases (measured as sulfur dioxide and hydrogen chloride) | 36 Mg/y (40 tpy) |
| Municipal solid waste landfill em-
  isions (measured as nonmethane
  organic compounds)               | 35 Mg/y (50 tpy) |

(b) For 401 KAR 51:017, in reference to a net emissions in-
crease, the potential of a source to emit any of the pollutants listed
in the table in paragraph (a) of this subsection, any
emissions rate.
(c) For 401 KAR 51:017, in reference to an emissions rate or a
net emissions increase associated with a major stationary source or
major modification, which is to be constructed within ten (10) kilo-
meters of a Class I area, an impact on that area equal to or greater
than one (1) μg/m³ over a twenty-four (24) hour average.
(d) For 401 KAR 51:019, in reference to the net emissions in-
crease or the potential of a source to emit any of the pollutants listed
in the following table, a rate of emissions that would equal or exceed
a corresponding rate listed in the table:

<table>
<thead>
<tr>
<th>POLLUTANT</th>
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</tr>
<tr>
<td>Sulfur dioxide</td>
<td>40 tpy</td>
</tr>
<tr>
<td>Ozone</td>
<td>40 tpy of volatile organic compounds</td>
</tr>
<tr>
<td>Lead</td>
<td>0.6 tpy</td>
</tr>
</tbody>
</table>

(222) “Significant emissions increase” means, for a regulated
NSR pollutant, an increase in emissions that is greater than the
level of emissions that was identified for that pollutant.
(223) “Significant emissions unit” means an emissions unit that
emits or has the potential to emit a PAL pollutant in an amount that
is equal or greater than the applicable significant level as defined in subsec-
ction (221) of this section or in 42 U.S.C. 7410 to 7671a
whichever is lower for that PAL pollutant, but less than the amount
that would qualify the unit as a major emissions unit.
(224) “Small emissions unit” means an emissions unit that emits
or has the potential to emit the PAL pollutant in an amount less than the
PAL pollutant’s applicable significant level as defined in subsec-
ction (221) of this section or in 42 U.S.C. 7410 to 7671a, whichever
is lower.
(225) [(465)] “SO₂” means sulfur dioxide.
(226) [(460)] “Source” means one (1) or more affected facilities
within the contiguous property line, which means the property is separated only by a public thoroughfare, stream, or other
right of way.
(227) [(461)] “sq” means square.
(228) [(462)] “Stack or chimney” means a flue, conduit, or duct
arranged to conduct emissions to the atmosphere.
(229) [(463)] “Standard” means an emission standard, a stan-
dard of performance, or an ambient quality standard as promul-
 gated in 401 KAR Chapters 50 & 65, including the emission control
requirements necessary to comply with 401 KAR Chapter 51.
(230) [(464)] “Standard conditions”:
(a) For source measurements means twenty (20) degrees Cel-
sius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm
Hg (29.92 in. of Hg).
(b) For the purpose of air quality determinations means twenty-
five (25) degrees Celsius and a reference pressure of 760 mm Hg.
(231) [(466)] “Start-up” means the setting in operation of an af-
fected facility.
(232) [(467)] “State implementation plan” or “SIP” means the
most recently prepared plan or revision required by 42 U.S.C. 7410
that [which] has been approved by the U.S. EPA.
(233) “Stationary source” means a building, structure, facility, or
installation that emits or may emit a regulated NSR pollutant.
(234) [(167)] “Submit” means to send or transmit a document,
information, or correspondence in accordance with an applicable
requirement.
(235) [(468)] “TAPPPI” means Technical Association of the Pulp
and Paper Industry.
(236) “Temporary clean coal technology demonstration project”
means a clean coal technology demonstration project that is oper-
ated for a period of five (5) years or less and that complies with the
Kentucky SIP and with other requirements necessary to attain and
maintain the national ambient air quality standards during and after
the project is terminated.
(237) [(469)] “Ton” or “tonnage” means, for a NOx budget
source, a short ton or [82,000 pounds]. For determining compli-
ance with the NOx budget emissions limitation, total tons for a con-
trolled period is calculated as the sum of all recorded hourly
emissions, [[or the tonnage equivalent of the recorded hourly emis-
sions rates, [i] in accordance with 40 C.F.R. 96, Subpart H with any
remaining fraction of a ton equal to or greater than 0.50 ton deemed
equal to one (1) ton and any fraction of a ton less than 0.50 ton

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deemed to equal zero tons.

(238) [470] "Total suspended particulates" or "TSP" means particulate matter as measured by the method described in 40 C.F.R. 50, Appendix B.

(239) [471] "fly" means tons per year.

(240) [472] "TSS" means total suspended solids.

(241) [473] "Uncombined water" means water that [which] can be separated from a compound by ordinary physical means and that [which] is not bound to a compound by internal molecular forces.

(242) [474] "Unit" means a fossil-fuel-fired stationary boiler, combustion turbine, or combined cycle system.

(243) [475] "Urban county" means a county that [which] is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county is [shall be] classified as urban for [with respect to] the administrative regulations of the Division for the following:

(244) [476] "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(245) [477] "U.S. EPA" means the United States Environmental Protection Agency.

(246) [478] "UTM" means Universal Transverse Mercator.

(247) "Visibility impairment" means a human perceptible change in visibility such as visual range, contrast, or coloration from that which would exist under natural conditions.

(248) [479] "Volatile organic compound" or "VOC" means an organic compound that participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; acetylene; hydrogen cyanide; acetaldehyde; methanol; ethylene; ethylene oxide; methylene chloride; trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); 1,2-dichloro-1,2,2-trifluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1-chloro-1,1-difluoroethane (HCFC-141b); 1-chloro-1,1,2-trifluoroethane (HFC-125a); 1,1,2,2-tetrafluoroethane (HFC-134a); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-difluoroethane (HFC-152a); perfluorobutane (CF3CF2CF2CF3); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,2,3,3,5,5,5-heptadecafluoropentane (HFC-4310mee);

(249) [(480)] "yd" means yard.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:


(2) This material may be inspected, copied or obtained, subject to applicable copyright law. (The documents incorporated by reference in subsection (1) of this section are available for public inspection and copying (subject to copyright law) at the following main and regional offices of the Kentucky Division for Air Quality during the normal working hours of 8 a.m. to 4:30 p.m., local time:

(a) Kentucky Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601-1403, (502) 573-3382;

(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102, (606) 929-5285;

(c) Bowling Green Regional Office, 1508 Weston Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (800) 878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 887-7304;

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (270) 898-8468; and

(i) Frankfort Regional Office, 643 Teton Trail, Suite B, Frankfort, Kentucky 40601, (502) 584-3358.

[3][a] The Standard Industrial Classification Manual is also available under Order No. PH 87-100012 from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, phone (703) 497-4650.


LAUJANA S. WILCHER, Secretary

APPROVED BY AGENCY: May 14, 2004

FILED WITH LRC: May 14, 2004 at noon

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ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS, June 8, 2004)

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

RELATES TO: KRS 224.10-100, 40 C.F.R. 51 Subpart I, Appendix S, Section IV, Part 51, Appendix W, 51, 51.166, 52.21, Part 58, Appendix B, 60, 61, 63, 81, 81.318, 81 Subpart D, 42 U.S.C. 7401-7671q (Clean Air Act), 4321-4370d (National Environmental Policy Act)

STATUTORY AUTHORITY: KRS 224.10-100, 40 C.F.R. 51, 52.21, 42 U.S.C. 7401-7671q (Clean Air Act)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the [Natural-Resources-and Environmental and Public Protection] Cabinet to promulgate (prescribe) administrative regulations for the prevention, abatement and control of air pollution. This administrative regulation provides for the prevention of significant
deterioration of ambient air quality. The provisions of this administrative regulation are not different nor more stringent than the federal regulation, 40 C.F.R. 51.166.

Section 1. Definitions. Terms not defined in this section shall have the meaning given them in 401 KAR 51:001.

(1)(a) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with paragraphs (b) to (d) of this subsection.

(b) Actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during the two (2) year period which precedes the particular date and is representative of normal source operation. The cabinet may allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit’s actual operating hours, production rates, and other data on emissions processed, stored, or combusted during the selected time period.

(c) The cabinet may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For an emissions unit (other than an electric utility steam generating unit) which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(e) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit), actual emissions of the unit following the physical or operational change shall equal the representative, actual annual emissions of the unit following the physical or operational change, if the source owner or operator maintains and submits to the cabinet, on an annual basis for a period of five (5) years from the date the unit resumes normal operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed ten (10) years, may be required by the cabinet if it determines that period to be more representative of normal source postchange operations.

(2) "Adverse impact on visibility" means visibility impairment which, when integrated with the management, protection, preservation, or enjoyment of the existing visual experience of the Class I area. This determination shall be made on a case-by-case basis and shall consider the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with the times of visitation of the use of the Class I area, and the frequency and timing of natural conditions that reduce visibility.

(3) "Baseline concentration" means the emissions rate of a stationary source which is calculated using the maximum rated capacity of the source (unless the source is subject to state or federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards in Title 401, KAR Chapters 57, 59, 60, and 63, or 40 C.F.R. 60, 61, and 63;

(b) The applicable state or federally approved regulatory emissions limitation, including those with a future compliance date;

(c) The emissions rate specified as a state or federally enforceable permit condition, including those with a future compliance date.

(4)(a) "Baseline area" means an intrastate area (and every part of that area designated as attainment or unclassifiable pursuant to 42 U.S.C. 7404(d)(1)(A)(i) or (iii) of the Clean Air Act) in which the major source or major modification of a stationary source which is calculated using the maximum rated capacity of the source (unless the source is subject to state or federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards in Title 401, KAR Chapters 57, 59, 60, and 63, or 40 C.F.R. 60, 61, and 63;

(b) The applicable state or federally approved regulatory emissions limitation, including those with a future compliance date;

(c) The emissions rate specified as a state or federally enforceable permit condition, including those with a future compliance date.

(b) A baseline area established originally for total suspended particulate (TSP) increments shall remain in effect and shall apply in determining the amount of available PM10 increments, except that this baseline area shall not remain in effect if the cabinet rescinds the corresponding minor source baseline date in accordance with subsection (27)(b) of this section.

(5) "Baseline concentration" means that ambient concentration level which exists in the baseline area when the applicable minor source baseline date is established. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(a) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph (c) of this subsection; and

(b) The allowable emissions of major, stationary sources which commenced construction before the major source baseline date but were not in operation by the applicable minor source baseline date.

(c) The following shall not be included in the baseline concentration and shall affect the maximum applicable allowable increase:

1. Actual emissions at a major source, which result from construction commencing after the major source baseline date; and

2. Actual emissions increases and decreases at a stationary source occurring after the minor source baseline date.

(6)(a) "Baseline date" means major source baseline date, defined in subsection (24) of this section, or minor source baseline date, defined in subsection (27) of this section.

(b) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if the area in which the proposed source or existing source is located is designated as attainment or unclassifiable pursuant to 42 U.S.C. 7407(d)(1)(A)(i) or (iii) of the Clean Air Act for the pollutant on the date of its complete application; and

2. For a major stationary source, the pollutant would be emitted in significant amounts, or, for a major modification, there would be a significant net emissions increase of the pollutant.

(7) "Begin actual construction" means initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Those activities include, but are not limited to, installation of building supports and foundations, laying underground pipework, and construction of permanent storage structures. For a change in method of operations, this term refers to those on-site activities other than the preparatory activities which mark the initiation of the change.

(8) "Best available control technology" means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under 42 U.S.C. 7401 to 7477tq (Clean Air Act), which would be emitted from a proposed major stationary source or major modification of the unit when the cabinet, in its discretion, determines that the source is not subject to state or federally enforceable limits which restrict the operating rate, or hours of operation, or both, based upon an evaluation of the energy, environmental, and economic impacts and other costs, determined for that source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of that pollutant. Application of best available control technology shall not result in emissions of a pollutant which would exceed the amounts allowed by applicable standards under Title 401, KAR Chapters 57, 59, 60, and 63, or 40 C.F.R. Parts 60, 61, and 63. If the cabinet determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard unfeasible, a design, equipment, work practice, or operational standard, or combination of design, equipment, work practice, or operational standard, may be prescribed in order to satisfy the requirements for the application of best available control technology. That standard shall, to the degree possible, establish the emissions reduction achievable by implementation of the design, equipment, work practice, or operational standard, and shall provide for compliance by means which achieve equivalent results.

(9) "Building, structure, facility, or installation" means all of the pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control, except the activities of a vessel. Pollutant emitting activities shall be considered part of the same industrial grouping if they belong to the same major group (i.e., have the same two (2) digit code) as described in the Standard Industrial Classification Manual, 1987, which has been incorporated by reference in Section 21 of this administrative regulation.
(10) "Clean coal technology" means a technology, including technologies applied at the precombustion, combustion, or post-combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(11) "Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy—Clean Coal Technology" up to a total amount of $2,600,00,000 for commercial demonstration of clean coal technology, or a similar project funded through appropriations for the U.S. EPA. The federal contribution for a qualifying project shall be at least twenty (20) percent of the total cost of the demonstration project.

(12) "Commences", for construction of a major stationary source or major modification, means the date the owner or operator has all necessary preconstruction approvals or permits and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) Entered into agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(13) "Complete", means, in reference to an application for a permit, that the application contains information necessary for processing the application. Designating an application complete for permit processing does not preclude the cabinet from requesting or accepting additional information.

(14) "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

(15) "Electric utility steam generating unit" means a steam electric generating unit that is constructed for the purpose of supplying more than one-third (1/3) of its potential electric output capacity and more than twenty-five (25) megawatts electrical output to ultimate consumers. Steam supplied to a steam distributing system for the purpose of providing steam to a steam electric generator producing electric energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(16) "Emissions unit" means a part of a stationary source which emits or would have the potential to emit a pollutant subject to regulation under 42 U.S.C. 7401 to 7471q (Clean Air Act).

(17) "Federal land manager" means, for lands in the United States, the secretary of the department with authority over those lands.

(18) "Federally enforceable" means all limitations and conditions which are enforceable by the U.S. EPA, including those requirements developed pursuant to 40 C.F.R. 60, 61, and 63, requirements within an applicable State Implementation Plan (SIP) and any permit requirements established pursuant to 40 C.F.R. 52.21, or under regulations approved pursuant to 40 C.F.R. Part 61, Subpart H, including operating permits issued under an EPA approved program incorporated into the SIP, which expressly require adherence to a permit issued under the program.

(19) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(20) "High terrain" means an area having an elevation of 900 feet or more above the base of the stack of a source.

(21) "Innovative control technology" means a system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction or achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

(22) "Low terrain" means an area other than high terrain.

(23) "Major modification" means a physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of any pollutant subject to regulation under 42 U.S.C. 7401 to 7471q (Clean Air Act).

(a) A net emissions increase that is significant for volatile organic compounds shall be significant for ozone.

(b) A physical change or change in the method of operation shall not include:

1. Routine maintenance, repair or replacement;

2. Use of an alternative fuel or raw material by reason of an order or a natural gas curtailment plan in effect under a federal act;

3. Use of an alternative fuel at a steam generating unit if the extent to which the fuel is generated from municipal solid waste.

4. Use of an alternative fuel or raw material by a stationary source which:

   a. The source was capable of accommodating before January 6, 1976, unless the change would be prohibited under a condition which was established after January 6, 1976; or

   b. The source is approved to use under a permit issued under this administrative regulation or under 40 C.F.R. 52.21;

5. An increase in the hours of operation or in the production rate, unless the change would be prohibited after January 6, 1976, pursuant to 40 C.F.R. 52.21; after June 6, 1979, pursuant to 401 KAR 51:015; after September 22, 1982, pursuant to this administrative regulation; or under 401 KAR 52:020 and 401 KAR 51:016E; or

6. A change in ownership at a stationary source.

7. The addition, replacement, or use of a pollutant control project at an existing electric utility steam generating unit, unless the cabinet, in consultation with U.S. EPA, determines that such addition, replacement, or use renders the unit less environmentally beneficial, unless:

   a. The cabinet has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of criteria pollutants over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of 42 U.S.C. 7401 to 7471q (Title I of the Clean Air Act), if any; and

   b. The cabinet determines that the increase will cause or contribute to a violation of any national ambient air quality standard or prevention of significant deterioration (PSD) increment or visibility limitation.

8. The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, if the project complies with the Kentucky SIP and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

9. The installation of a permanent clean coal technology demonstration project that constitutes repowering, if the project does not result in an increase in the potential to emit of a regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

10. The reactivation of a very clean coal-fired electric utility steam generating unit.

(24) "Major source baseline date" means:

   (a) For particulate matter and sulfur dioxide, January 6, 1976; and

   (b) For nitrogen dioxide, February 8, 1988.

(25)(a) "Major stationary source" means:

   1. Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of a pollutant subject to regulation under 42 U.S.C. 7401 to 7471q (Clean Air Act); fossil fuel-fired steam electric plants of more than 260 million BTU per hour-heat input, coal cleaning plants (with thermal dryers); Kraft pulp mills, portland cement plants, primary zinc-smelters, iron and steel-mill plants, primary aluminum and other reduction plants, primary copper-smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric-sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal-production plants, chemical-process plants, fossil fuel boilers (or combination of fossil fuel boilers) totaling more than 260 million BTU per hour-heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore-processing plants, glass fiber processing plants, and charcoal production plants; and

   2. Notwithstanding the stationary source size specified in subparagraph 1 of this paragraph, a stationary source which emits, or has the potential to emit, 250 tons per year or more of air pollutants...
ant-subject to regulation under 42 U.S.C. 7401 to 7477q (Clean Air Act); or

3. Any physical change that would occur at a stationary source not otherwise qualifying under this subsection as a major stationary source, if the change would constitute a major stationary source by itself.

(b) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(c) For this administrative regulation, the fugitive emissions of a stationary source shall not be included in determining if it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

1. Coal cleaning plants (with thermal dryers);
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants (furnace-process);
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants;
21. Fossil-fuel boilers (or combination of fossil-fuel boilers) totaling more than 250 million BTUs per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil-fuel-fired electric plants of more than 250 million BTUs per hour heat input.

27. Any stationary source category which, as of August 7, 1980, is being regulated under 401 KAR Chapters 67, 69, 60, and 63, 40 C.F.R. Parts 50, 61, 63, or 42 U.S.C. 7471 or 7412 (Section 111 or 112 of the Clean Air Act).

26. "Mandatory Class I federal area" means an area identified in 40 C.F.R. 81, Subpart D, where the administrator of the U.S. EPA, in consultation with the Secretary of the United States Department of Interior, has determined visibility to be an important value.

27(a). "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 C.F.R. 52.21 or to regulations approved pursuant to 40 C.F.R. 51.166 submits a complete application under the relevant regulations. The trigger date shall be:

1. For particulate matter and sulfur dioxide, August 7, 1977; and
2. For nitrogen dioxide, February 8, 1988.

(b) A minor source baseline date established originally for the TSP increments shall remain in effect and shall apply in determining the amount of available PM10 increments, except that the cabinet may rescind the minor source baseline date if it can be shown to the satisfaction of the cabinet, that the emissions increase from the major modification responsible for triggering that date did not result in a significant amount of PM10 emissions.

28. "Natural conditions" means those naturally-occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

29. "Necessary preconstruction approvals or permits" means those permits or approvals required under the regulations of 401 KAR Chapters 50 to 65 and federal air quality control laws and regulations.

30(a). "Net emissions increase" means the amount by which the sum of subparagraphs 1 and 2 of this paragraph exceeds zero:

1. An increase in actual emissions from a particular-physical change or change in method of operation at a stationary source; and
2. Other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(b) An increase or decrease in actual emissions is creditable only if the cabinet or the U.S. EPA has not relied on it in issuing a permit for the source under this administrative regulation, or 40 C.F.R. 52.21, if the permit is in effect when the increase in actual emissions from the particular change occur.

(c) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides which occurs before the applicable minor source baseline date is creditable only if it is considered in calculating the amount of maximum allowable increases remaining available. For particulate matter, only PM10 emissions shall be evaluated to determine the net emissions increase for PM10.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(e) A decrease in actual emissions is creditable only to the extent that:

1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;
2. It is state or federally enforceable from the time that actual construction on the particular change begins; and
3. It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred begins to emit a particular pollutant. A replacement unit that requires a shutdown becomes operational only after a reasonable shutdown period, not to exceed 180 days.

31. "Pollution-control project" means an activity or project undertaken at an existing electric utility steam generating unit in order to reduce emissions from that unit. Such activities and projects are limited to:

(a) The installation of conventional or innovative pollution-control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides control and electrostatic precipitators.

(b) An activity or project to accommodate switching to a fuel that is less polluting than the fuel used prior to the activity or project, including but not limited to natural gas or coal reburning, or the cofiring of natural gas and other fuels for the purpose of controlling emissions.

(c) A permanent clean coal technology demonstration project conducted under 42 U.S.C. 5803(d). Title II, section 101(d), of the Further Continuing Appropriations Act of 1988, or subsequent appropriations, up to a total of $200,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the U.S. Environmental Protection Agency; or

(d) A permanent clean coal technology demonstration project that constitutes a repowering project.

32. "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical or operational design:

(a) A physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is state or federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(b) "Reactivation of a very clean coal-fired electric utility steam generating unit" means a physical change or change in the method
of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation if the unit:
(a) Has not been in operation for the two (2) year period between November 15, 1988, and November 15, 1990, and the emissions from that unit continue to be carried in the Kentucky emissions inventory after November 15, 1990;
(b) Was equipped prior to shutdown with a continuous system of emissions control achieving a removal efficiency for sulfur dioxide of no less than eighty-five (85) percent and a removal efficiency for particulates of no less than ninety-eight (98) percent;
(c) Is equipped with low NOx burners prior to the time of commencement of operations following reactivation; and
(d) Is otherwise in compliance with the requirements of 42 U.S.C. 7401 to 7674q (Clean Air Act).
(34)(4) "Repowering" means replacement of an existing coal-fired boiler with one (1) or more new coal-fired boilers with associated technologies or modernized or replaced existing coal-fired boilers with associated technologies: atmospheric and fluidize fired boilers, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator of U.S. EPA in consultation with the Secretary of Energy, a derivative of one or more of these technologies, or another technology capable of controlling multiple emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.
(b) Repowering shall also include an oil or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991 by the Department of Energy.
(c) The cabinet shall give expedited consideration to a permit application from a source that satisfies the requirements of this subsection and is granted an extension under 42 U.S.C. 7651h (Section 409 of the Clean Air Act).
(35) "Representative actual annual emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two (2) year period after a physical change or change in the method of operation of a unit (or major modification in the case of a unit, which is not a source) for a two (2) year period in the ten (10) years after that change, if the cabinet determines that this period is more representative of normal source operations, considering the effect the change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the cabinet shall:
(a) Consider all the relevant information, including but not limited to, historical operational data, the company's own representation, filings with local, state, or federal regulatory authorities, and compliance plans under 42 U.S.C. 7651 to 7651a (Title IV of the Clean Air Act); and
(b) Excludes in calculating an increase in emissions that results from the particular physical change or change in method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.
(36) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For this administrative regulation, secondary emissions shall be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from an off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions shall not include emissions which come from a mobile source, (e.g., the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel).
(37) "Significant" means:
(a) In reference to a net emissions increase or the potential of a source to emit a pollutant listed in Section 22 of this administrative regulation, a rate of emissions that would equal or exceed a rate given in Section 22 of this administrative regulation.
(b) Reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under 42 U.S.C. 7401 to 7574q (Clean Air Act), that is not listed in Section 22 of this administrative regulation, any emissions rate.
(c) Notwithstanding paragraph (b) of this subsection and Section 22 of this administrative regulation, "significant" means an emissions rate or net emissions increase associated with a major stationary source or major modification which is to be constructed within ten (10) kilometers of a Class I area and has an impact on that area equal to or greater than one (1) (μg/m^3) (twenty-four (24) hour average).
(38) "Stationary source" means a building, structure, facility, or installation which emits or may emit an air pollutant subject to regulation under the 42 U.S.C. 7401 to 7674q (Clean Air Act).
(39) "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five (5) years or less, and which complies with the Kentucky SIP and with other requirements necessary to attain and maintain the national ambient air quality standards during and after the project is terminated.
(40) "Visibility impairment" means a humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.
Section 2. Applicability. (1) This administrative regulation shall apply to the construction of a new [a] major stationary source or any project at an existing major stationary source that commences construction after September 22, 1982, and locates in an area designated attainment or unclassifiable under 42 U.S.C. 7407(d)(1)(A)(ii) and (d).
(2) Except as otherwise provided in this administrative regulation, the provisions of Sections 8 to 16 of this administrative regulation shall apply to the construction of a new major stationary source or a major modification of an existing major stationary source.
(3) The owner or operator of a new major stationary source or major modification, which is subject to the requirements of Sections 8 to 16 of this administrative regulation, shall not begin actual construction without a proposed permit or proposed permit revision issued under 401 KAR 62-020 stating that the major stationary source or major modification shall meet these requirements.
(4) Applicability tests for projects. Except as provided in subsection (5) or (6) of this section, a project shall be a major modification for a regulated NSR pollutant only if the project causes a significant emissions increase and a significant net emissions increase as provided in paragraphs (a) and (b) of this subsection.
(a) Prior to beginning actual construction, the owner or operator shall first determine if a significant emissions increase will occur for the applicable type of unit being constructed according to subparagraphs 1 to 4 of this paragraph.
1. Actual-to-projected actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit equals or exceeds the significant amount for that pollutant.
2. Actual-to-projected test for projects that involve only construction of new emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the potential to emit from each new emissions unit following completion of the project equals or exceeds the significant amount for that pollutant.
3. Emissions test for projects that involve clean units. An emissions increase shall not be deemed to occur for a project that will be constructed and operated at a clean unit without causing the unit to lose its clean unit designation, as provided in Sections 20 and 21 of this administrative regulation.
4. Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the emissions increases for each emissions unit, using a method specified in subparagraphs 1 to 3 of this paragraph as applicable, equals or exceeds the significant amount for that pollutant.
(b) Prior to beginning actual construction and after completing
the applicable procedure of paragraph (a) of the subsection, the owner or operator shall determine for each regulated NSR pollutant if a significant net emissions increase will occur pursuant to 401 KAR 51:011, Section 114(6).

(5) For a plant-wide applicability limit (PAL) for a regulated NSR pollutant at a major stationary source, the owner or operator of the major stationary source shall comply with the applicable requirements of Section 23 of this administrative regulation.

(6) An owner or operator undertaking a pollution control project (PCP) shall comply with Section 22 of this administrative regulation.

[Major Modifications which,]

(1) commenced construction after September 22, 1982;

(2) emits a pollutant regulated by 42 U.S.C. 7401 to 7474q (Clean Air Act); and

(3) is constructed in an area designated as attainment or unclassifiable for a pollutant as defined pursuant to 42 U.S.C. 7407(d)(1)(A)(i) or (ii) (Section 107(d)(1)(A) or (ii) of the Clean Air Act). Area designations are contained in 40 C.F.R. 81.318.

Section 2. [3.] Ambient Air Increments. (1) In areas designated as Class I or II, increments in pollutant concentration over the baseline concentration shall be limited to the following levels:

<table>
<thead>
<tr>
<th>Pollutant</th>
<th>Maximum Allowable Increase (Micrograms per cubic meter)</th>
</tr>
</thead>
<tbody>
<tr>
<td>PM₁₀, annual arithmetic mean</td>
<td>4</td>
</tr>
<tr>
<td>PM₁₀, 24-hour maximum</td>
<td>8</td>
</tr>
<tr>
<td>Sulfur Dioxide:</td>
<td></td>
</tr>
<tr>
<td>Annual arithmetic mean</td>
<td>2</td>
</tr>
<tr>
<td>24-hour maximum</td>
<td>5</td>
</tr>
<tr>
<td>3-hour maximum</td>
<td>25</td>
</tr>
<tr>
<td>Nitrogen Dioxide:</td>
<td></td>
</tr>
<tr>
<td>Annual arithmetic mean</td>
<td>2.5</td>
</tr>
</tbody>
</table>

Class II

<table>
<thead>
<tr>
<th>Pollutant</th>
<th>Maximum Allowable Increase (Micrograms per cubic meter)</th>
</tr>
</thead>
<tbody>
<tr>
<td>PM₁₀, annual arithmetic mean</td>
<td>17</td>
</tr>
<tr>
<td>PM₁₀, 24-hour maximum</td>
<td>30</td>
</tr>
<tr>
<td>Sulfur Dioxide:</td>
<td></td>
</tr>
<tr>
<td>Annual arithmetic mean</td>
<td>20</td>
</tr>
<tr>
<td>24-hour maximum</td>
<td>512</td>
</tr>
<tr>
<td>3-hour maximum</td>
<td>25</td>
</tr>
<tr>
<td>Nitrogen Dioxide:</td>
<td></td>
</tr>
<tr>
<td>Annual arithmetic mean</td>
<td>25</td>
</tr>
</tbody>
</table>

(specified in Section 23 of this administrative regulation.)

(2) For any [a] period other than an annual period, the applicable maximum allowable increase may be exceeded during one (1) such period per year at any one (1) location.

Section 3. [4.] Ambient Air Ceilings. The [Ne] concentration of a regulated NSR pollutant [specified in Section 2 of this administrative regulation] shall not exceed the concentration allowed under the national secondary ambient air quality standard or under the national primary ambient air quality standard, whichever concentration is lower for the pollutant for a period of exposure [1]:

(1) The concentration permitted under the national secondary ambient air quality standard; or

(2) The concentration permitted under the national primary ambient air quality standard, whichever concentration is lower for the pollutant for a period of exposure.

Section 4. [5.] Restrictions on Area Classifications. (1) The following areas which were in existence on August 7, 1977, shall be Class I areas and shall not be redesignated:

(a) International parks;

(b) National wilderness areas and national memorial parks which exceed 5,000 acres in size; and

(c) National parks which exceed 6,000 acres in size.

(2) Any other area, unless otherwise specified in the legislation creating the area, is designated Class II but may be redesignated as provided in 40 C.F.R. 51.166(g).

(3) The visibility protection requirements of this administrative regulation shall apply only to sources which may impact a mandatory Class I federal area.

(4) The following areas may be redesignated only as Class I or II:

(a) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

(b) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

Section 5. [6.] Exclusions from Increment Consumption. (1) The cabinet may, after notice and opportunity for at least one (1) public hearing to be held in accordance with procedures established in 401 KAR 52:100, exclude the following concentrations in determining compliance with a maximum allowable increase:

(a) Concentrations attributable to the increase in emissions from stationary sources that have [which have been] converted from the use of petroleum products, natural gas, or both by reason of an order in effect under a federal statute or regulation over the emissions from those [the] sources before the effective date of the order; or

(b) Concentrations attributable to the increase in emissions from sources that [which] have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to a [the] federal statute over the emissions from those sources before the effective date of the plan;

(c) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources; and

(d) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources that [which] are affected by plan revisions approved by the Administrator of the U.S. EPA as meeting the criteria specified in subsection (3) [4(b)] of this section.

(2) Exclusion of concentrations shall not apply more than five (5) years after the effective date of the order to which subsection (1)(a) of this section refers or the curtailment plan to which subsection (1)(b) of this section refers, whichever is applicable. If both an order and curtailment plan are applicable, an [no] exclusion shall apply more than five (5) years after the later of the two (2) effective dates.

(3) For excluding concentrations pursuant to subsection (1)(d) of this section [, the SIP revision specify the following provisions]:

(a) the time period over which the temporary emissions [emissions] increase of sulfur dioxide, particulate matter, or nitrogen oxides would occur shall be specified and [- The time period] shall not exceed two (2) years in duration unless a longer time is approved by the U.S. EPA;

(b) The time period for excluding certain contributions in accordance with paragraph (a) of this subsection shall not be [be- not] renewable;

(c) An emissions increase from a stationary source shall not occur that will [No emissions increase will occur from a stationary source which would] 1. Impact a Class I area or an area in which [where] an applicable increment is known to be violated; or

2. Cause or contribute to the violation of a national ambient air quality standard; and

(d) Limitations shall be in effect at the end of the time period established in paragraph (a) of this subsection, which ensure that the emissions levels from stationary sources affected by the SIP revision shall [will] not exceed the [those] levels occurring from those sources before the revision was approved.

Section 6. [7.] Stack Heights. (1) The degree of emissions [emission] limitation required for control of an air pollutant under this administrative regulation shall not be affected by:

(a) So much of the stack height of a source as exceeds good engineering practice; or

(b) Another dispersion technique.

(2) Subsection (1) of this section shall not apply to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.
Section 7. Exemptions. (1) [8—Review of—Major—Stationary Sources and Major Modifications—Source Applicability and Exemptions. (1) A major stationary source or major modification to which Sections 9 to 17 of this administrative regulation apply shall not be given actual construction until it obtains a permit stating that the stationary source or modification shall comply with Sections 9 to 17 of this administrative regulation.

(2) Sections 9 to 17 of this administrative regulation shall apply to a major stationary source and major modification for each pollutant that it would emit, which is subject to regulation under 42 U.S.C. 7401 to 7479q-1 (Clean Air Act), except as required in Section 2 of this administrative regulation.

(3) Sections 9 to 17 of this administrative regulation shall only apply to a major stationary source or major modification that will be constructed in an area designated as attainment or unclassifiable pursuant to 42 U.S.C. 7407(a)(1)(A)(ii) or (iii) of the Clean Air Act.

(4) Sections 8 to 16 [9—To—] of this administrative regulation shall not apply to a particular major stationary source or major modification, if:

(a) The owner or operator:
1. Obtained the necessary federal, state, and local preconstruction, or nodal effective before September 22, 1982;
2. Commenced construction before September 22, 1982; and
3. Did not discontinue construction for a period of 18 months or more, [i—of]

(b) The major stationary source is [or modification—would be] a nonprofit health institution, a [or] nonprofit educational institution, or a major modification [would occur] at such an [the] institution, and the Governor of the Commonwealth of Kentucky requests that it be exempt from those requirements, [i—]

(c) The source or modification [would be] a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:
1. Coal cleaning plants [with thermal dryers];
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants [furnace process];
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants;
21. Fossil-fueled steam electric plants of more than 250 million BTUs per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil-fueled steam electric plants of more than 250 million BTUs per hour heat input; or
27. Another stationary source category which, as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412, [Section 111 or 112 of the Clean Air Act]; or

(d) The source or modification is a portable stationary source that [which] has previously received a permit under this administrative regulation.

(1) The owner or operator proposes to relocate the source and emissions of the source at the new location will [would] be tempo-

rary;

2. The emissions from the source will [would] not exceed its allowable emissions;

3. The emissions from the source will [would] not impact a Class I area or an area where an applicable increment is known to be violated;

4. Reasonable notice is given to the cabinet prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Notice shall be given to the cabinet not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the cabinet.

(e) The source or modification was not subject to this administrative regulation with respect to particulate matter requirements in effect before July 31, 1987, and the owner or operator:
1. Obtained all final federal, state, and local preconstruction approvals or permits necessary under the applicable SIP [state implementation plan] before July 31, 1987;
2. Commenced construction within eighteen (18) months after July 31, 1987; and
3. Did not discontinue construction for a period of eighteen (18) months or more and completed construction within a reasonable period of time.

(f) The source or modification was subject to this administrative regulation for [with respect to] particulate matter requirements [as] in effect before July 31, 1987, and the owner or operator submitted an application for a permit under the applicable program [the administrative regulation] before that date, and the cabinet subsequently determined that the application as submitted was complete with respect to the particulate matter requirements then in effect [in this administrative regulation]. [If not, the requirements of Sections 9 to 17 of this administrative regulation that were in effect before July 31, 1987, apply to the source or modification.]

(2) [69] Sections 8 to 16 [9 to 17] of this administrative regulation shall not apply to a major stationary source or major modification for [with respect to] a particular pollutant if the owner or operator demonstrates that, for that pollutant, the source or modification is located in an area designated as nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(ii) [Section 107(d)(1)(A)(ii) of the Clean Air Act].

(3) [69] Sections 9, 11, and 13 [10, 12, and 14] of this administrative regulation shall not apply to a proposed major stationary source or major modification [for with respect to] a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from a modification [the modifications]:

(a) Will not impact a Class I area or an area where an applicable increment is known to be violated; and

(b) Will be temporary.

(4) [79] Sections 9, 11, and 13 [10, 12, and 14] of this administrative regulation, as applicable [they apply] to a maximum allowable increase for a Class II area, shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant [subject to regulation under 42 U.S.C. 7401 to 7479q-1 (Clean Air Act)] from the modification after the application of BACT [best available control technology] will be less than fifty (50) tons per year.

(5) [89] The cabinet may exempt a proposed major stationary source or major modification from the monitoring requirements of Section 11 [42] of this administrative regulation for a particular pollutant, if:

(a) The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification will cause air quality impacts in an area, which are less than the amounts listed in the following table:

<table>
<thead>
<tr>
<th>Pollutant</th>
<th>Air Quality Level</th>
<th>Averaging Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carbon monoxide</td>
<td>575 µg/m³</td>
<td>8-hour average</td>
</tr>
<tr>
<td>Nitrogen dioxide</td>
<td>14 µg/m³</td>
<td>annual average</td>
</tr>
<tr>
<td>Particulate matter</td>
<td>10 µg/m³</td>
<td>24-hour average</td>
</tr>
<tr>
<td>Sulfur dioxide</td>
<td>13 µg/m³</td>
<td>24-hour average</td>
</tr>
</tbody>
</table>
No de minimis air quality level is provided for ozone. However, a net increase of 100 tons per year or more of volatile organic compounds subject to this administrative regulation is required to perform an ambient impact analysis including the gathering of ambient air quality data.

<table>
<thead>
<tr>
<th>Compound</th>
<th>Concentration</th>
<th>3-month average (24-hour average)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lead</td>
<td>0.1 μg/m³</td>
<td></td>
</tr>
<tr>
<td>Mercury</td>
<td>0.25 μg/m³</td>
<td>24-hour average</td>
</tr>
<tr>
<td>Beryllium</td>
<td>0.001 μg/m³</td>
<td>24-hour average</td>
</tr>
<tr>
<td>Fluorides</td>
<td>0.25 μg/m³</td>
<td>24-hour average</td>
</tr>
<tr>
<td>Vinyl chloride</td>
<td>0.2 μg/m³</td>
<td>1-hour average</td>
</tr>
<tr>
<td>Hydrogen sulfide</td>
<td>10 μg/m³</td>
<td>1-hour average</td>
</tr>
<tr>
<td>Total reduced sulfur</td>
<td>10 μg/m³</td>
<td>1-hour average</td>
</tr>
<tr>
<td>Reduced sulfur compounds</td>
<td>10 μg/m³</td>
<td>1-hour average</td>
</tr>
</tbody>
</table>

[given in Section 24 of this administrative regulation; or]

(b) The concentrations of the pollutant in the area that the source or modification will affect are less than the concentrations listed in the table in paragraph (a) of this subsection [Section 24 of this administrative regulation], or the pollutant is not listed in the table [Section 24 of this administrative regulation].

(6) Permitting requirements equivalent to Section 9(2) of this administrative regulation shall not apply to a stationary source or modification for a maximum allowable increase for nitrogen oxides if:

(a) The owner or operator of the source or modification submitted an application for a permit or permit revision under the applicable permit program before the date on which the provisions embodying the maximum allowable increase took effect in the Kentucky SIP, and;

(b) The cabinet subsequently determined that the application as submitted before that date was complete.

(7) Permitting requirements equivalent to Section 10(2) of this administrative regulation shall not apply to a stationary source or modification for a maximum allowable increase for PM₁₀ if:

(a) The owner or operator of the source or modification submitted an application for a permit under the applicable permit program before the provisions embodying the maximum allowable increase for PM₁₀ took effect as part of Kentucky's SIP, and;

(b) The cabinet subsequently determined that the application as submitted before that date was complete.

(9)(a) [109(e)] The cabinet may determine that [At the discretion of the cabinet], the requirements for air quality monitoring of PM₁₀ in Section 11 [12] of this administrative regulation shall [may] not apply to a particular source or modification if:

1. The owner or operator of the source or modification submitted an application for a permit under this section on or before June 1, 1988; and

2. The cabinet subsequently determines that the application as submitted before that date was complete, except for the requirements for monitoring particulate matter specified in Section 11 [12] of this administrative regulation.

(b) The requirements for air quality monitoring of PM₁₀ in Section 11 [12] of this administrative regulation shall apply to a particular source or modification if the owner or operator of the source or modification submitted an application for a permit under 40 C.F.R. 52.21 or this administrative regulation after June 1, 1988, and no later than December 1, 1988.

1. The data shall have been gathered over at least the period from February 1, 1988, to the date the application becomes complete in accordance with Section 11 [12] of this administrative regulation; and

2. If [unless] the cabinet determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period, which may [not be less than four (4) months], the data that Section 11 [12] of this administrative regulation requires shall have been gathered over that shorter period.

The requirements of Section 9(2) [109(2)] of this administrative regulation shall not apply to a stationary source or modification for a [with respect to any] maximum allowable increase for PM₁₀ if:

(a) The owner or operator of the source or modification submitted an application for a permit under 40 C.F.R. 52.21 or this administrative regulation before the date the provisions embodying the maximum allowable increases for PM₁₀ took effect, and the cabinet subsequently determined that the application as submitted before that date was complete.

(b) Instead, the requirements of Section 9(2) [109(2)] shall apply for the maximum allowable increases for TSP as in effect on the day the application was submitted.

[(11) The requirements of Section 10(2) of this administrative regulation shall not apply to a stationary source or modification with respect to a maximum allowable increase for nitrogen oxides if the owner or operator of the source or modification submitted an application for a permit under 40 C.F.R. 52.21 or this administrative regulation before the date on which the provisions embodying the maximum allowable increase took effect, and the cabinet subsequently determined that the application as submitted before that date was complete.]

Section 8. [6] Control Technology Review. (1) A major stationary source or major modification shall meet each applicable emissions limitation under the Kentucky SIP [401-KAR-Chapters 60-65], and each applicable emissions [emission] standard and standard of performance under 40 C.F.R. Parts 60 and 61 [40-C.F.R. 60, 61-63].

(2) A new major stationary source shall apply BACT [best-available control technology] for each regulated NSR pollutant subject to regulation under 42 U.S.C. 7401 to 7679q (Clean Air Act), for which the source has [that it will have] the potential to emit in significant amounts.

(3) A major modification shall apply BACT:

(a) For each regulated NSR pollutant that results [best-available control technology for each pollutant subject to regulation under 42 U.S.C. 7401 to 7679q (Clean Air Act), for which it will result in a significant net emissions increase at the source; and

(b) For each proposed emissions unit at which a net emissions increase in the pollutant occurs [will occur] as a result of a physical change or change in the method of operation of the unit.

(4) For phased construction projects; [;]

(a) The cabinet shall review and modify, as appropriate, the BACT determination [best-available control-technology shall be reviewed and modified as appropriate] at the latest reasonable time occurring [which occurs] no later than eighteen (18) months prior to commencement of construction of each independent phase of the project; and

(b) The owner or operator of the applicable stationary source may then be required to demonstrate the adequacy of a previous BACT determination [best-available control-technology] for the source.

Section 9. [40] Source Impact Analysis. The owner or operator of the proposed source or modification shall demonstrate that allowable emissions [emissions] increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions, [including applicable control measures], shall [will] not cause or contribute to air pollution in violation of:

(1) A national ambient air quality standard in an air quality control region; or

(2) An applicable maximum allowable increase over the baseline concentration in any [an] area.


(2) If an air quality model specified in 40 C.F.R. Part 51, Appendix W, is inappropriate, the model may be modified or another model
substituted.

(a) The use of a modified substitute model [This change shall be]

1. Subject to notice and opportunity for public comment under 401 KAR 52:100; and [Section 14 of this administrative regulation] -

2. Made on a case-by-case basis and receive written approval from the U.S. EPA [Written approval of the U.S. EPA shall be obtained for a modification or substitution]

(b) Methods similar to those outlined in the "Workbook for the Comparison of Air Quality Models," specified in 401 KAR 50:040, Section 10(1), shall be used to determine the comparability of air quality models.

Section 11. [12.] Air Quality Analysis. (1) Preapplication analysis.

(a) An application for a permit or permit revision [revisions] under 401 KAR 52:020 and this administrative regulation shall contain an analysis of ambient air quality in the area that the major stationary source or major modification will affect for each of the following [pollutants]:

1. For a source, each pollutant that the source [it] will have the potential to emit in a significant amount [as defined in Section 1(37) of this administrative regulation];

2. For a modification, each pollutant that the modification [for which it will result in a significant net emissions increase].

(b) For [With respect to] a pollutant that does not have a [for which no] national ambient air quality standard [exteile], the analysis shall contain [the] air quality monitoring data the cabinet determines necessary to assess ambient air quality for that pollutant in an area that the emissions of that pollutant will affect.

(c) For pollutants, [other than nonmethane hydrocarbons, [for which a standard exists] does exist], the analysis shall contain continuous air quality monitoring data gathered to determine if emissions of that pollutant will cause or contribute to a violation of the standard or a maximum allowable increase.

(d) The required continuous air quality monitoring data shall have been gathered over a period of at least one (1) year and shall represent at least the year preceding receipt of the application, [except that,]

2. If the cabinet determines that a complete and adequate analysis may [can be] accomplished with monitoring data gathered over a period shorter than one (1) year, that period shall be but not less than four (4) months [e.g., with data obtained during a time period when maximum air quality levels can be expected], the required data shall have been gathered over at least that shorter period.

(e) For analysis of volatile organic compounds, the owner or operator of a proposed major stationary source or major modification [of volatile organic compounds] who satisfies all conditions of 40 C.F.R. Part 51, Appendix S, section IV may provide postapproval monitoring data for ozone instead [in lieu] of providing preconstruction data as required in this section [required under paragraphs (a) to (d) of this subsection].

(f) [For an application that is complete, except for the requirements of paragraphs (c) and (d) of this subsection pertaining to PM_{x}, after December 1, 1988, and no later than August 1, 1989, the data that paragraph (c) of this subsection requires shall have been gathered over at least the period from August 1, 1988, to the date the application becomes otherwise complete, unless the cabinet determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four (4) months). The data that paragraph (c) of this subsection requires shall have been gathered over that shorter period.

(g) Air quality monitoring of PM_{x} under Section 7(6)(a) and (b) [8(9)(a) and (b)] of this administrative regulation, the owner or operator of the source or major modification shall use a monitoring method approved by the cabinet and shall estimate the ambient concentrations of PM_{x} using the data collected by that approved monitoring method in accordance with estimating procedures approved by the cabinet.

(2) Postconstruction monitoring. After construction of a major stationary source or major modification, the owner or operator of a major stationary source or major modification, after construction of the stationary source or modification, shall conduct the ambient monitoring that [which] the cabinet determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in an area.

Section 12. [13.] Source Information. The owner or operator of a proposed source or modification shall submit to the cabinet all information necessary to perform an analysis or make a determination required under this administrative regulation.

(1) [For a major source or major modification to which Sections 8, 11, 13, and 15 of this administrative regulation apply,] The information shall include:

(a) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

(b) A detailed schedule for construction of the source or modification;

(c) A detailed description of the system of continuous emissions [emission] reduction planned for the source or modification, emissions [emission] estimates, and other information necessary to determine that BACT [best available control technology] will be applied.

(2) Upon request of the cabinet, the owner or operator shall also provide information on:

(a) The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate the impact; and

(b) The air quality impacts and the nature and extent of general commercial, residential, industrial, and other growth that [which] has occurred since August 7, 1977, in the area the source or modification will affect.

Section 13. [14.] Additional Impact Analysis. (1) The owner or operator shall provide an analysis of the impairment to visibility, soils and vegetation that will [would occur as a result of;

(a) The source or modification; and

(b) General commercial, residential, industrial and other growth associated with the source or modification.

(2) The owner or operator shall not be required to provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(3) (g) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

(4) (i) Visibility monitoring.

(a) The cabinet may require monitoring of visibility in a Class I area impacted by the proposed new stationary source or major modification using:

1. Human observations; [i]

2. Teleradiometers; [i]

3. Photographic cameras; [i]

4. Nephelometers; [i]

5. Fine particulate monitors; [ii] or

6. Other appropriate methods as specified by the U.S. EPA.

(b) The method selected shall be determined on a case-by-case basis by the cabinet.

(c) Visibility monitoring required by the cabinet in a Class I area shall be approved by the federal land manager.

(d) Data obtained from visibility monitoring shall be made available to the cabinet, the U.S. EPA, and the federal land manager, upon request.

Section 14. [16.] Sources Impacting Class I Areas; Additional Requirements. (1) Notice to U.S. EPA and federal land managers. The cabinet shall provide:

(a) Written notice to the U.S. EPA, the federal land manager, and the federal official charged with direct responsibility for management of lands within a Class I area of a permit application for a
proposed major stationary source or major modification that [the emissions from which] may affect the Class I area.

(ii) The cabinet shall provide Notice promptly after receiving the permit application. The notice shall:
1. Include a copy of all information relevant to the permit application;
2. [and shall] Be given within thirty (30) days of receipt and at least sixty (60) days prior to the public hearing on the application for a permit to construct; [The notice shall]
3. Include an analysis of the proposed source's anticipated impacts on visibility in the Class I area.

(a) The cabinet shall also provide the federal land manager and other federal officials with a copy of the preliminary determination [required under Section 16 of this administrative regulation.] and shall make available to them the materials used in making that determination, promptly after the cabinet makes it. The cabinet shall also notify all affected federal land managers within thirty (30) days of receipt of an advanced notification of the permit application.

(2) Federal land manager. The federal land manager and the federal official charged with direct responsibility for management of lands located in a Class I area shall have an affirmative responsibility to protect [the] visibility and other air quality related values [including visibility] of the lands and to consider, in consultation with the cabinet, if [whether] a proposed source or modification will have an adverse impact on those values.

(3) Visibility analysis.
(a) The cabinet shall consider an analysis performed by the federal land manager, which is provided within thirty (30) days of the notice and analysis required by subsection (1) of this section, which shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in a Class I area.
(b) If the cabinet finds that analysis does not demonstrate to the cabinet's satisfaction [of the cabinet] that an adverse impact on visibility will result in the Class I area, the cabinet shall, in the public notice required in 401 KAR 52:100, either explain that decision or give notice as to where the explanation may be obtained [can be explained].

(4) Denial: impact on air quality related values.
(a) The federal land manager of lands located in a Class I area may demonstrate to the cabinet that the emissions from a proposed source or modification will have an adverse impact on the visibility and other air quality related values [including visibility] of those lands, even though [notwithstanding that] the change in air quality resulting from emissions from the proposed source or modification will not cause or contribute to concentrations that would exceed the maximum allowable increases for a Class I area [as defined in Section 23 of this administrative regulation].
(b) If the cabinet concurs with the demonstration specified in paragraph (a) of this subsection, [then] the cabinet shall not issue the permit or permit revision.

(5) Class I variances.
(a) The owner or operator of a proposed source or modification may demonstrate to the federal land manager that the emissions from the source or modification will have no adverse impact on the visibility or other air quality related values of lands located in a Class I area [including visibility], even though [notwithstanding that] the change in air quality resulting from emissions from the source or modification will cause or contribute to concentrations that would exceed the maximum allowable increases for a Class I area as specified in Section 21 of this administrative regulation.
(b) If the federal land manager concurs with the demonstration specified in paragraph (a) of this subsection and he so certifies, the cabinet may, if the other applicable requirements of this administrative regulation are met, issue the permit or permit revision with [the] emissions [emissions] limitations that are necessary to assure that emissions of sulfur dioxide, particulate matter, and nitrogen oxides will not exceed the maximum allowable increases over minor source baseline concentration for the pollutants as specified in Section 21 of this administrative regulation. [In Section 5 of this administrative regulation.]

(6) Sulfur dioxide variance by governor with federal land manager's concurrence.
(a) The owner or operator of a proposed source or modification, which cannot be approved under subsection (5) of this section because the source cannot be constructed without exceeding a maximum allowable increase in sulfur dioxide applicable to a Class I area for a period of twenty-four (24) hours or less, may demonstrate to the governor of the Commonwealth of Kentucky that a variance [under this clause] will not adversely affect the visibility or other air quality related values of the area [including visibility].
(b) The governor, after consideration of the federal land manager's recommendation, [if applicable], and subject to his concurrence, may, after notice and public hearing, grant a variance from the maximum allowable increase.
(c) If a variance is granted, the cabinet shall issue a permit or permit revision to the source or modification under the requirements of 401 KAR Chapter 52 [subsection 6 of this section] if the other applicable requirements of this administrative regulation are met.

(7) Variance by the governor with the President's concurrence.
(a) If the Governor of the Commonwealth of Kentucky recommends a variance in which the federal land manager does not concur, the recommendations of the governor and the federal land manager shall be transmitted to the President of the United States of America.
(b) If the variance is approved by the President, the cabinet shall issue a permit or permit revision in accordance with [pursuant to] the requirements of 401 KAR Chapter 52 [subsection 6 of this section] if the other applicable requirements of this administrative regulation are met.

(8) Emissions [Emission] limitations for presidential or gubernatorial variance. For a permit or permit revision issued pursuant to subsections (6) or (7) of this section the source or modification shall comply with the emissions [these emission] limitations necessary to assure that:
(a) Emissions of sulfur dioxide from the source or modification shall not cause or contribute to concentrations that exceed the other applicable maximum allowable increases for periods of exposure of twenty-four (24) hours or less for more than a total of eighteen (18) days, which are not necessarily consecutive, during an annual period.

<table>
<thead>
<tr>
<th>Maximum Allowable Increase</th>
<th>Terrain areas</th>
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<tbody>
<tr>
<td>(Micrograms per cubic meter)</td>
<td></td>
</tr>
<tr>
<td>Period of Exposure</td>
<td>Low</td>
</tr>
<tr>
<td>24-hour maximum</td>
<td>36</td>
</tr>
<tr>
<td>3-hour maximum</td>
<td>130</td>
</tr>
</tbody>
</table>

(b) To assure that the emissions shall not cause or contribute to concentrations that exceed the other applicable maximum allowable increases for periods of exposure of twenty-four (24) hours or less for more than a total of eighteen (18) days, which are not necessarily consecutive, during an annual period.

Section 15, [46] Public Participation. The cabinet shall follow the applicable procedures of 401 KAR 52:100 and 40 C.F.R. 51.166(q) and this administrative regulation in processing applications under this administrative regulation.

Section 16, [47] Source Obligation. (1) An owner [or operator of a source or modification subject to this administrative regulation who begins actual construction after September 22, 1982, shall construct and operate the source or modification in accordance with the application submitted to the cabinet under this administrative regulation and 401 KAR 52:020 or under the terms of an approval to construct [who constructs or operates a source or modification not in accordance with the application submitted to the cabinet under this administrative regulation or under the terms of an approval to construct, or an owner [or operator of a source or modification subject to this administrative regulation who begins actual construction after September 22, 1982, without applying for and receiving approval, shall be subject to appropriate enforcement action].

(2) Approval to construct shall become invalid if construction:
1. Is not commenced within eighteen (18) months after receipt of the approval; [if construction]
2. Is discontinued for a period of eighteen (18) months or more; or [if construction]
3. Is not completed within a reasonable time.

(b) The cabinet may extend the eighteen (18) month period upon a satisfactory showing that an extension is justified.

1. An extension [This provision shall not apply to the time period between construction of the approved phases of a phased construction project; and

2. Each phase shall commence construction within eighteen (18) months of the projected and approved commencement date.

(3) Approval to construct shall not relieve an owner or operator of the responsibility to comply with 401 KAR Chapters 50 to 68 [83] and other requirements of local, state, or federal law.

(4) If [When] a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in an enforceable limitation that [which] was established as of August 7, 1980, on the capacity of the source or modification to emit a pollutant, [such a] restriction on hours of operation, then Sections 8 to 10 [8a to 10] of this administrative regulation shall apply to the source or modification as though construction had not yet commenced on the source or modification.

5(a) The provisions of this subsection shall apply to projects at existing emissions units at a major stationary source other than projects at a clean unit or at a source with a PAL, if:

1. There is a reasonable possibility that a project that is not part of a major modification may result in a significant emissions increase; and

2. The owner or operator elects to use the methodology specified in 401 KAR 51:001, Section 1(2)(b) to calculate projected actual emissions.

(b) Before beginning actual construction of a project specified in paragraph (a) of this subsection, the owner or operator shall document and maintain a record of the following information:

1. A description of the project;

2. Identification of the emissions units for which emissions of a regulated NSR pollutant could be affected by the project; and

3. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including:

a. Baseline actual emissions;

b. Projected actual emissions;

c. Amount of emissions excluded in calculating projected actual emissions and an explanation for why that amount was excluded; and

d. Any applicable netting calculations.

(c) For a project specified in paragraph (a) of this subsection, the owner or operator shall:

1. Monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that are emitted by any emissions unit identified in paragraph (b)2 of this subsection; and

2. Calculate and maintain a record of the annual emissions, in tnu per year on a calendar year basis for:

a. Five (5) years following resumption of regular operations after the change; or

b. Ten (10) years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of the regulated NSR pollutant at the emissions unit.

1. If the emissions unit is an existing EUSGU, before beginning actual construction, the owner or operator shall:

a. Provide a copy of the information in paragraph (b) of this subsection to the cabinet;

b. Shall not be required to obtain a determination from the cabinet before beginning actual construction.

2. Shall submit a report to the cabinet within sixty (60) days after the end of each year during which records are required to be generated under paragraph (b) of this subsection that set out the unit’s annual emissions during the calendar year that preceded submission of the report.

(b1) For an existing unit other than an EUSGU, the owner or operator shall submit a report to the cabinet if:

a. The annual emissions, in tons per year, from a project identified in paragraph (a) of this subsection exceed the baseline actual emissions, as documented and maintained pursuant to paragraph (b)3 of this subsection, by a significant amount for that regulated NSR pollutant; and

b. The emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph (b)3 of this subsection.

2. The report shall be submitted within sixty (60) days after the end of the year during which records are required to be generated under paragraph (b) of this subsection and shall contain the following:

a. The name, address and telephone number of the major stationary source;

b. The annual emissions as calculated pursuant to paragraph (c) of this subsection; and

c. Any other information that the owner or operator wishes to include in the report.

(f) The owner or operator of the source shall make the information required to be documented and maintained under this subsection available for review upon request for inspection by the cabinet or the general public pursuant to 401 KAR 52-150.

Section 17, [16] Environmental Impact Statements. If a proposed source or modification is subject to action by a federal agency which might necessitate preparation of an environmental impact statement under [purusant-to] 42 U.S.C. 4321 to 4370d (the National Environmental Policy Act), review by the cabinet conducted in accordance with [purusant-to] this administrative regulation shall be coordinated with the broad environmental reviews under that Act and under 42 U.S.C. 7609 ([Section 309 of the Clean Air Act]) to the maximum extent feasible and reasonable.

Section 18, [19] Innovative Control Technology. (1) An owner or operator of a proposed major stationary source or major modification may request the cabinet in writing to approve a system of innovative control technology.

(2) The cabinet may [shall], with the consent of the governors of other affected states, determine that the source or modification may employ a system of innovative control technology if:

(a) The proposed control system will not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

(b) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under Section 8(2) [9(2)] of this administrative regulation by a date specified by the cabinet.

The date shall not be later than four (4) years from the time of start-up or seven (7) years from permit issuance; or

(c) The source or modification will meet requirements equivalent to those in Sections 8 and 9 [8a and –10] of this administrative regulation based on the emissions rate that the stationary source employing the system of innovative control technology will be required to meet on the date specified by the cabinet;

(d) The source or modification will not be required to do more than:

1. Cause or contribute to a violation of an applicable national ambient air quality standard; or

2. Impact an area in which [where] an applicable increment is known to be violated;

(e) Section 14 [16] of this administrative regulation ([relating to Class I areas]) has been satisfied for all periods during the life of the source or modification; and

(f) All other applicable requirements including those for public participation have been met.

(3) The cabinet shall withdraw approval to employ a system of innovative control technology if:

(a) The proposed system fails by the specified date to achieve the required continuous emission reduction rate;

(b) The proposed system fails before the specified date and contributes [so as to contribute] to an unreasonable risk to public health, welfare, or safety; or

(c) The cabinet decides that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

(4) If a source or modification fails to meet the required level of continuous emissions [emissions] reduction within the specified time period or the approval is withdrawn in accordance with subsection (3) of this section, the cabinet may allow the source or modification up to an additional three (3) years to meet the requirement for the
application of BACT [best-available-control technology] through use of a demonstrated system of control.

Section 19. (20) Permit Condition Rescission. (1)(a) An owner or operator holding a permit for a stationary source or modification which contains conditions pursuant to 401 KAR 51:015 or 401 KAR 51:016E may request that the cabinet rescind the applicable conditions.

(b) An owner or operator of a stationary source or modification who holds a permit for the source or modification which was issued under this administrative regulation as in effect on July 30, 1987, or an earlier version of this administrative regulation, may request that the cabinet rescind the permit or a particular portion of the permit.

(2) The cabinet shall rescind a permit condition if requested and if the applicant can demonstrate to the satisfaction of the cabinet that this administrative regulation does not apply to the source or modification or to a portion of the source or modification.

Section 20. Clean Unit Test for Emissions Units that are Subject to BACT or LAER. For any emissions unit that is subject to BACT or LAER and for which the cabinet has issued a major NSR permit in the past ten (10) years, an owner or operator of a major stationary source may use the clean unit test provisions specified in this section to determine if an emissions increase at a clean unit is part of a project that is a major modification.

(1) General provisions for clean units.

(a) The cabinet shall make a separate clean unit designation for each pollutant emitted by an emissions unit for which the emissions unit qualifies as a clean unit.

(b) A project for which the owner or operator begins actual construction shall be considered to have occurred while the emissions unit is a clean unit if actual construction begins:

1. After the effective date of the clean unit designation as determined pursuant to subsection (3) of this section; and

2. Before the expiration date of the clean unit designation as determined pursuant to subsection (4) of this section.

(c) For an emissions unit to retain its clean unit designation during a project at a clean unit, the project shall not:

1. Cause the need for a change in the emissions limitations or work practice requirements adopted in conjunction with BACT in the permit for the unit; and

2. Alter any physical or operational characteristics that formed the basis for the BACT determination as specified in subsection (5)(d) of this section.

(d) If an emissions unit requalifies as a clean unit according to subsection (2)(b) of this section, the unit shall lose its designation as a clean unit upon issuance of the necessary permit revisions, if:

1. The project causes the need for a change in the emissions limitations or work practice requirements that were determined in conjunction with BACT in the permit for the unit; or

2. The project will alter any physical or operational characteristics that formed the basis for the BACT determination as specified in subsection (5)(d) of this section.

(e) Clean unit designation shall end immediately prior to the time actual construction begins on a project that will cause a unit to lose its clean unit designation if the owner or operator begins actual construction on a project before applying for a permit revision.

(f) A project that causes an emissions unit to lose its clean unit designation shall be subject to the applicability requirements of Section 1(4)(a), 2, and 4(b) of this administrative regulation as if the emissions unit is not a clean unit.

(2) Qualifying or requalifying to use the clean unit applicability test.

(a) An emissions unit shall automatically qualify as a clean unit if the unit meets the requirements in this paragraph:

1. Permitting requirement. The owner or operator of an emissions unit shall have received a major NSR permit within the past ten (10) years and shall maintain and provide information upon request by the cabinet or U.S. EPA to demonstrate that this permitting requirement is met.

2. Qualifying air pollution control technologies requirement. Air pollution emissions from the emissions unit shall be reduced through the use of air pollution control technology, including pollution prevention or work practices, that meets the following requirements:

a. The control technology shall achieve the BACT or LAER level of emissions reductions determined by issuance of a major NSR permit within the past ten (10) years;

b. The emissions unit shall not be eligible for the clean unit designation if the BACT determination did not result in a requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type; and

c. The owner or operator shall have made [make] an investment to install the control technology. An investment shall include expenses to research the application of or to actually apply a pollution prevention technique to the emissions unit or to retrofit the unit to apply a pollution prevention technique.

(b) Requalifying for the clean unit designation. After the original clean unit designation expires or is lost, an emissions unit may requalify as a clean unit under the provisions of this paragraph or under Section 21 of this administrative regulation.

1. For an emissions unit that is requalifying for clean unit designation, an owner or operator shall obtain a new major NSR permit or permit revision, as applicable, issued pursuant to 401 KAR 52:020.

2. The permit shall require compliance with the current-day BACT or LAER, and the emissions unit shall meet the requirements in subsection (3)(a) of this section.

(3) Effective date of the clean unit designation. The date that the owner or operator may begin to use the clean unit test to determine if a project involving an emissions unit is a major modification shall be determined according to paragraph (a) or (b) of this subsection, as applicable.

(a) The effective date for an original clean unit designation and for an emissions unit that requalifies as a clean unit by implementing a new control technology to meet current-day BACT shall be:

1. The earlier of the date the unit’s air pollution control technology is placed into service or three (3) years after the date the major NSR permit or permit revision is issued; and

2. No sooner than the date that provisions for clean units become effective in the Kentucky SIP.

(b) The effective date for emissions units that requalify for the clean unit designation using an existing control technology shall be the date the major NSR permit or permit revision is issued.

(4) Clean unit expiration. The date the owner or operator shall no longer be allowed to use the clean unit test to determine if a project involving an emissions unit is, or is part of, a major modification shall be determined according to paragraph (a) or (b) of this subsection, as applicable.

(a) For an emissions unit that automatically qualifies as a clean unit according to subsection (2)(a) of this section, or a unit that requalifies by implementing new control technology to meet current-day BACT, the expiration date of the clean unit designation shall be:

1. Ten (10) years after the effective date or ten (10) years after the date the equipment went into service, whichever is earlier; or

2. At any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation pursuant to subsection (6) of this section.

(b) The clean unit designation for an emissions unit that requalifies for the clean unit designation using an existing control technology shall expire:

1. Ten (10) years after the effective date; or

2. At any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation according to subsection (6) of this section.

(5) Required Title V permit content for a clean unit. The Title V permit for a major stationary source with a clean unit shall, after the effective date of the clean unit designation and in accordance with the applicable provisions of 401 KAR Chapter 52, but not later than the date the Title V permit is renewed, include the following terms and conditions:

(a) A statement indicating that the emissions unit qualifies as a clean unit and identifying the pollutant for which this clean unit designation applies.

(b) The effective date of the clean unit designation.

1. If the exact effective date is not known on the date the clean unit designation is initially recorded in the Title V permit, the permit or permit revision shall describe the event that shall determine the effective date. Once the effective date is determined, the owner or
operator shall notify the cabinet of the exact date; and
2. If originally absent from the Title V permit, the effective date of the clean unit shall be added to the Title V permit at the first opportunity for any reason the permit is opened, but not later than the next renewal.

(c) The expiration date of the clean unit designation.
1. If the exact expiration date is not known at the date the clean unit designation is initially recorded into the Title V permit, the permit shall describe the event that shall determine the expiration date.
2. Once the expiration date is determined, the owner or operator shall notify the cabinet of the exact date; and
3. If originally absent from the Title V permit, the expiration date shall be added to the Title V permit at the first opportunity for any reason the permit is opened, but not later than the next renewal.

(d) All emissions limitations and work practice requirements adopted in concert with BACT and any physical or operational characteristics that formed the basis for the BACT determination.

(e) Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the clean unit designation pursuant to subsection (6) of this section.

(f) Terms reflecting the owner or operator's duty to maintain the clean unit designation and the consequences of failing to do so, pursuant to subsection (6) of this section.

(g) Maintaining the clean unit designation.
(a) The owner or operator of a clean unit shall conform to the provisions of this subsection to maintain the clean unit designation.
1. The clean unit shall comply with the emissions limitations or work practice requirements adopted in concert with the BACT that are recorded in the major NSR permit or permit revision and subsequently reflected in the Title V permit.
2. The owner or operator shall not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the BACT determination.
3. The clean unit shall comply with all terms and conditions in the Title V permit related to the unit's clean unit designation; and
4. The clean unit shall continue to control emissions using the specific air pollution control technology that is the basis for its clean unit designation. The clean unit designation shall end if the emissions unit or control technology is replaced.

(b) The requirements of this subsection shall apply to each pollutant for which the cabinet has designated an emissions unit a clean unit. Failing to conform to the restrictions for one pollutant shall only affect the clean unit designation for that pollutant.

(c) Netting at clean units.
1. Emissions changes that occur at a clean unit shall not be included in calculating a significant net emissions increase to be used in a netting analysis unless:
   a. Such use occurs before the effective date of the clean unit designation, or after the clean unit designation expires; or
   b. The emissions unit reduces emissions below the level that qualified the unit as a clean unit.
2. The owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emissions limitation if:
   a. The unit reduces emissions below the level that qualified the unit as a clean unit; and
   b. The reductions are surplus, quantifiable, and permanent.
3. For generating offsets, reductions shall also be federally enforceable.
4. For determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.

(d) Effect of area redesignation on clean units.
1. The clean unit designation of an emissions unit shall not be affected by redesignation of the attainment status of the area in which it is located.
2. If an existing clean unit designation expires or is lost, the unit shall qualify as a clean unit according to the requirements currently applicable in the area, regardless of the area's original attainment status during the previous designation period.

Section 21, Clean Unit Provisions for Emissions Units that Achieve Emissions Limitation Comparable to BACT. For an emissions unit at a major stationary source that does not qualify as a clean unit under Section 20 of this administrative regulation but is achieving a level of emissions control comparable to BACT, the owner or operator may use the clean unit test specified in this section to determine if an emissions increase at the unit is part of a project that is a major modification.

(a) The cabinet shall make a separate clean unit designation for each pollutant emitted by an emissions unit for which the emissions unit qualifies as a clean unit.

(b) A project for which the owner or operator begins actual construction shall be considered to have occurred while the emissions unit is a clean unit, if actual construction begins:
1. After the effective date of the clean unit designation as determined pursuant to subsection (4) of this section; and
2. Before the expiration date of the clean unit designation as determined pursuant to subsection (5) of this section.

(c) For an emissions unit to retain its clean unit designation during a project at a clean unit, the project shall not:
1. Cause the need for a change in the emissions limitations or work practice requirements in the permit for the unit that have been determined to be comparable to BACT according to subsection (3) of this section; and [or]
2. Alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT according to subsection (7)(d) of this section.

(d) Unless an emissions unit's control technology qualifies as a clean unit according to subsection (2)(b) of this section, the unit shall lose its designation as a clean unit upon issuance of the necessary permit revisions.

1. The project causes the need for a change in the emissions limitations or work practice requirements in the permit for the unit that have been determined to be comparable to BACT.
2. The project will alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT.

(e) Clean unit designation shall and immediately prior to the time actual construction begins on a project that will cause a unit to lose its clean unit designation, if the owner or operator begins actual construction on a project that causes an emissions unit to lose its clean unit designation shall be subject to the applicability requirements of Section 14(4)(a), 2., and (b) of this administrative regulation as if the emissions unit is not a clean unit.

(2) Qualifying or requalifying to use the clean unit applicability test.
(a) An emissions unit shall qualify as a clean unit if the unit meets the requirements in this paragraph.

1. Qualifying air pollution control technology requirement. Air pollutant emissions from an emissions unit shall be reduced through the use of air pollution control technology, including pollution prevention or work practices, and the owner or operator shall:
   a. Demonstrate that an emissions unit's control technology is comparable to BACT according to the requirements of subsection (3) of this section;
   b. Demonstrate that an emissions unit's control technology reduces emissions below the level of a standard, uncontrolled emissions unit of the same type; and
   c. Have made [Make] an investment to install the control technology. An investment shall include expenses to research the application of, or to actually apply, a pollution prevention technique to the emissions unit or to retrofit the unit to apply a pollution prevention technique.

2. Impact of emissions from the unit requirement. The allowable emissions from the emissions unit, as determined by the cabinet, shall not:
   a. Cause or contribute to a violation of any national ambient air quality standard or PSD increment; or
   b. Adversely impact visibility or another air quality related value that has been identified as a federal Class I area by a federal land
manager and for which information is available to the general public.
3. Date of installation requirement.
   a. For control technology installed before provisions for clean units are effective in the Kentucky SIP, the owner or operator of an emissions unit with control technology on which a clean unit designation is based, shall apply for clean unit designation within two (2) years after the requirements for clean units become effective in the Kentucky SIP.
   b. For control technology installed after the provisions for clean units become effective in the Kentucky SIP, the owner or operator shall apply for clean unit designation at the time the control technology is installed.
   (b) Requalifying as a clean unit. An emissions unit may requalify as a clean unit after the original clean unit designation expires or is lost according to provisions in subsections (6) and (7) of this section or under clean unit provisions in Section 20 of this administrative regulation.
1. The owner or operator shall obtain a new permit or permit revision pursuant to subsections (6) and (7) of this section and 401 KAR 52:020 that demonstrates the emissions unit's control technology is achieving a level of emissions control comparable to current-day BACT.
2. The emissions unit shall meet the requirements of subsections 1(a) and 2 of this section.
3. Demonstrating control effectiveness comparable to BACT. The owner or operator shall demonstrate that the emissions unit's control technology is comparable to BACT under the provisions of either paragraph (a) or (b) of this subsection.
(a) Comparison of the control technology to previous BACT and LAER determinations.
   1. An emissions unit's control technology shall be presumed to be comparable to BACT if:
      a. The control technology achieves an emissions limitation that is equal to or better than the average of the emissions limitation achieved by all the sources for which a BACT or LAER determination has been made within the preceding five (5) years and entered into the RACT/BACT/LAER Clearinghouse; and
      b. Application of the BACT or LAER control technology to the emissions unit is technically feasible.
   2. To determine the accuracy of any presumptive determination that an achieved-in-practice control technology is comparable to BACT, the cabinet shall:
      a. Consider any information on achieved-in-practice pollution control technologies that is provided during the public comment period; and
      b. Compare this presumption to information on achieved-in-practice pollution control technologies provided during the public comment period.
      a. To determine the accuracy of any presumptive determination that the control technology is comparable to BACT; and
      b. To consider any additional BACT or LAER determinations of which the cabinet is aware.
   (b) The substantially-as-effective test. The owner or operator may demonstrate that the emissions unit's control technology is substantially as effective as BACT pursuant to this paragraph. The cabinet:
      1. Shall consider the evidence on a case-by-case basis that an owner or operator, and any other person during the public participation process, provides to the cabinet to demonstrate if the emissions unit's control technology is substantially as effective as BACT; and
      2. Shall determine if the emissions unit's air pollution control technology is substantially as effective as BACT after considering the evidence.
4. Effective date of the clean unit designation. The date that the owner or operator may begin to use the clean unit test to determine if a project involving an emissions unit is a major modification shall be the later of:
   a. The date that the permit or permit revision required by subsection (6) of this section is issued; or
   b. The date that the emissions unit's air pollution control technology is placed into service.
5. Clean unit expiration. The date the owner or operator shall no longer be allowed to use the clean unit test to determine if a project involving an emissions unit is a major modification shall be determined according to this subsection.
   a. The cabinet shall designate an emissions unit a clean unit by issuing a permit or permit revision under 401 KAR Chapter 52, including requirements for public notice of the proposed clean unit designation and opportunity for public comment; and
   b. The permit or permit revision shall meet the requirements of subsection (7) of this section.
6. Required permit content. The Title V permit for a major stationary source with a clean unit shall, after the effective date of the clean unit designation and in accordance with the applicable provisions of 401 KAR Chapter 52, but not later than the date the Title V permit is renewed, include the following terms and conditions:
   a. A statement indicating that the emissions unit qualifies as a clean unit and identifying the pollutant for which the clean unit designation applies; and
   b. The effective date of clean unit designation.
   i. If the effective date is not known on the date the clean unit designation is initially recorded in the Title V permit, the permit or permit revisions shall describe the event that shall determine the effective date. Once the effective date is determined, the owner or operator shall notify the cabinet of the exact date; and
   ii. If originally absent from the Title V permit, the effective date of the clean unit shall be added to the Title V permit at the first opportunity the permit is opened, but not later than the next renewal.
7. The expiration date of clean unit designation:
   a. If the expiration date is not known on the date the clean unit designation is initially recorded in the Title V permit, the permit or permit revision shall describe the event that shall determine the expiration date.
   b. Once the expiration date is determined, the owner or operator shall notify the cabinet of the exact date; and
   c. If originally absent from the Title V permit, the expiration date shall be added to the Title V permit at the first opportunity the permit is opened, but not later than the next renewal.
8. All emissions limitations and work practice requirements adopted in conjunction with emissions limitations necessary to assure the control technology continues to achieve an emissions limitation comparable to BACT and any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT; and
9. Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions units continue to meet.
the criteria for maintaining the clean unit designation pursuant to subsection (8) of this section; and
(f) Terms reflecting the owner or operator's duty to maintain the clean unit designation and the consequences of failing to do so, pursuant to subsection (8) of this section.

(8) Maintaining the clean unit designation.
(a) The owner or operator shall conform to the provisions of this subsection to maintain clean unit status.

1. The control technology continues to achieve emissions control comparable to BACT, the clean unit shall comply with the emissions limitations or work practice requirements adopted in conjunction with those that are comparable to BACT, which are recorded in the source's major NSR permit or permit revisions and subsequently reflected in the Title V permit that designates the unit as a clean unit.

2. The owner or operator shall not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emissions control that is comparable to BACT.

3. The clean unit shall comply with all terms and conditions in the Title V permit related to the unit's clean unit designation.

4. The clean unit shall continue to control emissions using the specific air pollution control technology that was the basis for its clean unit designation. The clean unit designation shall end if the emissions unit or control technology is replaced.

(b) The [these] requirements of this subsection shall apply to each pollutant for which the cabinet has designated an emissions unit a clean unit. Failing to conform to the restrictions for one (1) pollutant shall only affect the clean unit designation for that pollutant.

(9) Netting at clean units.
(a) Emissions changes that occur at a clean unit shall not be included in calculating a significant net emissions increase to be used in a netting analysis, unless:
1. Such use occurs before the date the clean unit provisions are effective in the Kentucky SIP or after the clean unit designation expires; or
2. The emissions unit reduces emissions below the level that qualified the unit as a clean unit.

(b) The owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emissions limitation. If:
1. The unit reduces emissions below the level that qualified the unit as a clean unit;
2. The reductions are surplus, quantifiable, and permanent;
3. For determining creditable net emissions increases and decreases, the reductions shall also be enforceable;
4. For determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.

(c) Effect of area redefinition on clean units.
1. The clean unit designation of an emissions unit shall not be affected by redefinition of the attainment status of the area in which it is located.
2. If an existing clean unit designation expires or is lost, the unit shall qualify as a clean unit according to the requirements that are currently applicable in the area, regardless of the area's original attainment status during the previous designation period.

Section 22. PCP Exclusion Procedural Requirements. For a project to qualify for a pollution control project (PCP) exclusion, an owner or operator shall comply with the provisions of this section.

(1) To request a PCP designation for a project the owner or operator shall:
(a) Submit a notice to the cabinet before beginning actual construction for a project that is listed in the definition for "pollution control project" in 401 KAR 51:001, Section 1(18b)(a) to (f); or
(b) Submit a notice and request for a permit or permit revision and obtain approval to use the PCP exclusion from the cabinet according to subsection (5) of this section for a project that is not listed in the definition at 401 KAR 51:001, Section 1(18b)(a) to (f).

(2) The owner or operator for all projects that rely on the PCP exclusion shall perform:
(a) An environmentally-beneficial analysis.
1. The environmental benefit from the emissions reductions of pollutants regulated under 42 U.S.C. 7401 to 7477p(1) (Clean Air Act) shall outweigh the environmental detriment of emissions increases in pollutants regulated under the Act; and
2. A statement that the project is implementing a technology from those listed at 401 KAR 51:001, Section 1(18b)(a) to (f) shall satisfy the requirement in subparagraph (1) of this paragraph.
(b) An air quality analysis. The emissions increases from the project shall not:
1. Cause or contribute to a violation of any national ambient air quality standard or PSD increment, or
2. Adversely impact visibility or another air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(3) Content of notice or application for a permit or permit revision. The owner or operator shall include the following information in the notice or application for a permit or permit revision submitted to the cabinet for a PCP:
(a) A description of the project;
(b) The potential emissions increases and decreases of any pollutant regulated under the Act and the projected emissions increases and decreases using the methodology in Section 1(4) of this administrative regulation that will result from the project;
(c) A copy of the environmentally-beneficial analysis required by subsection (2)(a) of this section;
(d) A description of all methods, including monitoring and recordkeeping, that shall be used on an ongoing basis to demonstrate that the project is environmentally beneficial and sufficient to meet the applicable requirements of 401 KAR Chapter 52;
(e) A certification that the project shall be designed and operated in a manner that is consistent with:
1. The proper industry and engineering practices;
2. The environmentally-beneficial analysis and air quality analysis required by subsection (2)(a) and (b) of this section;
3. The information submitted in the notice or permit application; and
4. Procedures that minimize emissions of collateral pollutants within the physical configuration and operational standards usually associated with the emissions control device or strategy; and
(f) Demonstration that the PCP shall not have an adverse air quality impact.

The demonstration requirement may be satisfied with modeling, screening level modeling results, a statement that the collateral emissions increase is included within the parameters used in the most recent modeling exercise as required by subsection (2)(b) of this section, or another method approved by the cabinet.

2. An air quality impact analysis shall not be required for any pollutant that will not experience a significant emissions increase from the project.

(4) Notice process for listed projects. The owner or operator:
(a) May begin actual construction of a PCP project immediately after notice is sent to the cabinet; for projects listed in the definition of "pollution control project" in 401 KAR 51:001, Section 1(18b)(a) to (f); and
(b) Shall respond to any requests by the cabinet for additional information necessary to evaluate the suitability of the project for a PCP exclusion.

(5) Permitting process for unlisted projects.
(a) The owner or operator shall not begin actual construction of a PCP that is not listed in 401 KAR 51:001, Section 1(18b)(a) to (f) until the cabinet approves and issues a permit or permit revision for the project consistent with 40 C.F.R. 51.160 and 51.161 (equivalent to 401 KAR 52:000). These processes shall include the cabinet providing the public with:
1. Notice of the proposed approval;
2. Access to the environmentally-beneficial analysis and the air quality analysis; and
3. At least a thirty (30) day period for the public and the U.S. EPA to submit comments.
(b) The cabinet shall address all material comments received by the end of the comment period before taking final action on the permit or permit revision.

(6) Operational requirements. Upon installation of a PCP, the
owner or operator shall comply with the requirements of this subsection.

(a) General duty. The owner or operator shall operate the PCP in a manner that is consistent with:

1. Proper industry and engineering practices;
2. The environmentally-beneficial analysis and air quality analysis required by subsection (2)(a) and (b) of this section; and
3. Information submitted in the notice or application for a permit or permit revision required by subsection (3) of this section; and
4. Procedures that minimize emissions of collateral pollutants within the physical configuration and operational standards usually associated with the emissions control device or strategy.

(b) Recordkeeping to prove that the PCP is operated consistent with the general duty requirements in paragraph (a) of this subsection, the owner or operator shall maintain copies on site, of:

1. The environmentally-beneficial analysis;
2. The air quality impacts analysis; and
3. The monitoring and other emissions records.

(c) Permit requirements. The owner or operator shall comply with all provisions in a permit issued under 401 KAR 52:020 related to use and approval of the PCP exclusion.

(d) Generation of emissions reduction credits.

1. Emissions reductions created by a PCP shall not be included in calculating a significant net emissions increase unless the emissions unit further reduces emissions after qualifying for the PCP exclusion;
2. The owner or operator may generate a credit for the difference between the level of reduction that was used to qualify for the PCP exclusion and the new emissions limitation if such reductions are surplus, quantifiable, and permanent;
3. For generating offsets, the reductions shall be federally enforceable; and
4. For determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.

Section 23. Plant-wide Applicability Limit Provisions. The cabinet may approve the use of an actual PAL (PAL) for an existing major stationary source if the PAL meets the requirements of this section.

(1) General provisions.

(a) An owner or operator may execute a project without triggering major NSR if the source maintains its total source-wide emissions below the PAL level, meets the requirements in this section, and complies with the PAL permit. If these conditions are met, a project:

1. Shall not be considered a major modification for the PAL pollutant;
2. Shall not have to be approved through Kentucky’s major NSR program; and
3. Shall not be subject to the provisions of Section 16(4)(2) of this administrative regulation concerning restrictions on relaxing enforceable emission limitations that a major stationary source used to avoid applicability of the major NSR program.

(b) Except as provided under subparagraph (1)(a)(3) of this section, a major stationary source shall continue to comply with all applicable federal or state requirements, emissions limits, and work practice requirements that were established prior to the effective date of the PAL.

(2) Permit application requirements. The owner or operator of a major stationary source shall submit the following information to the cabinet for approval as part of an application for a permit or permit revision requesting a PAL:

(a) A list of all emissions units at the source designated as small, significant or major, based on their potential to emit;
(b) Identification of the federal and state applicable requirements, emissions limits, and work practice requirements that apply to each emissions unit;
(c) Calculations of the baseline actual emissions for the emissions units with supporting documentation, including emissions associated with startup, shutdown and malfunction; and
(d) The calculation procedures the owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by subsection (12)(a) of this section.

(3) Establishing a PAL. The cabinet shall establish a PAL at a major stationary source in a federally enforceable permit pursuant to the requirements of this section.

(a) The PAL shall impose an annual emissions limitation in tons per year that is enforceable as a practical matter for the entire major stationary source.

1. For each month during the PAL effective period after the first twelve (12) months of establishing a PAL, the owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous twelve (12) consecutive months is less than the PAL as a twelve (12) month average, rolled monthly; and
2. For each month during the first eleven (11) months from the PAL effective date, the owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(b) The PAL shall be established in a PAL permit that:

1. Meets the public participation requirements in subsection (4) of this section; and
2. Contains all the requirements of subsection (6) of this section;
(c) A PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source;
(d) Each PAL shall regulate emissions of only one (1) pollutant;
(e) Each PAL shall have a PAL effective period of ten (10) years;
(f) The owner or operator of a major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements of subsections (11) to (13) of this section for each emissions unit under the PAL though the PAL effective period;
(g) Emissions reductions of a PAL pollutant that occur during the PAL effective period shall not be creditable as decreases for offsets under 40 C.F.R. 51.165(a)(3)(ii); unless:
1. The level of the PAL is reduced by the amount of the emissions reductions; and
2. The reductions will be creditable in the absence of the PAL.

(4) Public participation requirements. PALs for existing major stationary sources shall be established, renewed, or increased pursuant to this subsection and the applicable procedures of 401 KAR 52:100. The cabinet shall:

(a) Provide the public with notice of the proposed approval of a PAL permit with at least a thirty (30) day period for submission of public comment; and
(b) Address all material comments before taking final action on a PAL permit or permit revision.

(5) Setting the ten (10) year PAL level.

(a) The PAL level for a major stationary source shall be the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source during the chosen twenty-four (24) month period plus the applicable significant level for the PAL pollutant under the definition for "significant" in 401 KAR 51:001, Section 1(221) or under the Act, whichever is lower.

(b) In establishing a PAL level for a PAL pollutant, only one (1) consecutive twenty-four (24) month period shall be used to determine the baseline actual emissions for all existing emissions units.

(c) A different consecutive twenty-four (24) month period may be used for each different PAL pollutant.

(d) Emissions associated with units that were permanently shutdown after the chosen twenty-four (24) month period shall be subtracted from the PAL level.

(e) The PAL permit shall contain all the requirements of subsection (6) of this section.

(f) Emissions from units for which actual construction began after the twenty-four (24) month period shall be added to the PAL level in an amount equal to the potential to emit of the units.

(g) The cabinet shall specify a reduced PAL level in the PAL permit to become effective on the future compliance date of any applicable federal or state regulatory requirement that the cabinet is aware of prior to issuance of the PAL permit.

(6) Contents of the PAL permit. The PAL permit shall contain the following information:

(a) The PAL pollutant and the applicable source-wide emissions limitations in tons per year;
(b) The PAL permit effective date and the expiration date of the permit;
PAL or PAL effective period;
(c) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL under subsection (9) of this section before the end of the PAL effective period, the PAL shall remain in effect until a revised PAL permit is issued by the cabinet;
(d) A requirement that emissions calculations for compliance purposes include emissions from startups, shutdowns and malfunctions;
(e) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of subsection (9) of this section;
(f) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by subsection (12)(a) of this section;
(g) A requirement that the major stationary source owner or operator shall monitor all emissions units in accordance with the provisions in subsection (12)(a) of this section;
(h) A requirement that the owner or operator shall retain the records required under subsection (12) of this section on site. Records may be retained in an electronic format or another acceptable format approved by the cabinet;
(i) A requirement for the owner or operator to submit the reports required under subsection (13) of this section by the required deadlines; and
(j) Other requirements necessary to implement and enforce the PAL;
(7) PAL effective period and reopening of a PAL permit.
(a) A PAL effective period shall be ten (10) years.
(b) The cabinet shall renew a PAL permit to:
1. Correct typographical or calculation errors made in setting the PAL;
2. Reflect a more accurate determination of emissions used to establish the PAL;
3. Reduce the PAL if the owner or operator of the major stationary source does not have creditable emissions reductions for use as offsets under 40 C.F.R. 51.165(a)(3)(i); or
4. Revise the PAL to reflect an increase in the PAL, according to subsection (10) of this section.
(c) The cabinet may reopen the PAL permit, during the PAL effective period, to:
1. Reduce the PAL to reflect newly applicable federal requirements with compliance dates after the PAL effective date;
2. Reduce the PAL consistent with any other requirement that is enforceable as a practical matter; and
3. Impose on the major stationary source under the SIP; and
4. Reduce the PAL if the cabinet determines that a reduction is necessary to avoid causing or contributing to:
   a. A National Ambient Air Quality Standard (NAAQS) or PSD increment violation; or
   b. An adverse impact on visibility or another air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.
(d) All permit reopenings shall be carried out under the public participation requirements of subsection (4) of this section except for permit reopenings to correct typographical or calculation of errors that do not increase the PAL level.
(8)Expiration of a PAL. A PAL that is not renewed shall expire at the end of the PAL effective period and the requirements of this subsection shall then apply:
(a) Each emissions unit, or each group of emissions units, that existed under the PAL shall comply with an allowable emissions limitations under a revised permit established as follows:
1. An owner or operator of a major stationary source using a PAL shall submit a proposed allowable emissions limitation for each emissions unit, or each group of emissions units, by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL;
a. This proposal shall be submitted to the cabinet at least six (6) months before the expiration of the PAL permit but not sooner than eighteen (18) months before permit expiration;
b. If the PAL has not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subsection (9)(e) of this section, distribution of allowable emissions shall be made as if the PAL has been adjusted.
2. The cabinet shall decide the date and procedure the owner or operator shall use to distribute the PAL allowable emissions.
3. The cabinet shall issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the cabinet determines is appropriate.
(b) Each emissions unit shall comply with the allowable emissions limitation on a twelve (12) month rolling basis. The cabinet may approve the use of monitoring systems other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emissions limitation.
(c) The source shall continue to comply with a source-wide, multunit emissions cap equivalent to the level of the PAL emissions limitation until the cabinet issues the revised permit incorporating allowable limits for each emissions unit or each group of emissions units.
(d) A major modification at the major stationary source shall be subject to major NSR requirements.
(e) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements eliminated by the PAL that applied during or before the PAL effective period, except for those emissions limitations established pursuant to Section 16(4) of this administrative regulation.
(9) Renewal of a PAL.
(a) Public participation requirements.
1. The cabinet shall follow the public participation procedures specified in subsection (4) of this section in approving a request to renew a PAL for a major stationary source.
2. The cabinet shall provide a written rationale for the proposed PAL level for public review and comment.
3. Any person may propose a PAL level for the source for consideration by the cabinet during the public review period.
(b) Application deadline.
1. A major stationary source owner or operator shall submit an application for renewal of a PAL at least six (6) months before the date of permit expiration but no earlier than eighteen (18) months before permit expiration.
2. The deadline for application submission shall ensure that the permit shall not expire before the permit is renewed.
3. If a complete application for renewal is submitted within the timeframe specified in subparagraph 1 of this paragraph, the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.
(c) Application requirements. The application to renew a PAL permit shall contain:
1. The information required in subsection (2) of this section;
2. A proposed PAL level;
3. The sum of the potential to emit of all emissions units under the PAL with supporting documentation; and
4. Any other information the owner or operator wishes the cabinet to consider in determining the appropriate level to renew the PAL.
(d) PAL adjustment.
1. A PAL shall not exceed the source's potential to emit. The cabinet shall adjust the PAL downward if a source's potential to emit has declined below the PAL level.
2. The cabinet may renew the PAL at the same level as the current PAL if the sum of the baseline actual emissions for all emissions units at the source plus an amount equal to the significant level is equal to or greater than eighty (80) percent of the current PAL level, unless the sum is greater than the source's potential to emit.
3. If the sum of the baseline actual emissions for all emissions units at the source plus an amount equal to the significant level is less than eighty (80) percent of the current PAL level, the cabinet may set the PAL at a level that is determined to be:
   a. More representative of the source's baseline actual emissions;
   b. Appropriate considering the following factors:
   (i) Air quality needs;
(ii) Advances in control technology;
(iii) Anticipated economic growth in the area of the source;
(iv) The cabinet's goal of promoting voluntary emissions reductions;
(v) Cost effective emissions control alternatives; and
(vi) Other factors as specifically identified by the cabinet in its written rationale for setting the PAL level.

4. The cabinet shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of subsection (10) of this section.

(a) The PAL shall be adjusted at the time of PAL permit renewal or Title V permit renewal, whichever comes first, if:

1. The compliance date for a state or federal applicable requirement that applies to the PAL source occurs during the PAL effective period; and
2. The cabinet has not already adjusted for such requirement.

(10) Increasing a PAL during the PAL effective period. The cabinet may increase a PAL if emissions limitations during the PAL effective period, if the major stationary source complies with the provisions of this subsection.

(a) Application procedures. To request an increase in the PAL limit for a major modification, the owner or operator of the major stationary source shall submit a complete application, which shall include [for a PAL increase that includes the following];

1. Identification of the emissions units contributing to the increase in emissions that cause the source's emissions to equal or exceed its PAL [for the PAL major-modification];
2. Demonstration that the increased PAL, as calculated in paragraph (c) of this subsection, [does not exceed the PAL, and];
   a. The level of control that results from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis; the new BACT analysis is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established before the preceding ten (10) years;
   b. If an emissions unit currently complies with BACT or LAER, the assumed control level for that emissions unit shall be equal to the current level of BACT or LAER for that emissions unit; and
3. A statement that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(b) NSR permit and compliance requirement. The owner or operator shall obtain a major NSR permit for all emissions units contributing to the increase in emissions for the PAL major modification.

1. A significant source shall not apply in deciding for which emissions units a new NSR permit shall be obtained; and
2. Emissions units that obtain a major NSR permit shall comply with any emissions requirements resulting from the major NSR process, even though the units also shall become subject to the PAL or shall continue to be subject to the PAL.

(c) Calculation of increased PAL. The cabinet shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the baseline actual emissions of the small emissions units.

(11) Monitoring requirements for PALs.

(a) General requirements.

1. Each PAL permit shall contain enforceable requirements for the chosen monitoring system that accurately determines plant-wide emissions of the PAL pollutant in terms of mass per unit of time;
2. A monitoring system authorized for use in the PAL permit shall be:
   a. Approved by the cabinet; and
   b. Based on sound science and meet generally acceptable scientific procedures for data quality and manipulation;
3. The data generated by a monitoring system shall meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit;
4. A monitoring system shall employ one (1) or more of the four (4) general monitoring approaches meeting the minimum requirements set forth in paragraph (b) of this subsection;
5. The cabinet may approve an alternative monitoring approach that meets the requirements of subparagraphs 1 to 3 of this paragraph; and
6. Failure to use a monitoring system that meets the requirement of this section shall render the PAL invalid.

(b) Minimum performance requirements for approved monitoring approaches. If conducted in accordance with the minimum requirements in paragraphs (c) to (i) of this subsection, the following shall be acceptable monitoring approaches:

1. Mass balance calculations for activities using coatings or solvents;
2. CEMS;
3. CPMS or PEMS; and
4. Emission factors.

(c) Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coatings or solvents shall:

1. Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;
2. If the PAL pollutant cannot be accounted for in the process, assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit; and
3. If the vendor of the material or fuel from which the pollutant originates publishes a range, use the highest value of the published range of pollutant content to calculate the PAL pollutant emissions, unless the cabinet determines there is site-specific data or a site-specific monitoring program to support another pollutant content within the range.

(2) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

1. CEMS shall comply with applicable performance specifications found in 40 C.F.R. Part 60, Appendix B; and
2. CEMS shall sample, analyze, and record data at least every fifteen (15) minutes while the emissions unit is operating.

(a) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

1. The CPMS or PEMS shall be based on current site-specific data demonstrating a correlation between the monitored parameter and the PAL pollutant emissions across the range of operation of the emissions unit; and
2. While the unit is operating, each CPMS or PEMS shall sample, analyze, and record data at least every fifteen (15) minutes, or at another less frequent interval approved by the cabinet.

(d) Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

1. All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors’ development;
2. The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and
3. If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six (6) months of PAL permit issuance, unless the cabinet determines that testing is not required.

(q) A source owner or operator shall record and report maximum potential emissions without considering enforceable emissions limitations or operational restrictions for an emissions unit during any period of time there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(h) If an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, as an alternative to the requirements of paragraphs (c) to (q) of this subsection, at the time of permit issuance the cabinet shall:

1. Establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at operating points; or
2. Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL.

   (l) Revalidation. All data used to establish the PAL pollutant shall be revalidated through performance testing or other scientifically-validated means approved by the cabinet. Validation testing shall occur at least once every five (5) years after issuance of the PAL.

   (m) Recordkeeping requirements. The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's twelve (12) month rolling total emissions for five (5) years from the date of the determination.

   (n) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five (5) years:

   1. A copy of the PAL permit application and any applications for revisions to the PAL;

   2. Each annual certification of compliance pursuant to Title V and the data used to certify compliance.

   (o) Reporting and notification requirements. The owner or operator shall submit semiannual monitoring reports and prompt deviation reports to the cabinet in accordance with 401 KAR Chapter 62 and in the following requirements:

   (a) Semiannual report. The semiannual report shall be submitted to the cabinet within thirty (30) days of the end of each reporting period and shall contain:

   1. The identification of owner and operator and the permit number;

   2. Total annual emissions, in lpy, based on a twelve (12) month rolling total for each month in the reporting period recorded pursuant to subsection (12)(a) of this section;

   3. All data used in calculating the monthly and annual PAL pollutant emissions, including any quality assurance or quality control data;

   4. A list of any emissions units modified or added to the major stationary source during the preceding six (6) month period;

   5. The number, duration, and cause of any deviations or monitoring malfunctions, other than the time associated with zero and span calibration checks, and any corrective action following a deviation;

   6. A notification of permanent or temporary shutdown of any monitoring system including:

   a. The reason for the shutdown;

   b. The anticipated date that the monitoring system shall be fully operational or shall be replaced with another monitoring system;

   c. If applicable, a statement that the emissions unit monitored by the monitoring system continued to operate without the monitoring system; and

   d. The calculation of the emissions of the pollutant or the number determined according to subsection (11)(g)(6) of this section that is included in the permit; and

   7. A signed statement by the responsible official, as defined by 401 KAR 52:001, certifying the truth, accuracy, and completeness of the information provided in the semiannual report.

   (p) Deviation report. The major stationary source owner or operator shall submit reports of any deviation or exceedance of the PAL requirements, including periods monitoring is unavailable:

   1. A report submitted pursuant to 40 C.F.R. 70.6(a)(3)(ii)(B) shall satisfy the deviation reporting requirement;

   2. The deviation report shall be submitted within the time limits prescribed by 40 C.F.R. 70.6(a)(3)(iii)(B);

   3. The deviation report shall contain the following information:

   a. The identification of the owner, the operator and the permit number;

   b. The PAL requirement that experienced the deviation or that was exceeded;

   c. Emissions resulting from the deviation or the exceedance; and

   d. A signed statement by the responsible official, as defined by 401 KAR 52:001, certifying the truth, accuracy, and completeness of the information provided in the report.

   (q) Revalidation results. The owner or operator shall submit to the cabinet the results of any revalidation test or method within three (3) months after completion of the test or method.

   (r) Transition requirements.

   (s) After the U.S. EPA approves the Kentucky SIP revisions for the PAL provisions published in 67 Fed. Reg. 80186, December 31, 2002, the cabinet shall only issue a PAL that complies with the requirements of this section.

   (t) The cabinet may supersede a PAL that was established before the date the U.S. EPA approves the Kentucky SIP revisions for the PAL provisions published in 67 Fed. Reg. 80186, December 31, 2002, with a PAL that complies with the requirements of this section.

Section 24. Incorporation by Reference. (1) The following material is incorporated by reference:


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law. The documents incorporated by reference in subsection (1) of this section are available for public inspection and copying (subject to copyright law) at the following main and regional offices of the Kentucky Division for Air Quality during the normal working hours of 8 a.m. to 4:30 p.m., local time:

(a) Kentucky Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601-1403, (502) 573-3382;

(b) Ashland Regional Office, 1550 Wolenham Drive, Suite 1, Ashland, Kentucky 41102, (606) 929-5285;

(c) Bowling Green Regional Office, 1508 West Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 526-4923;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W, Suite 700, Owensboro, Kentucky 42303, (270) 687-7904;

(h) Paducah Regional Office, 14500 Clarks River Road, Paducah, Kentucky 42003, (270) 889-8486; and

(i) Frankfort Regional Office, 643 Teton Trail, Suite B, Frankfort, Kentucky 40601, (502) 584-3355.


[Section 21. Reference Material. (1) Incorporation by Reference. The following documents are incorporated by reference:


(b) The manual is available under Order No. PB 87-100012 from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia, 22161; Phone (703) 487-4600.

(2) Documents from the Code of Federal Regulations:


(b) 40 C.F.R. - Part 58, Appendix B - Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitor-
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**Section 24. Significant Air Quality Impact.**

<table>
<thead>
<tr>
<th>Pollutant</th>
<th>Air-Quality Level</th>
<th>Averaging Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carbon monoxide</td>
<td>575 μg/m³</td>
<td>8-hour average</td>
</tr>
<tr>
<td>Nitrogen dioxide</td>
<td>14 μg/m³</td>
<td>Annual-average</td>
</tr>
<tr>
<td>Particulate matter</td>
<td>10 μg/m³ of PM₁₀</td>
<td>24-hour average</td>
</tr>
<tr>
<td>Sulfur dioxide</td>
<td>13 μg/m³</td>
<td>24-hour average</td>
</tr>
<tr>
<td>Ozone</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lead</td>
<td>9.3 μg/m³</td>
<td>3-month average</td>
</tr>
<tr>
<td>Mercury</td>
<td>0.26 μg/m³</td>
<td>24-hour average</td>
</tr>
<tr>
<td>Beryllium</td>
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<td>24-hour average</td>
</tr>
<tr>
<td>Fluorides</td>
<td>0.26 μg/m³</td>
<td>24-hour average</td>
</tr>
<tr>
<td>Vinyl chloride</td>
<td>15 μg/m³</td>
<td>24-hour average</td>
</tr>
<tr>
<td>Hydrogen sulfide</td>
<td>0.2 μg/m³</td>
<td>1-hour average</td>
</tr>
<tr>
<td>Reduced sulfur compounds</td>
<td>16 μg/m³</td>
<td>1-hour average</td>
</tr>
<tr>
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### Section 25. Ambient Air Increments for Class I Variances.

<table>
<thead>
<tr>
<th>Pollutant</th>
<th>Maximum Allowable Increase (micrograms per cubic meter)</th>
</tr>
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<tbody>
<tr>
<td>PM₁₀; annual arithmetic mean</td>
<td>4</td>
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<tr>
<td>PM₁₀; 24-hour maximum</td>
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</table>

**Section 26. Ambient Air Increments for Presidential or Gubernatorial SO₂ Variances.**

<table>
<thead>
<tr>
<th>Pollutant</th>
<th>Maximum Allowable Increase (micrograms per cubic meter)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sulfur Dioxide</td>
<td></td>
</tr>
</tbody>
</table>

**LAJUANA S. WILCHER, Secretary**

**APPROVED BY AGENCY: May 14, 2004**

**FILED WITH LRC: May 14, 2004 at noon**

**CONTACT PERSON: Millie Ellis, Environmental Technologist III, Regulation Development Section, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, and fax (502) 573-3787.**

RELATES TO: KRS 16.040, 16.050

STATUTORY AUTHORITY: KRS 16.040, 16.050, 16.080

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.040 requires the Commissioner of State Police to prescribe minimum physical requirements for persons appointed as state police officers, and to conduct tests to determine the fitness and qualifications of applicants. KRS 16.080 authorizes the commissioner to adopt administrative regulations for the enlistment of officers. KRS 16.050 requires the State Police Personnel Board to adopt administrative regulations to provide for competitive examination as to the fitness of applicants for employment as officers, and for the establishment of eligible lists for employment based upon competitive examination. This administrative regulation establishes the grounds for disqualification from competition in the process.

Section 1. Applicants shall be disqualified from further participation in the selection process or removed from the register if it is determined that:

(1) An applicant does not meet any one (1) of the qualifications for appointment as an officer;
(2) An applicant has made a false statement of material fact on the application, or in response to any questions or requests for information during the selection process;
(3) An applicant has used or attempted to use political influence, coercion or bribery to secure an advantage in any phase of the selection process;
(4) An applicant has cheated during the course of any examination required during the selection process, or has attempted to gain an advantage over other applicants by any dishonest or intentionally misleading act or omission;
(5) An applicant has failed to comply with any instructions from the department relating to the selection process;
(6) An applicant has been dismissed for cause from any public agency, or has resigned while charges of misconduct were pending;
(7) An applicant has been convicted of a felony or any crime of moral turpitude;
(8) An applicant is a current user of a controlled substance, unless prescribed by a physician;
(9) An applicant is addicted to or is a habitual user of any controlled substance or intoxicant;
(10) An applicant has more than six (6) driver demerit points against his or her operator's license;
(11) An applicant tests positive for an unlawful controlled substance as determined by a blood or urine analysis; or
(12) An applicant has tattoos that can be seen when the applicant wears a Kentucky State Police summer uniform shirt, which the Kentucky State Police will make available for the applicant to try on when the applicant takes the written examination (who fails to comply with the commissioner's standards for appearance and demeanor battling an officer of the Kentucky State Police).

Section 2. If cause exists to believe that an applicant has committed an act or omission which if true would result in disqualification, the department may defer any further processing of the application, or may condition further processing upon successful completion of a polygraph examination conducted by a licensed examiner employed by the department.

Section 3. An applicant who is disqualified or upon whose application further processing is deferred shall be informed within ten (10) working days of the reason for the disqualification or deferral, and of the right to appeal to the State Police Personnel Board.

STEPHEN B. PENCE, Lieutenant Governor, Secretary
MARK MILLER, Commissioner
W. O. BRADLEY, Chairman
APPROVED BY AGENCY: March 4, 2004

503 KAR 3:010. Basic law enforcement training course recruit conduct requirements; procedures and penalties.

RELATES TO: KRS 15A.070(1)

STATUTORY AUTHORITY: KRS 15A.070(5) [Chapter—13A:45A.160]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.070(1) authorizes Department of Criminal Justice Training to establish, supervise and coordinate training programs and schools for law enforcement personnel. This administrative regulation establishes procedures for disciplinary action, and [sets] penalties for violations of conduct requirements.

Section 1. Uniforms and Operator's License Required. A recruit shall provide the uniforms required in Section 6(8) of this administrative regulation and present a valid motor vehicle operator's license to participate in the basic training course.

Section 2. Removing a Recruit from the Course. (1) Unqualified recruit. If a recruit is not qualified to participate in the basic training course, he shall:

(a) Be removed from basic training by the:
   1. Commissioner;
   2. Director;
   3. Branch manager; or
   4. Section supervisor; and
(b) Receive no credit for the part of the course he has completed.

(2) [g] If a recruit is removed from training, pursuant to subsection (1) of this section, within thirty (30) days of the removal, he may request in writing an administrative hearing, which shall comply with KRS Chapter 13B.

(3) [g] A recruit shall be considered unqualified if he:
   (a) Has or his law enforcement agency files an incomplete or fraudulent application to attend basic training, or otherwise fails to comply with admissions requirements;
   (b) Is not presently employed as a law enforcement officer and has not received special permission to attend;
   (c) Arrives at the beginning of basic training physically unable to participate because of:
      1. [a.] Physical injury; or
      2. [b.] Being under the influence of alcohol or drugs (prescription or illegal); or
   (d) Failure of the physical training entry requirements as found in 503 KAR 1:110 [3:014] if the recruit is required to complete basic training in order to fulfill the peace officer certification provisions as found in KRS 15.380 to 15.402;
   (f) Has had prior disciplinary action while at DOCJT which would prevent participation (expelled or suspended from training), or has a pending disciplinary action which was initiated during a previous DOCJT training course;
   (g) Is unprepared to participate in training due to his arrival without the required equipment, license, uniform, or preparation;
   (h) Agency's request: The department shall remove a recruit from basic training upon the department's receipt of a written request from the recruit's law enforcement agency. The recruit shall receive no credit for the part of the course he has completed.

Section 3. Gifts. Gifts from recruits to department staff members shall conform with the Executive Branch Code of Ethics (KRS 11A.040).
Section 4. Penalties for Misconduct. (1) The following penalties shall apply to a recruit's failure to meet conduct or Honor Code requirements of the department. The penalties are listed in order of decreasing severity.

(a) Expulsion. The recruit is dismissed from the course, and all privileges are terminated. The recruit may not reapply for admission to the department's basic training course for five (5) years from the date of expulsion.

(b) Suspension. The recruit is suspended from training for a specified period of time, not to exceed one (1) year; all privileges are rescinded during the suspension period.

(c) Probation. The recruit is placed on probation for a specified period of time, not to exceed the final date of the basic training course in which he is currently enrolled. A loss of privileges may be imposed during the period of probation. A violation of any conduct or Honor Code requirement during the period of probation shall result in an extension of the period of probation, additional loss of privileges, suspension, or expulsion.

(d) Loss of privileges. The recruit's privileges as specified in the imposed penalty are rescinded for a stated period of time. The recruit's participation in training activities is not affected.

(e) Written reprimand. The recruit is reprimanded in writing for violating a conduct or Honor Code requirement.

(2) Second and subsequent violations.

(a) If a recruit has received a penalty for violating a conduct or Honor Code requirement, upon a second violation of any conduct or Honor Code requirement the next higher penalty shall be added to the list of penalties which may be imposed for the second violation.

(b) If a recruit has previously received two (2) penalties for violating two (2) conduct or Honor Code requirements, upon a third or subsequent violation of any conduct or Honor Code requirement the next two (2) higher penalties shall be added to the list of penalties which may be imposed for the third or subsequent violation.

(3) Giving notice of disciplinary action to recruit. The department shall give written notice to a recruit of any penalty imposed upon him.

(a) The department shall keep a written record of any penalty imposed on a recruit.

(b) A copy of any penalty imposed on a recruit shall be placed in his basic training file.

(c) Only the department, the recruit, and the recruit's agency head shall have access to the penalty records in a recruit's basic training file unless broader access is required by law.

Section 5. Termination of Dangerous or Disruptive Situation. If the conduct or condition of a recruit constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of a department activity, a department staff member may take all reasonable steps necessary to terminate the situation.

Section 6. Conduct Requirements. A recruit attending the basic training course shall meet the following conduct requirements:

(1) General conduct, chain of command. All communications shall follow chain of command of the department. Exceptions are the unavailability of a supervisor, or the recruit's complaint regarding a supervisor. Penalty: verbal warning or written reprimand.

(2) General conduct, insubordination. A recruit shall:

(a) Obey a lawful order from a department staff member. Penalty: verbal warning, written reprimand, loss of privileges, probation, or suspension.

(b) Refrain from vulgarity, rudeness, violence, threatening, or offensive confrontation, or other disrespectful conduct directed toward a department staff member, recruit or other department trainee or guest. Penalty: verbal warning, written reprimand, probation, or suspension.

(c) General conduct, grooming. The recruit shall be clean shaven with sideburns no longer than the bottom of the ear lobe. A mustache is permitted if the recruit has the mustache upon arrival and keeps it neatly trimmed. A beard shall not be permitted unless the recruit receives permission from the department based upon a written request from the recruit's agency and good cause shown. A recruit's hair shall not be unkempt and shall not be over the collar. Penalty: verbal warning or written reprimand.

(d) General conduct, alcoholic beverages and other intoxicants.

(a) A recruit shall not possess, consume nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician while attending a basic training course which [For purposes of this section, attending a basic training course] shall include all dates of training and periods when residing in the dormitory. A recruit shall not report to the dormitory having consumed alcoholic beverages, controlled substances, or other intoxicating substances. A recruit shall submit to testing as requested by the department to determine the presence of alcoholic beverages, or controlled or other intoxicating substances at the department's expense. Testing shall be requested if a department or dormitory staff member, instructor, section supervisor, branch manager, director or commissioner has a reasonable suspicion that the recruit has violated the provisions of this section. Testing may be randomly requested of all members of a basic training class or all dormitory residents. Penalty: written reprimand, loss of privileges, probation, suspension or expulsion.

(b) If a recruit has taken a controlled substance as prescribed by a physician or has taken any other medication, whether prescribed or not, he shall not participate in any training activity if he is under the influence thereof to the extent that the recruit may be impaired or may endanger himself or other persons or property. A recruit shall advise the class coordinator or the section supervisor in writing of the use of controlled substance or medication whether or not it has been prescribed by a physician. Penalty: verbal warning, written reprimand, probation, or suspension.

(c) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, or branch manager observes an unlawfully possessed intoxicating substance, he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(d) General conduct, weapons and other dangerous devices.

(a) A recruit shall not possess deadly weapons (as defined in KRS 500.080), ammunition, destructive devices or booby trap devices (as defined in KRS 237.030), hazardous substances (as defined in KRS 224.01-400), knives other than an ordinary pocket knife, firework, or instruments used by law enforcement for control purposes including batons, stun guns, Mace, and pepper spray, on property used by the department except under circumstances specifically authorized by the department. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

(b) Weapons specifically designated by the department to be used for training purposes shall be stored in a vault provided by the department at all times when they are not being used directly in training activities and may be removed only for scheduled training, servicing, cleaning, or repair. Servicing, cleaning, and repairs of weapons (other than repairs which may require the expertise of a qualified gunsmith) shall be carried out only as authorized by the section supervisor and only in the presence of a certified firearms instructor. Penalty: verbal warning, written reprimand, loss of privileges, or probation.

(c) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, branch manager, director or commissioner observes an unlawfully possessed weapon or other dangerous device he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(e) General conduct, department property.

(a) A recruit shall not recklessly, negligently, or intentionally damage, destroy, fail to return, or be wasteful of property of the department or any other facility used by the department. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension or expulsion.

(b) A recruit shall not have successfully completed basic training and shall not be allowed to graduate until he has returned all issued items or made satisfactory arrangements to pay for unrecovered or damaged items.
Director or commissioner. Penalty: verbal warning or written reprimand.

(c) A recruit shall not engage in conduct which creates or may create a risk of injury to others during a training session. Penalty: probation, suspension, or expulsion.

(d) A recruit shall complete assignments by the deadline established by the instructor or coordinator. Penalty: verbal warning or written reprimand.

(12) Training activities, dishonesty.

(a) A recruit shall not cheat or attempt to cheat on a test, or alter or attempt to alter a test grade or other evaluation result. A recruit shall not permit, assist or facilitate this conduct by another recruit. Penalty: suspension or expulsion.

(b) A recruit shall not cheat or attempt to cheat on any other assignment or activity, engage in any other conduct intended to gain an undeserved evaluation, or falsify a document provided to the department during basic training. A recruit shall not permit, assist or facilitate this conduct by another recruit. Penalty: written reprimand, loss of privileges, probation, suspension or expulsion.

(13) Residence hall.

(a) During the basic training course, when attending in Madison County, a recruit shall reside in the residence hall designated by the department.

(b) A recruit shall return to his residence hall at curfew times designated by the commissioner, Sunday through Thursday evenings, and Friday or Saturday if a training session is scheduled for the following day, and remain there until 5 a.m. the next morning. Exceptions shall be approved by the class coordinator and reported in writing through channels to the director. Penalty: verbal warning, written reprimand, loss of privileges, probation.

(c) A recruit shall observe "lights out" by 11:30 p.m. Sunday through Thursday, and Friday or Saturday if a training session is scheduled for the following day except on nights prior to an academic test when the time shall be extended to 12 midnight. Penalty: verbal warning or written reprimand.

(d) Each recruit shall be responsible for cleaning his area. Each month, prior to leaving for class training, a recruit shall ensure his room is clean and free of trash, with beds made and the room ready for inspection. Penalty: verbal warning, written reprimand, loss of privileges.

(e) Doors shall be locked whenever a room is unoccupied. Penalty: verbal warning or written reprimand.

(f) The use of cooking appliances or space heaters is prohibited. Penalty: verbal warning, written reprimand, loss of privileges.

(g) All residence hall rooms, closets, and containers therein may be inspected by department staff for purposes of safety, sanitation and rule violations.

(h) A recruit residing at the residence hall shall not:

1. Have any person of the opposite sex in his room, or visit in the room of a recruit of the opposite sex without the permission of the department. Penalty: verbal warning, written reprimand, loss of privileges, probation, or suspension.

2. Have a visitor in his room after 9 p.m. Penalty: verbal warning or written reprimand, loss of privileges.

3. Keep pets, animals, or birds of any kind in his room. Penalty: verbal warning, written reprimand, loss of privileges.

4. Engage in dangerous, disruptive, immoral or obscene behavior. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

Section 7. Honor Code. (1) The recruit shall abide by the provisions of the Honor Code which reads as follows:

We are a dynamic team of individuals who possess a wide array of talent and strengths. In order for our team to grow and be successful, we will respect the leadership of the agency and follow directives to the best of our ability. We will make sacrifices for the benefit of the team. We will practice humility and show a spirit of compromise. As recruits of the Department of Criminal Justice Training, Law Enforcement Basic Training class, we will not lie, steal or cheat nor tolerate any among us who do.

We will keep our privileges honorably as an example to all. We will be exemplary in obeying the laws of the Commonwealth and the administrative regulations of the Department of Criminal Justice Training. Whatever we see or hear of a confidential nature or con-
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vided to us in our official capacity shall be kept confidential unless revelation is necessary in the performance of duty. We will never allow personal feelings, prejudices, ill will or friendships to influence our decisions.

We know that each of us is individually responsible for standards of professional performance. Therefore, we will make the utmost effort to improve our level of knowledge and competence.

We recognize the badge of our office as a symbol of public faith and accept it as a public trust to be held so long as we are true to the ethics of the police service. We will constantly strive to achieve these ideals, dedicating ourselves to our chosen profession - law enforcement. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension or expulsion.

(2) The coordinator, in cooperation with the class shall designate a minimum of one (1) Honor Code representative during the first week of basic training. The Honor Code representative may be replaced:

(a) For nonperformance of duties, including conduct violations; or

(b) If the coordinator, in cooperation with the class, determines that a rotating assignment as Honor Code representative is in the best interest of the class.

(3) All recruits shall report Honor Code violations to the Honor Code representative. The coordinator shall report the offense to the class coordinator. The representative shall recommend the penalty to be imposed for the violation.

(4) All disciplinary procedures contained in this administrative regulation shall apply to the Honor Code violation. The department may pursue separately any additional offenses discovered during the investigation of the Honor Code violation. The department may charge a recruit with an Honor Code violation without a prior report from the Honor Code representative. A penalty recommendation for violation shall be solicited from the Honor Code representative.

Section 8. Department's Responsibilities to Recruit's Agency. In order to keep the agency advised of the recruit's progress and performance in basic training so that the agency may adequately assess the recruit's ability to perform required duties, the department shall provide the following to the police chief, sheriff or chief administrator of the recruit's agency:

(1) Recruit performance report which shall be completed at four (4) week intervals and shall include recruit conduct, demonstrated leadership abilities, examination scores, physical fitness scores and overall effort on performance, observed social and interpersonal skills and appearance and attendance.

(2) Immediate notice of specific nonperformance or lack of progress.

(3) Immediate notice of any off-campus activity which reflects negatively on the profession, including the following:

(a) Parking a marked police vehicle at a:
   1. Bar;
   2. Tavern;
   3. Lounge;
   4. Nightclub; or
   5. Other establishment with the primary purpose of serving alcoholic beverages;

(b) Disorderly conduct;

(c) Speeding; or

(d) Other behavior that gives rise to a citizen's complaint.

(4) Written notice of any conduct or Honor Code penalty imposed upon the recruit.

(5) Notice when a recruit has been charged with a violation of a conduct or Honor Code requirement and has requested a hearing.

(6) Notice when a recruit has been removed from training pending an initial appearance before the commissioner as defined in Section 10 of this administrative regulation, or when a recruit has been removed from training pending a disciplinary hearing as defined in Section 14(3) of this administrative regulation.

(7) Immediate notice of concerns related to the recruit's safety, or physical or emotional health.

Section 9. Summary Discipline. Except for summary discipline, a penalty shall not be imposed upon a recruit unless charges have first been brought by the legal officer.

(1) The following department staff members have the authority to impose the specified penalties summarily without meeting the requirements of the formal disciplinary procedures provided by Sections 10 through 15 of this administrative regulation. To have the authority to impose summary discipline, the staff member shall have reasonable grounds to believe the recruit has engaged in the misconduct.

(a) A department instructor may summarily impose a verbal warning.

(b) The section supervisor, branch manager, director, or commissioner may summarily impose a verbal warning, or written reprimand.

(c) The branch manager, director, or commissioner may summarily impose a verbal warning, written reprimand, or loss of privileges consisting only of a change in curfew.

(2) Before imposing a penalty summarily, the staff member shall give the recruit the opportunity to give an explanation.

(3) A summarily imposed penalty shall be reviewed by, and may be rescinded or modified by, the immediate supervisor of the staff member imposing the penalty. The reviewer shall provide the recruit with the opportunity to give an explanation.

Section 10. Removal From Training Pending an Initial Appearance Before the Commissioner. (1) When a charge is filed against a recruit, the commissioner or director may remove the recruit from some or all training until the recruit's initial appearance before the commissioner if he has reasonable grounds to believe the alleged misconduct took place and:

(a) He has reasonable suspicion to believe the recruit would be dangerous or disruptive if not removed; or

(b) The recruit has been charged with misconduct for which suspension or expulsion is authorized, and the facts demonstrate that suspension or expulsion is the appropriate penalty should the recruit be found guilty of the conduct violation.

(2) A recruit who has been removed from training pending an initial appearance before the commissioner shall be provided the initial appearance within three (3) training days of the removal.

Section 11. Complaint. Anyone having reasonable grounds to believe that a recruit has violated any of the conduct or Honor Code requirements identified in this administrative regulation may file a complaint with the section supervisor. This complaint shall be in writing setting forth the facts upon which the complaint is based.

Section 12. Investigation by Section Supervisor. (1) If the section supervisor receives a complaint of or witnesses apparent misconduct, he shall take statements and otherwise investigate the matter.

(2) After investigating the matter, the section supervisor shall:

(a) Take no action if none is justified by the evidence; or

(b) Impose appropriate summary discipline; or

(c) File, with the legal officer, a written request that charges be brought against the recruit. The request for charges shall describe the alleged misconduct and designate the specific conduct requirements violated. All pertinent evidence and documents including the complaint, and statements of the recruit and witnesses shall be forwarded to the legal officer.

Section 13. Review by Legal Officer; Placing Charges. (1) The legal officer shall review the request for charges and the supporting evidence and documents.

(2) The legal officer may make or cause further inquiry into the matter for additional information.

(3) The legal officer shall:

(a) File such charges against the recruit as he believes are justified by the evidence; or

(b) Deny the request for charges if the evidence does not support any charges. If the legal officer declines to file charges, he shall provide the commissioner with a statement of his reasons for not filing charges.

(4) The charging document shall:

(a) Be in writing;

(b) Particularly describe the alleged misconduct so as to reasonably inform the recruit of the nature of the allegation;
(c) State the time, date and place the recruit shall make an initial appearance before the commissioner to answer the charges;
(d) Be signed by the legal officer; and
(e) Be served upon the recruit at least forty-eight (48) hours before his initial appearance before the commissioner.

Section 14. Initial Appearance Before the Commissioner. (1) The initial appearance before the commissioner shall be held no more than five (5) training days after the charges have been served on the recruit. If the recruit after receiving proper notice, fails to appear, the commissioner may proceed in his absence and the recruit shall be notified in writing of any action taken.

(2) At the initial appearance before the commissioner:
(a) The legal officer shall:
1. Read the charges to the recruit;
2. Explain to the recruit:
   a. The charges;
   b. His right to a hearing in accordance with KRS Chapter 13B; and
   c. His right to be represented by legal counsel.
(b) The legal officer shall explain to the recruit the possible answers to the charges; admit the charges are true, deny the charges are true but waive a hearing, or deny the charges are true and ask for a hearing.
(c) The commissioner shall advise the recruit of the penalty which shall be imposed if the recruit admits the charges or waives a hearing.
(d) The recruit shall be requested to answer the charges.
(e) If the recruit chooses to waive his rights and admits the charges or denies the charges but waives a hearing:
1. He shall be permitted to make a statement of explanation; and
2. The commissioner shall impose a penalty.
(f) If the recruit denies the charges and requests a hearing, the commissioner shall set a date for the hearing. A notice of administrative hearing as required by KRS 13B.050 shall be served on the recruit within forty-eight (48) hours of the initial appearance before the commissioner.
(g) If the recruit remains silent or refuses to answer the charges, the commissioner may suspend the recruit from training until the recruit answers the charges or the legal officer drops the charges.
(3) The commissioner may remove the recruit from some or all training until the hearing if:
(a) He has reasonable grounds to believe the recruit would be dangerous or disruptive if removed; or
(b) The recruit is charged with misconduct serious enough to authorize expulsion as a possible penalty.

Section 15. Hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

[Section 16. Appeal. (1) A trainee may appeal an order entered by the commissioner which imposes a penalty adverse to the trainee by filing a written notice of appeal to the Secretary of the Justice Cabinet.
(a) The notice of appeal shall state the points on which the appeal is based and shall be on a form provided by the department. The form is made a part hereof by reference.
(b) A copy of the order being appealed shall be attached to the notice of appeal.
(c) A copy of the notice of appeal shall be delivered to the commissioner of the department by certified mail.
(2) The appeal shall not be heard de novo but shall be determined upon the audio record and any written or physical evidence introduced at the hearing.
(3) The Secretary of the Justice Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.]

JOHN W. BIZZACK, Ph.D., Commissioner
APPROVED BY AGENCY: April 13, 2004
FILED WITH LRC: April 13, 2004 at 3 p.m.
CONTACT PERSON: Stephen D. Lynn, Associate General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3137, phone (859) 622-3073, fax (859) 622-3162.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Criminal Justice Training
(As Amended at ARRS, June 8, 2004)

503 KAR 3:020. Law enforcement training course trainee requirements; misconduct; penalties; discipline procedures.

RELATES TO: KRS 15A.070(1)
STATUTORY AUTHORITY: KRS 15A.070(5) (15A.160)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.070(1) authorizes Department of Criminal Justice Training to establish, supervise and coordinate training programs and schools for law enforcement personnel. This administrative regulation establishes [prescribe] conduct requirements for [of] trainees attending in-service law enforcement training courses conducted by the Department of Criminal Justice Training, [prescribe] procedures for disciplinary action, and penalties for violations of conduct requirements [set penalties].

Section 1. Removing a Trainee from the Course. (1) Unqualified trainee. If a trainee is not qualified to participate in training, he shall:
(a) Be removed from training by the:
   1. Director;
   2. Branch manager; or
   3. Section supervisor; and
(b) Not receive credit for completed portions of training.
(2) A trainee shall be considered unqualified if:
(a) He or his agency files an incomplete or fraudulent application to attend the training course;
(b) He is not presently employed as a law enforcement officer and has not received special permission to attend;
(c) He arrives at the beginning of training physically unable to participate because of:
   1. Physical injury;
   2. Being under the influence of alcohol or drugs (prescription or illegal);
(d) He has had prior disciplinary action while at DOCJT which would prevent participation (expelled or suspended from training), or has a pending disciplinary action which was initiated during a previous DOCJT training course;
(e) He is unprepared to participate in training due to his arrival without the required equipment, license, uniform, or preparation;
(f) He failed to complete a prerequisite law enforcement training course or;
(g) He is not employed in a capacity for which the course is designed and has not received special permission to attend.
(3) If a trainee is removed from training, pursuant to subsection (1) of this section, within thirty (30) days of the removal, he may request in writing an administrative hearing, which shall comply with KRS Chapter 13B.

(4) Agency request. The department shall remove a trainee from training upon written request of the trainee's law enforcement agency. The trainee shall not receive credit for completed portions of the course.

Section 2. Gifts. A gift from trainees to department staff shall conform with the requirements of KRS 11A.040.

Section 3. Penalties for Misconduct. (1) The following penalties shall apply to a trainee's failure to meet conduct requirements of the department. The penalties are listed in order of decreasing severity.
(a) Expulsion. The trainee is dismissed from the course and all privileges are terminated.
(b) Loss of privileges. The trainee's privileges as specified in the imposed penalty are rescinded for a stated period of time. The trainee's participation in training activities is not affected.
(c) Written reprimand. The trainee is reprimanded in writing for violating a conduct requirement.
(d) Verbal warning. The trainee is warned verbally that he has violated a conduct requirement.
(2) Second and subsequent violations.
(a) If a trainee has received a penalty for violating a conduct requirement, upon a second violation of any conduct requirement the next higher penalty shall be added to the list of penalties which may be imposed for the second violation.  
(b) If a trainee has previously received two (2) penalties for violating two (2) conduct requirements, upon a third or subsequent violation of any conduct requirement the next two (2) higher penalties shall be added to the list of penalties which may be imposed for the third or subsequent violation.  
(3) Giving notice of disciplinary action to trainee and trainee's agency.  The department shall give written notice to a trainee of any penalty imposed upon him.  The trainee's agency shall be given written notice of any penalty imposed upon the trainee except a verbal warning, and shall be given verbal notice when a trainee has been charged with a violation of a conduct requirement and has requested a hearing.  
(4) Penalty records.  
(a) The department shall keep a written record of any penalty imposed on a trainee.  
(b) A copy of any penalty imposed on a trainee shall be placed in his training file.  
(c) Only the department, the trainee, and the trainee's agency head shall have access to the penalty records in a trainee's training file unless broader access is required by law.  

Section 4. Termination of Dangerous or Disruptive Situation. If the conduct or condition of a trainee constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of a departmental activity, a department staff member may take all reasonable steps necessary to terminate the situation.  

Section 5. Conduct Requirements. [(4)] A trainee attending a training course shall meet the following conduct requirements:  
(1) [(a)] General conduct - chain of command.  
[(b)] All communications shall follow chain of command of the department. Exceptions are the unavailability of a supervisor, or the trainee's communication regarding a supervisor. Penalty: verbal warning or written reprimand.  
(2) General conduct - insubordination. A trainee shall:  
(a) Obey a lawful order from a department staff member. Penalty: verbal warning, written reprimand, loss of privileges.  
(b) Refrain from vulgarity, rudeness, violent, threatening, or offensive confrontation, or other disrespectful conduct directed toward a department member, trainee or other department trainee or guest. Penalty: verbal warning, written reprimand.  
(3) General conduct - grooming. The trainee shall maintain a professional personal appearance which reflects favorably upon the trainee, the department, and the trainee's agency. Penalty: verbal warning or written reprimand.  
(4) General conduct - alcoholic beverages and other intoxicants.  
(a) A trainee shall not possess, consume nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician while attending a training course or bring alcoholic beverages into the Thompson Residence Hall. Penalty: written reprimand, loss of privileges, or expulsion.  
(b) If a trainee has taken a controlled substance as prescribed by a physician or has taken any other medication, whether prescribed or not, he shall not participate in any training activity if he is under the influence thereof to the extent that the trainee may be impaired or may endanger himself or other persons or property. A trainee shall advise the section supervisor in writing of the use of controlled substance or medication whether or not it has been prescribed by a physician. Penalty: verbal warning, written reprimand.  
(c) Confiscation.  
1. If a dormitory staff member, department instructor, section supervisor, or branch manager observes an unlawfully-possessed intoxicating substance, he shall immediately confiscate it.  
2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.  
(5) General conduct - weapons and other dangerous devices.  
(a) A trainee may possess his regular service weapon or authorized off-duty weapon, including ammunition, on property used by the department. A trainee shall not possess any other deadly weapons (as defined in KRS 500.080), ammunition, destructive devices or booby trap devices (as defined in KRS 237.030), hazardous substances (as defined in KRS 224.01-400), fireworks, or instruments used by law enforcement for control purposes (such as batons, stun guns, Mace, and pepper spray) on property used by the department except under circumstances specifically authorized by the department. Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.  
(6) Confiscation.  
1. If a dormitory staff member, department instructor, section supervisor, branch manager, director or commissioner observes an unlawfully-possessed weapon or other dangerous device he shall immediately confiscate it.  
2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.  
(7) General conduct - conduct unbecoming a trainee. A trainee shall not:  
(a) Engage in criminal activity, including acts which would constitute a felony, misdemeanor or violation, while enrolled in a training class. Depending on the nature of the conduct, the trainee shall be penalized by a verbal warning, written reprimand, loss of privileges, suspension or expulsion. Additionally, the appropriate prosecutorial authority may be notified of the activity.  
(b) Engage in conduct which creates a danger or risk of danger to the trainee or another, possess obscene material as defined in KRS 531.010, engage in conduct which is unreasonably annoying, engage in fighting or in violent, tumultuous or threatening conduct, engage in sexual harassment or conduct which is patently offensive. Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.  
(8) Training activities - absences.  
(a) A trainee is absent if he is not physically present in a class or other required department activity for more than ten (10) minutes. A trainee shall give advance notice of an absence if [when] possible. Penalty for an unexcused absence: verbal warning or written reprimand. Penalty for an unexcused tardiness: verbal warning or written reprimand.  
(b) All absences from training shall [must] be approved by the section supervisor or branch manager. Absences shall only be excused for legitimate reasons including sickness, court appearances, and emergencies. Written notice shall be given prior to the absence, or if an unexpected absence, [in the case of unexpected absence] on the first day upon returning.  
(c) If a trainee is absent less than ten (10) percent of a subject area, excused or unexcused, he shall make up for the absence by completing a special assignment. The assignment shall be provided by the instructor who taught the missed subject area and shall be approved by the section supervisor. Failure to complete the assignment shall be deemed a failure for that subject area.  
(d) A trainee shall repeat a subject area in which he has had an absence of ten (10) percent or more, excused or unexcused.  
(e) A trainee shall not be allowed to repeat a test that occurs during the trainee's unexcused absence.  
(9) Training activities - breaks. Trainees shall be allowed a ten (10) minute break per hour of instruction if possible. Breaks shall be taken only in areas designated by the department. Penalty: verbal warning or written reprimand.  
(10) Training activities - general conduct.  
(a) A trainee shall be attentive during training activities. Penalty: verbal warning or written reprimand.  
(b) A trainee shall not use tobacco products during, or bring food or drink into, any department training activity, regardless of location, unless permitted by the branch manager. Penalty: verbal warning or written reprimand.  
(c) A trainee shall not negligently or intentionally engage in con-
duct which creates or may create a risk of injury to others during a training session. Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.

(11) Training activities - dishonesty. A trainee shall not cheat or attempt to cheat on a test or on any other assignment or activity; or alter or attempt to alter a test grade or other evaluation result; or engage in any other conduct intended to gain an undeserved evaluation for himself or another. Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.

(12) Residence hall.
(a) Each trainee shall be responsible for cleaning his area. Each morning, prior to leaving for class training, a trainee shall ensure his room is clean and free of trash, with beds made and the room ready for inspection. Penalty: verbal warning, written reprimand, loss of privileges.
(b) Doors shall be locked whenever a room is unoccupied. Penalty: verbal warning or written reprimand.
(c) The use of cooking appliances or space heaters is prohibited. Penalty: verbal warning, written reprimand, loss of privileges.
(d) All residence hall rooms, closets, and containers therein may be inspected by department staff for purposes of safety, sanitation and rule violations.
(a) A trainee residing at the residence hall shall not:
1. Have any person of the opposite sex in his room without the permission of the department. Penalty: verbal warning, written reprimand, loss of privileges.
2. Keep pets, animals, or birds of any kind in his room. Penalty: verbal warning, written reprimand, loss of privileges.
3. Engage in dangerous, disruptive, immoral or obscene behavior. Penalty: verbal warning, written reprimand, loss of privileges.

Section 6. Summary Discipline. Except for summary discipline, a [no] penalty shall not be imposed upon a trainee unless charges have first been brought by the legal officer.
(1) The following department staff members have the authority to impose the specified penalties summarized without meeting the requirements of the formal disciplinary procedures provided by Sections 8 through 12 [13] of this administrative regulation. To have the authority to impose summary discipline, the staff member shall be by a preponderance of the evidence that the trainee has engaged in the misconduct.
(a) A department instructor may summarily impose a verbal warning.
(b) The section supervisor, branch manager, director, or commissioner may summarily impose a verbal warning or written reprimand.
(2) Before imposing a penalty summarily, the staff member shall give the trainee the opportunity to give an explanation.
(3) A summarily imposed penalty shall be reviewed by, and may be rescinded or modified by, the immediate supervisor of the staff member imposing the penalty. The reviewer shall provide the trainee with the opportunity to give an explanation.

Section 7. Removal from Training Pending an Initial Appearance Before the Commissioner. (1) When a charge is filed against a trainee, the commissioner or director may remove the trainee from some or all training until the trainee's initial appearance before the commissioner if he has reasonable grounds to believe the alleged misconduct took place and:
(a) He has reasonable suspicion to believe the trainee would be dangerous or disruptive if not removed; or
(b) The trainee has been charged with misconduct serious enough to authorize expulsion.
(2) A trainee who has been removed from training pending an initial appearance before the commissioner shall be provided the initial appearance within three (3) training days of the removal.

Section 8. Complaint. Anyone having reasonable grounds for believing that a trainee has violated any of the conduct requirements identified in this administrative regulation may file a complaint with the section supervisor. This complaint shall be in writing setting forth the facts upon which the complaint is based.

Section 9. Investigation by Section Supervisor. (1) If the section supervisor receives a complaint of or witnesses apparent misconduct, he shall take statements and otherwise investigate the matter.
(2) After investigating the matter, the section supervisor shall:
(a) Take no action if none is justified by the evidence; or
(b) Impose appropriate summary discipline; or
(c) File, with the legal officer, a written request that charges be brought against the trainee. The request for charges shall describe the alleged misconduct and designate the specific conduct requirements violated. All pertinent evidence and documents including the complaint, and statements of the trainee and witnesses shall be forwarded to the legal officer.

Section 10. Review by Legal Officer; Placing Charges. (1) The legal officer shall review the request for charges and the supporting evidence and documents.
(2) The legal officer may make or cause further inquiry into the matter for additional information.
(3) The legal officer shall either:
(a) File any [such] charges against the trainee as he believes are justified by the evidence; or
(b) Deny the request for charges if the evidence does not support any charges. If the legal officer declines to file charges, he shall provide the commissioner with a statement of his reasons for not filing charges.
(4) The charging document shall:
(a) Be in writing;
(b) Partly describe the alleged misconduct so as to reasonably inform the trainee of the nature of the allegation;
(c) State the time, date and place the trainee shall make an initial appearance before the commissioner to answer the charges.
(d) Be signed by the legal officer; and
(e) Be served upon the trainee at least one (1) hour before his initial appearance before the commissioner. The copy shall be [Have a copy] served upon the trainee either in person or by mail.

Section 11. Initial Appearance Before the Commissioner. (1) The initial appearance before the commissioner shall be held no more than three (3) training days after the charges have been served on the trainee. If the trainee after receiving proper notice, fails to appear, the commissioner may proceed in his absence and the trainee shall be notified in writing of any action taken.
(2) At the initial appearance before the commissioner:
(a) The legal officer shall:
1. Read the charges to the trainee; and
2. Explain to the trainee:
   a. The charges;
   b. His right to an administrative [a] hearing in accordance with KRS Chapter 13B; and
   c. His right to be represented by legal counsel.
(b) The legal officer shall explain to the trainee the possible answers to the charges: admit, deny or waive. If the charges are true, deny the charges are true but waive an administrative [a] hearing, or deny the charges are true and ask for an administrative [a] hearing.
(c) The commissioner shall advise the trainee of the penalty which shall be imposed if the trainee admits the charges or waives an administrative [a] hearing.
(d) The trainee shall be required to answer the charges.
(e) If the trainee chooses to waive his rights and admits the charges or denies the charges but waives an administrative [a] hearing:
   1. He shall be permitted to make a statement of explanation; and
   2. The commissioner shall impose a penalty.
(f) If the trainee denies the charges and requests an administrative [a] hearing, or refuses to answer the charges, the commissioner shall set a date for the administrative hearing. A notice of administrative hearing as required by KRS 13B.050 shall be served on the trainee within forty-eight (48) hours of the initial appearance before the commissioner.
(3) The commissioner may remove the trainee from some or all training until the administrative hearing if:
(a) He has reasonable grounds to believe the trainee would be dangerous or disruptive if not removed; or
(b) The trainee is charged with misconduct serious enough to
authorize expulsion as a possible penalty.

Section 12. Hearing. The administrative hearing shall be conducted in accordance with KRS Chapter 13B.

[Section 13. Appeal. (1) A trainee may appeal an order entered by the commissioner which imposes a penalty adverse to the trainee by filing a written notice of appeal to the Secretary of the Justice Cabinet. (a) The notice of appeal shall state the points on which the appeal is based and shall be on a form provided by the department. The form is a part of 503 KAR 3:010 by reference. (b) A copy of the order being appealed shall be attached to the notice of appeal. (c) A copy of the notice of appeal shall be delivered to the commissioner of the department by certified mail. (2) The appeal shall not be heard de-novo but shall be determined upon the audio-record and any written or physical evidence introduced at the hearing. (3) The Secretary of the Justice Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.]

JOHN W. BIZZACK, Ph.D., Commissioner
APPROVED BY AGENCY: April 13, 2004
FILED WITH LRC: April 13, 2004 at 3 p.m.
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JUSTICE AND PUBLIC SAFETY CABINET
Department of Criminal Justice Training
(As Amended at ARR S, June 8, 2004)

503 KAR 3:040. Telecommunications academy trainee requirements; misconduct; penalties; discipline procedures.

RELATES TO: KRS 15.530-15.590
STATUTORY AUTHORITY: KRS [15.650.], 15.590, 15A.070(1), (5)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.590
requires the Commissioner of the Department of Criminal Justice Training to promulgate necessary administrative regulations for the administration of telecommunications training, in-service training and practices [15A.070 authorizes Department of Criminal Justice Training to establish, supervise and coordinate training programs and schools for law enforcement personnel, and any other justice or nonlaw enforcement related personnel as prescribed by the secretary, which includes law enforcement telecommunicators pursuant to KRS 15.660]. This administrative regulation prescribes conduct requirements of trainees attending the telecommunications academy conducted by the Department of Criminal Justice Training, prescribes procedures for disciplinary action, and sets penalties.

Section 1. Uniforms Required. (1) A trainee shall wear a uniform, approved by the department, while participating in the telecommunications academy. (2) The required uniform shall consist of: (a) Men: 1. Gray polo shirt with DOCJT logo, supplied by the department; 2. Solid black dress pants with belt loops. Cargo pants shall not be worn; 3. Solid white button-down dress shirt with collar, long- or short sleeve; 2. Necktie; 3. Dress pants with belt loops, solid black, dark gray, or dark blue; 4. Black belt; 5. Black or navy-blue socks; and 6. Black, plain-toe, dress shoes. Athletic shoes shall not be worn with the uniform. (b) Women: 1. Gray polo shirt with DOCJT logo, supplied by the department; 2. Solid black dress pants with belt loops or skirt. Cargo pants shall not be worn; 3. Solid white plain dress shirt with collar, button-down, long- or short sleeves; 2. Necktie or scarf; 3. Dress pants or skirt, solid black, dark gray, or dark blue; 4. Black belt; 4. Black socks or hose; and 5. Black or navy-blue socks. Solid-color hose may be substituted, black, navy-blue, or flesh tones; 6. Black, plain, closed-toe, dress shoes. Athletic shoes shall not be worn with the uniform. (3) The following may be worn with the uniform: (a) Dress jacket or sport coat, solid gray or dark blue is recommended; (b) Pins issued by the trainee's agency; and (c) The Department of Criminal Justice Training cap which shall be issued to the trainee on the first day of the academy.

Section 2. Removing a Trainee from the Academy. (1) Unqualified trainee. If a trainee does not meet the law enforcement telecommunicator qualifications in KRS 15.540, he shall: (a) Be removed from the academy by the: 1. Director; 2. Branch manager; or 3. Section supervisor; and (b) Not receive credit for completed portions of academy training. (2) If a trainee is removed from the academy, pursuant to subsection (1) of this section, within thirty (30) days of the removal, he may request in writing an administrative hearing, which shall comply with KRS Chapter 13B. (3) Agency request. The department shall remove a trainee from the academy upon written request of the trainee's law enforcement agency. The trainee shall not receive credit for completed portions of academy training.

Section 3. Gifts. A gift from trainees to department staff shall conform with the requirements of KRS Chapter 11A, the executive branch code of ethics.

Section 4. Penalties for Misconduct. (1) The following penalties shall apply to a trainee's failure to meet conduct or honor code requirements of the department. The penalties are listed in order of decreasing severity. (a) Expulsion. The trainee is dismissed from the academy, and all privileges are terminated. (b) Suspension. The trainee is suspended from the academy for a specified period of time; all privileges are rescinded during the suspension period. (c) Loss of privileges. The trainee's privileges as specified in the imposed penalty are rescinded for a stated period of time. The trainee's participation in academy activities is not affected. (d) Written reprimand. The trainee is reprimanded in writing for violating a conduct or honor code requirement. (e) Verbal warning. The trainee is warned verbally that he has violated a conduct or honor code requirement. (2) Second and subsequent violations. (a) If a trainee has received a penalty for violating a conduct or honor code requirement, upon a second violation of any conduct or honor code requirement the next higher penalty shall be added to the list of penalties which may be imposed for the second violation. (b) If a trainee has previously received two (2) penalties for violating two (2) conduct or honor code requirements, upon a third or subsequent violation of any conduct or honor code requirement the next two (2) higher penalties shall be added to the list of penalties which may be imposed for the third or subsequent violation. (3) Giving notice of disciplinary action to trainee and trainee's agency. The department shall give written notice to a trainee of any penalty imposed upon him. The trainee's agency shall be given written notice of any penalty imposed upon the trainee except a verbal warning, and shall be given verbal notice when a trainee has been charged with a violation of a conduct or honor code require-
ment and has requested a hearing.

(4) Penalties records.
(a) The department shall keep a written record of a penalty imposed on a trainee by placing it in the trainee's file.
(b) Except where required by law, a trainee's training file shall not be available for access except by:
   1. The department;
   2. The trainee; or
   3. The trainee's agency head.

Section 5. Termination of Dangerous or Disruptive Situation. If the conduct or condition of a trainee constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of a department activity, a department staff member may take all reasonable steps necessary to terminate the situation.

Section 6. Conduct Requirements. A trainee attending the telecommunications academy shall meet the following conduct requirements:

(1) General conduct - chain of command. All communications shall follow chain of command of the department. Exceptions are the unavailability of a supervisor, or the trainee's complaint regarding a supervisor. Penalty: verbal warning or written reprimand.

(2) General conduct - insubordination. A trainee shall:
   (a) Obey a lawful order from a department staff member. Penalty: verbal warning, written reprimand, loss of privileges, or suspension.

   (b) Refrain from vulgarity, rudeness, confrontation, or other disrespectful conduct directed toward a department staff member, trainee or other department trainee or guest. Penalty: verbal warning, written reprimand or suspension.

(3) General conduct - grooming.
   (a) A male trainee:
      1. Shall be clean shaven with sideburns no longer than the bottom of the earlobe;
      2. May wear a mustache if he had it upon arrival and keeps it neatly trimmed; and
      3. Shall not wear a beard unless he receives permission from the department, based upon:
         a. A written request from the trainee's agency; and
         b. A showing of good cause.
   (b) A trainee's hair shall:
      1. Not be unkempt; and
      2. Be kept above the collar.
   (c) Penalty: verbal warning or written reprimand.

(4) General conduct - alcoholic beverages and other intoxicants.
   (a) A trainee shall not possess, consume nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician while enrolled in a telecommunications academy. Penalty: written reprimand, loss of privileges, suspension or expulsion.
   (b) If a trainee has taken a controlled substance as prescribed by a physician or has taken any other medication, whether prescribed or not, he shall not participate in any academy activity if he is under the influence thereof to the extent that the trainee may be impaired or may endanger himself or other persons or property. A trainee shall advise the class coordinator or the section supervisor in writing of the use of controlled substance or medication whether or not it has been prescribed by a physician. Penalty: verbal warning, written reprimand or suspension.
   (c) Confiscation. 1. If a dormitory staff member, department instructor, section supervisor, or branch manager observes an unlawfully-possessed intoxicating substance, he shall immediately confiscate it.
      2. A confiscated item shall be stored in a secure facility of the department until the item is returned to the trainee at the completion of the academy, or disposed of by the department.

(5) General conduct - weapons and other dangerous devices.
   (a) A trainee shall not possess deadly weapons (as defined in KRS 500.080), ammunition, destructive devices or booby trap devices (as defined in KRS 237.030), hazardous substances (as defined in KRS 224.01-400), fireworks, or instruments used by law enforcement for control purposes (such as batons, stun guns, Mace, and pepper spray) on property used by the department except under circumstances specifically authorized by the department. Penalty: verbal warning, written reprimand, loss of privileges, suspension, or expulsion.
   (b) Weapons specifically designated by the department to be used for training purposes shall be stored in a vault provided by the department at all times when they are not being used directly in academy activities and may be removed only for scheduled training, servicing, cleaning, or repair. Servicing, cleaning, and repairs of weapons (other than repairs which may require the expertise of a qualified gunsmith) shall be carried out only as authorized by the section supervisor and only in the presence of a certified firearms instructor. Penalty: verbal warning or written reprimand.
   (c) Confiscation. 1. If a dormitory staff member, department instructor, section supervisor, branch manager, director or commissioner observes an unlawfully-possessed weapon or other dangerous device he shall immediately confiscate it.
      2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(6) General conduct - department property.
   (a) A trainee shall not damage, deface, fail to return, or be wasteful of property of the department or any other facility used by the department. Penalty: verbal warning, written reprimand, loss of privileges, suspension, or expulsion.
   (b) A trainee shall not have successfully completed the telecommunications academy, and shall not be allowed to graduate until he has returned all issued items or made satisfactory arrangements to pay for unreturned or damaged items.

(7) General conduct - conduct unbecoming a trainee. A trainee shall not:
   (a) Engage in criminal activity, including acts which would constitute a felony, misdemeanor or violation, while enrolled in the telecommunications academy. Depending on the nature of the conduct, the trainee shall be penalized by a verbal warning, written reprimand, loss of privileges, suspension or expulsion.
   (b) Engage in conduct which creates a danger or risk of danger to the trainee or another, possess obscene material as defined in KRS 331.010, engage in conduct which is unreasonably annoying, engage in fighting or in violent, tumultuous or threatening conduct, engage in sexual harassment or conduct which is patently offensive. Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.

(8) Academy activities - uniforms.
   (a) A trainee shall wear the uniform required by Section 1 of this administrative. Penalty: verbal warning or written reprimand.
   (b) Uniforms shall be clean, pressed and in good condition. Penalty: verbal warning or written reprimand.
   (c) A name tag, provided by the department, shall be worn on the left chest. Penalty: verbal warning or written reprimand.
   (d) Sleeves on long-sleeved shirts shall not be rolled up. Penalty: verbal warning or written reprimand.
   (e) Additional clothing may be worn during an academy activity if authorized by the instructor.

(9) Academy activities - absences.
   (a) A trainee shall be considered absent if he is not physically present at a class or other required department activity for more than ten (10) minutes. A trainee shall be considered tardy if he is not physically present at a class or other required department activity for fewer than ten (10) minutes. A trainee shall give advance notice of an absence if possible. Penalty: verbal warning or written reprimand.
   (b) An absence shall be excused if the trainee was absent due to:
      1. Illness;
      2. Illness of an immediate family member;
      3. Death of an immediate family member;
      4. Necessity of trainee's agency; or
      5. Emergency circumstances.
   (c) An absence from the telecommunications academy shall be approved by the section supervisor or branch manager.
   (d) If a trainee is absent, excused or unexcused, he shall make up for the absence by completing an assignment provided by the instructor who taught the missed unit. Failure to make up the work shall be deemed a failure for that academy area.
(10) Academy activities - breaks. Trainees shall be allowed a ten
(10) minute break per hour of instruction if possible. A trainee shall not take a break in an area restricted by the department. Penalty: verbal warning or written reprimand.
(11) Academy activities - general conduct.
(a) A trainee shall be attentive during academy activities. Pen-
alty: verbal warning or written reprimand.
(b) A trainee shall not use tobacco products during, or bring food
or drink into a academy activity unless so permitted by the training
director or commissioner. Penalty: verbal warning or written reprim-
and.
(c) A trainee shall not engage in conduct which creates or may
create a risk of injury to others during a training session.
(12) Academy activities - dishonesty. A trainee shall not cheat or
attempt to cheat on a test or on any other assignment or activity; or
alter or attempt to alter a test grade or other evaluation result; or en-
gage in any other conduct intended to gain an undeserved evalua-
tion for himself or another. Penalty: verbal warning, written reprim-
and, loss of privileges, suspension or expulsion.
(13) Residence hall.
(a) During the telecommunications academy, when attending in
Madison County, a trainee shall reside in the residence hall desig-
nated by the department.
(b) A trainee shall return to his residence hall at curfew times
designated by the commissioner, Sunday through Thursday eve-
nings, and remain there until 5 a.m. the next morning. Exceptions
shall be approved by the class coordinator and reported in writing
through channels to the director. Penalty: verbal warning, written reprimand, loss of privileges.
(c) A trainee shall observe “lights out” by 11:30 p.m. Sunday
through Thursday except on nights prior to an academic test when
the time shall be extended to 12 midnight. Penalty: verbal warning or
written reprimand.
(d) Each trainee shall be responsible for cleaning his area. Each
morning, prior to leaving for class training, a trainee shall ensure his
room is clean and free of trash, with beds made and the room ready
for inspection. Penalty: verbal warning, written reprimand, loss of
privileges.
(e) Doors shall be locked whenever a room is unoccupied. Pen-
alty: verbal warning or written reprimand.
(f) The use of hot plates is prohibited. Penalty: verbal warning,
written reprimand, loss of privileges.
(g) All residence hall rooms, closets, and containers therein may
be inspected by department staff for purposes of safety, sanitation
and rule violations.
(h) A trainee residing at the residence hall shall not:
1. Have any person of the opposite sex in his room without the
permission of the department. Penalty: verbal warning, written reprimand, loss of privileges, or suspension.
2. Have a visitor in his room after 9 p.m. Penalty: verbal warning
or written reprimand, loss of privileges.
3. Keep pets, animals, or birds of any kind in his room. Penalty:
verbal warning, written reprimand, loss of privileges.
4. Engage in dangerous, disruptive, immoral or obscene behav-
ior. Penalty: verbal warning, written reprimand, loss of privileges, or suspension.

Section 7. Honor Code. (1) The trainee shall abide by the provi-
sions of the honor code which reads as follows:
We are a dynamic team of individuals who possess a wide array of talent and strengths. In order for our team to
grow and be successful, we will respect the leadership of
the agency and follow directives to the best of our ability.
We will make sacrifices for the benefit of the team. We will
practice humility and show a spirit of compromise. As
trainees of the Department of Criminal Justice Training,
Telecommunications Academy, we will not lie, steal or
cheat nor tolerate any among us who do.
We will keep our private lives honorable as an example
to all. We will be exemplary in obeying the laws of
the Commonwealth and the administrative regulations of
the Department of Criminal Justice Training. Whatever we see
or hear of a confidential nature of confided to us in our
official capacity shall be kept confidential unless revelation
is necessary in the performance of duty. We will never al-
low personal feelings, prejudices, ill will or friendships to
influence our decisions.
We know that each of us is individually responsible for
standards of professional performance. Therefore, we will
make the utmost effort to improve our level of knowledge
and competence.
We recognize the badge of our office as a symbol of
public faith and accept it as a public trust to be held so
long as we are true to the ethics of the police service. We
will constantly strive to achieve these ideals, dedicating
ourselves to our chosen profession - law enforcement.
(2) The penalty for violating the honor code shall be: verbal
warning, written reprimand, loss of privileges, suspension or expulsion.
(3) The class shall elect an honor code representative during the
first week of the academy.
(4) All trainees shall report honor code violations to the honor
code representative who shall report the offense to the class coordi-
nator. The representative shall [will] recommend the penalty to be
imposed for the violation.
(5) All disciplinary procedures contained in this administrative
regulation shall apply to the honor code violation. The department
may pursue separately any additional offenses discovered during
the investigation of the honor code violation.

Section 8. Department's Responsibilities to Trainee's Agency. In
order to keep the agency advised of the trainee's progress and per-
fomance in the telecommunications academy so that the agency
may adequately assess the trainee's ability to perform required du-
ilies, the department shall provide the following to the police chief,
sheriff or chief administrator of the trainee's agency:
(1) Trainee performance report which shall be completed at four
(4) week intervals and shall include trainee conduct, demonstrated
leadership abilities, examination scores, physical fitness scores and
overall effort on performance, observed social/interpersonal skills, and
appearance.
(2) Immediate notice of specific nonperformance, misconduct or lack of
progress. (3) Immediate notice of any off-campus activity which reflects
negatively on the profession, including the following:
(a) Parking a marked police vehicle parked at a:
1. Bar; 2. Tavern; 3. Lounge; 4. Nightclub; or
5. Other establishment with the primary purpose of serving alco-
holic beverages;
(b) Disorderly conduct;
(c) Speeding; or
(d) Other behavior that gives rise to a citizen's complaint.

Section 9. Summary Discipline. Except for summary discipline, a
penalty shall not be imposed upon a trainee unless charges have first been brought by the legal officer.
(1) The following department staff members shall have the
authority to impose the specified penalties summarily without meet-
ing the requirements of the formal disciplinary procedures provided
by Sections 10 through 15 of this administrative regulation. To have
the authority to impose summary discipline, the staff member shall
believe by a preponderance of the evidence that the trainee has en-
gaged in the misconduct:
(a) A department instructor may summarily impose a verbal
warning.
(b) The section supervisor, branch manager, director, or com-
misssioner may summarily impose a verbal warning, written reprim-
and, or loss of privileges.
(2) Before imposing a penalty summarily, the staff member shall
give the trainee the opportunity to give an explanation.
(3) A summarily imposed penalty shall be reviewed by, and may
be rescinded or modified by, the immediate supervisor of the staff
member imposing the penalty. The reviewer shall provide the trainee
with the opportunity to give an explanation.
Section 10. Removal From the Academy Pending an Initial Appearance Before the Commissioner. (1) When a request for charges is filed against a trainee, the commissioner or director may remove the trainee from some or all training until the trainee’s initial appearance before the commissioner if he has reasonable grounds to believe the alleged misconduct took place and:
(a) He has reasonable suspicion to believe the trainee would be dangerous or disruptive if not removed; or
(b) The trainee may be charged with misconduct serious enough to authorize expulsion.
(2) A trainee who has been removed from the academy pending an initial appearance before the commissioner shall be provided the initial appearance within three (3) training days of the removal.

Section 11. Complaint. Anyone having reasonable grounds for believing that a trainee has violated a conduct or honor code requirement identified in this administrative regulation may file a complaint with the section supervisor. This complaint shall be in writing setting forth the facts upon which the complaint is based.

Section 12. Investigation by Section Supervisor. (1) If the section supervisor receives a complaint of or witnesses apparent misconduct, he shall take statements and otherwise investigate the matter.
(2) After investigating the matter, the section supervisor shall:
(a) Take no action if none justified by the evidence; or
(b) Impose appropriate summary discipline; or
(c) File, with the legal officer, a written request that charges be brought against the trainee. The request for charges shall describe the alleged misconduct and designate the specific conduct requirements violated. All pertinent evidence and documents including the complaint, and statements of the trainee and witnesses shall be forwarded to the legal officer.

Section 13. Review by Legal Officer; Placing Charges. (1) The legal officer shall review the request for charges and the supporting evidence and documents.
(2) The legal officer may make or cause further inquiry into the matter for additional information.
(3) The legal officer shall either:
(a) File any such charges against the trainee as he believes are justified by the evidence; or
(b) Deny the request for charges if the evidence does not support any charges. If the legal officer declines to file charges, he shall provide the commissioner with a statement of his reasons for not filing charges.
(4) The charging document shall:
(a) Be in writing;
(b) Particularly describe the alleged misconduct so as to reasonably inform the trainee of the nature of the allegation;
(c) State the date, time and place the trainee shall make an initial appearance before the commissioner to answer the charges.
(d) Be signed by the legal officer; and
(e) Be served upon the trainee at least one (1) hour before his initial appearance before the commissioner.

Section 14. Initial Appearance Before the Commissioner. (1) The initial appearance before the commissioner shall be held no more than three (3) training days after the charges have been served on the trainee. If the trainee, after receiving proper notice, fails to appear, the commissioner may proceed in his absence and the trainee shall be notified in writing of any action taken.
(2) At the initial appearance before the commissioner:
(a) The legal officer shall:
   1. Read the charges to the trainee; and
   2. Explain to the trainee:
      a. The charges;
      b. His right to a hearing in accordance with KRS Chapter 13B; and
      c. His right to be represented by legal counsel.
   (b) The legal officer shall explain to the trainee the possible answers to the charges, admit the charges are true, deny the charges are true but waive a hearing, or deny the charges are true and ask for a hearing.
   (c) The commissioner shall advise the trainee of the penalty which shall be imposed if the trainee admits the charges or waives a hearing.
   (d) The trainee shall be requested to answer the charges.
   (e) If the trainee chooses to waive his rights and admits the charges or denies the charges but waives a hearing:
      1. He shall be permitted to make a statement of explanation; and
      2. The commissioner shall impose a penalty.
   (f) If the trainee denies the charges and requests a hearing, or refuses to answer the charges, the commissioner shall set a date for the hearing. A notice of administrative hearing as required by KRS 13B.050 shall be served on the trainee within forty-eight (48) hours of the initial appearance before the commissioner.
   (3) The commissioner may remove the trainee from some or all training until the hearing if:
      (a) He has reasonable grounds to believe the trainee would be dangerous or disruptive if not removed; or
      (b) The trainee is charged with misconduct serious enough to authorize expulsion as a possible penalty.

Section 15. Hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

[Section 16. Appeal.—(1) A trainee may appeal an order entered by the commissioner which imposes a penalty adverse to the trainee by filing a written notice of appeal to the Secretary of the Justice Cabinet.
(a) The notice of appeal shall state the points on which the appeal is based and shall be on a form provided by the department.
(b) A copy of the order being appealed shall be attached to the notice of appeal.
(c) A copy of the notice of appeal shall be delivered to the commissioner of the department by certified mail.
(2) The appeal shall not be heard de novo but shall be determined upon the hearing record and any written or oral evidence introduced at the hearing.
(3) The Secretary of the Justice Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.

Section 17. Incorporation by Reference.—(1) "Notice of Appeal": (October 15, 1998), Department of Criminal Justice Training, is incorporated by reference.
(2) It may be inspected, copied, or obtained at the Department of Criminal Justice Training, Funderburk Building, Richmond, Kentucky 40475-3137, Monday through Friday, 8 a.m. to 4:30 p.m.]

JOHN W. BIZZACK, Ph.D., Commissioner
APPROVED BY AGENCY: April 13, 2004
FILED WITH LRC: April 13, 2004 at 3 p.m.
CONTACT PERSON: Stephen D. Lynn, Associate General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3137, phone (859) 622-3073, fax (859) 622-3162.

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, June 8, 2004)

702 KAR 7:065. Designation of agent to manage high school interscholastic athletics.

RELATES TO: KRS 156.070(2)
STATUTORY AUTHORITY: KRS 156.070(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(2) requires the Kentucky Board of Education (KBE) to manage and control the common schools, including interscholastic athletics in the schools, and authorizes the KBE to designate an agency to manage athletics. This administrative regulation designates an agent for high school athletics; establishes the financial planning and review processes for the agent; and incorporates by
reference the bylaws, procedures and rules of the agent.

Section 1. The Kentucky High School Athletic Association (KHSAA) shall be the Kentucky Board of Education’s agent to manage interscholastic athletics at the high school level in the common schools, including a private school desiring to associate with KHSAA and to compete with a common school.

Section 2. To remain eligible to maintain the designation as the agent to manage interscholastic athletics, the KHSAA shall:
(1) Accept four (4) at-large members appointed by the Kentucky Board of Education to its governing body;
(2) Sponsor an annual meeting of its member schools;
(3) Provide for each member school to have a vote on constitution and bylaw changes submitted for consideration;
(4) Provide for regional postseason tournament net revenues to be distributed to the member schools in that region participating in that sport, utilizing a share approach determined by the schools within that region playing that sport;
(5) Require its governing body to annually establish goals and objectives for its commissioner and perform a self-assessment and submit the results annually to the KBE by October 31;
(6) Authorize the Department of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.;
(7) Employ a commissioner and evaluate that person’s performance annually by October 31, and establish all staff positions upon recommendation of the commissioner;
(8) Permit the commissioner to employ other personnel necessary to perform the staff responsibilities;
(9) Permit the Board of Control to assess fines on a member school;
(10) Utilize a trained independent hearing officer instead of an eligibility committee for an appeal;
(11) Establish a philosophical statement of principles to use as a guide in an eligibility case;
(12) Conduct field audits of the association’s entire membership over a five (5) year period regarding each school’s compliance with 20 U.S.C. Section 1681 (Title IX) and submit summary reports including highlighting of any deficiencies in compliance on a regular (not less than three (3) times annually) basis to the Kentucky Board of Education as requested; and
(b) As a condition precedent to membership, require each member school and superintendent to annually submit a written certification of compliance with 20 U.S.C. Section 1681 (Title IX);
(14) Conduct all meetings in accordance with KRS 61.805 through 61.850; and
(15) Provide written reports of any investigations into possible violations of statute, administrative regulations, KHSAA Constitution, bylaws, and other rules governing the conduct of interscholastic athletics conducted by KHSAA or their designees to the superintendent and principal of the involved school district and school prior to being made public.

Section 3. Financial Planning and Review Requirements. (1) KHSAA shall annually submit the following documents to the KBE:
(a) Draft budget for the next two (2) fiscal years, including the current year;
(b) End-of-year budget status report for the previous fiscal year;
(c) Revisions to the KHSAA Strategic Plan as a result of an annual review of the plan by the KHSAA governing body;
(d) A summary report of operations including financial, legal and administrative summaries of actions taken and other items ongoing within KHSAA. This report shall also include a summary of items affecting:
1. Athletic appeals and their disposition including the name of the individual, grade, school, and the action taken by KHSAA;
2. Eligibility rules;
3. Duties of school officials;
4. Contests and contest limitations;
5. Requirements for officials and coaches; and
6. Results of a biennial review of its bylaws that results in a recommendation for a change, directing any proposals for change in association rules to be considered for vote by the member schools at the next legislative opportunity; and
(e) A review of all items which have been submitted to the membership for approval through the processes established in the KHSAA Constitution and the result of the voting on those issues.
(2) The KHSAA shall annually submit by December 31, audited financial statements with the KHSAA Commissioner’s letter addressing exceptions or notes contained in management correspondence, if any.

Section 4. The bylaws, tournament rules, and due process procedures of the KHSAA Handbook, Fall 2003 [2002], shall apply to high school interscholastic athletics in Kentucky.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Office of Legal and Legislative Services, Department of Education, First Floor, Capital Plaza Tower, 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).

GENE WILHOIT, Commissioner
HELEN MOUNTJOY, Chairperson
APPROVED BY AGENCY: April 12, 2004
FILED WITH LRC: April 12, 2004, at 4 p.m.
CONTACT PERSON: Kevil M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, June 8, 2004)

702 KAR 7:125. Pupil attendance.

RELATES TO: KRS 157.320, 157.350, 157.360, 158.030, 158.060, 158.070, 158.100, 158.240, 159.010, 159.030, 159.035, 159.140, 159.170, 161.200
STATUTORY AUTHORITY KRS 156.070, 156.160, 157.320, 158.060, 158.070
NECESSITY, FUNCTION AND CONFORMITY: KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) Program. KRS 157.360 bases SEEK funding upon average daily attendance. KRS 158.030, 158.100, and 159.030 establish [require] the age for compulsory school attendance. KRS 158.060 defines the school day and month and make-up of school days missed. KRS 158.070 defines the school term. KRS 158.240 and 159.035 define attendance credit for moral instruction and 4-H activities. KRS 161.200 requires attendance records to be kept by teachers. This administrative regulation establishes a uniform method of recording pupil attendance.

Section 1. (1) The local board of education, upon recommendation of the local school district superintendent, shall adopt a school calendar for the upcoming school year or on or before May 15 of each year. The calendar shall:
(a) Establish the opening and closing dates of the school term;
(b) Establish beginning and ending dates of each school month;
program of studies for which a letter of assurance of compliance has been submitted to the Department of Education pursuant to 704 KAR 3:305;

(c) Co-curricular activities which are unequivocally instructional in nature, directly related to the instructional program and scheduled to minimize absences from classroom instruction; and

(d) A maximum of five (5) minutes passing time between instructional periods, and travel time required to participate in regular instructional programs off of the school campus including vocational schools, day treatment centers, and alternative schools. Travel time to off-campus facilities shall be scheduled to minimize absence from classroom instruction.

(2) The local board of education shall adopt a policy specifying co-curricular instructional activities which may be included in the instructional school day, as described in subsection (1)(c) of this section.

(3) Each school shall have a master (bell) schedule that delineates instructional time periods and non-instructional time periods for all grade levels served and schedules provided.

Section 7. (1) Daily attendance of pupils in elementary schools shall be determined by taking attendance one (1) time each day prior to the start of instruction and maintaining a student entry and exit log at each school. (2) Daily attendance of pupils in middle and high school shall be determined by taking attendance by class period and maintaining a student entry and exit log at each school.

(3) The student entry and exit log shall include the date, student name, grade or homeroom, time of late arrival, time of early departure (with the reason for both listed), parent or legal guardian signature (for elementary students who are signed out) and other information required by the local board of education.

(4) Pupils shall be physically present in the school to be counted in attendance except under the following conditions:

(a) The pupil is a participant in a co-curricular instructional activity that has been authorized by the local board of education and is a definite part of the instructional program of the school;

(b) The pupil is a participant in an activity as provided in either KRS 158.240 or 159.035;

(c) The pupil is participating in an off-site virtual high school class or block. A student may be counted in attendance for a virtual high school class or block for the year or [of] semester in which the student initially enrolled in the class or block if the final grade for that class or block is passing or above;

(d) The pupil's mental or physical condition prevents or renders inadvisable attendance in a school setting, and the pupil meets the requirements of KRS 159.030(2). A pupil being served through a court order shall receive a minimum of one (1) hour of instruction two (2) times per five (5) instructional days;

(e) The student has been court ordered to receive educational services in a setting other than the classroom. A pupil being served through a court order shall receive a minimum of one (1) hour of instruction two (2) times per five (5) instructional days; or

(f) The student has an individual education plan (IEP) that requires less than full-time instructional services.

(5) Even if a pupil's absence or tardy is due to factors beyond the pupil's control, including inclement weather or failure of the transportation system to operate, the pupil shall be counted absent or tardy.

(6) The local board of education shall determine by local board policy what constitutes an excused and an unexcused absence.

(7) A pupil shall not be allowed to make up absences for the purpose of including make-up activities in the calculation of average daily attendance.

Section 8. (1) The guidelines in this subsection shall be used to calculate student attendance for state funding purposes through June 30, 2005.

(a) A full day of attendance shall be recorded for a pupil who is in attendance 100 percent of the regularly scheduled school day for the pupil's grade level.

(b) (2) A tardy shall be recorded for a pupil who is absent less than thirty-five (35) percent of the regularly scheduled school day for his grade level.
(c) One-half (1/2) day of attendance shall be recorded for a pupil who is absent thirty-five (35) to eighty-four (84) percent of the regularly scheduled school day for the pupil's grade level.

(d) A full-day absence shall be recorded for a pupil who is absent greater than eighty-four (84) percent of the regularly scheduled school day for his grade level.

(e) The percentages described in this subsection shall apply to the regularly scheduled school day approved by the local board of education and shall be applicable to entry level through grade level twelve (12).

(2) Beginning July 1, 2005, the guidelines in this subsection shall be used to calculate student attendance for state funding purposes.

(a) A full day of attendance shall be recorded for a pupil who is in attendance 100 percent of the regularly-scheduled school day for the pupil's [his] grade level.

(b) A tardy shall be recorded for a pupil who is absent sixty (60) minutes or less of the regularly-scheduled school day for the pupil's [his] grade level.

(c) The actual percentage of the school day shall be recorded for attendance of a pupil absent for more than sixty (60) [ten (10)] minutes of the regularly-scheduled school day for the pupil's [his] grade level.

(d) A full day absence shall be recorded for a pupil who is absent 100 percent of the regularly-scheduled school day for the pupil's [his] grade level.

(e) The percentages described in this subsection shall apply to the regularly-scheduled school day approved by the local board of education and shall be applicable to entry level through grade level twelve (12).

Section 9. A local board of education may permit an arrangement whereby a pupil has a shortened school day in accordance with KRS 158.060, or local board of education policy. The time a student is in attendance shall be included in calculating the district's average daily attendance.

Section 10. A local board of education may permit an arrangement in which a pupil pursues part of the student's education under the direction and control of one (1) public school and part of the student's education under the direction and control of another public or nonpublic school. The time a student is served by public school shall be included when calculating the district's average daily attendance.

Section 11. If a local school district, under the provisions of KRS 157.360(5), enrolls a child with a disability in a private school or agency, the private school or agency shall certify the attendance of the child to the local school district at the close of each school month.

Section 12. (1) If a local school district enrolls a pupil in the entry level program who will not be five (5) years of age on before October 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance.

(2) If a local school district enrolls a pupil in the second level of the primary program who will not be six (6) years of age on before October 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance.

(3) A local school district shall enroll any resident pupil, not holding a high school diploma, under the age of twenty-one (21) years of age who wishes to enroll. The days attended after the student's 21st birthday shall not be included in the calculation of the district's average daily attendance.

Section 13. The Growth Factor Report for the first two (2) school months of the school year pursuant to KRS 157.360(8) shall be submitted to the Department of Education within ten (10) business days following the last day of the second school month or by [no later than] November 1 of each year, whichever occurs first.

Section 14. (1) A copy of the written agreement local boards of education execute for enrollment of nonresident pupils as provided by KRS 157.350(4) shall be submitted to the Department of Education no later than February 1 of the year prior to the school year to which it will apply [November 1 of each year]. The written agreement shall include the specific terms to which the districts have agreed. A list of the names of all nonresident pupils enrolled in the district covered by the agreement shall be submitted to the Department of Education not later than November 1 of the school year covered by the agreement.

(2) A change may be made to the original nonresident pupil agreement up to the close of the school year to include the nonresident pupil enrolling after the close of the second school month. The amendment shall be submitted to the Department of Education [with the local Superintendent's Annual Attendance Report (SAAR)] no later than June 30 of each year.

Section 15. The superintendent's annual attendance report (SAAR) shall be considered the request to substitute prior year's average daily attendance for up to ten (10) designated weather-related low attendance days, and certification that the low attendance was due to inclement weather in accordance with KRS 157.320(17). Documentation that the low attendance was due to inclement weather shall be retained at the central office.

Section 16. (1) The school's records of daily attendance and teacher's monthly attendance reports, daily and class period absentee lists, student entry and exit logs, and the Home/Hospital Program Form, shall be the original source of attendance data for all pupils enrolled in the public common schools and shall be verified at the end of each school month.

(2) The school's records of daily attendance and teachers' monthly attendance reports shall be signed by a designated certified personnel within the elementary or secondary school who shall be responsible for verifying and certifying the state attendance documents for accuracy.

(3) The school's records of daily attendance and tenth month teacher's monthly attendance reports shall be retained at least twenty (20) years. The daily and class period absentee lists, and student entry and exit logs shall be retained at least two (2) full school years after the current school year.

Section 17. (1) The following entry, reentry and withdrawal codes shall be used to indicate the enrollment status of pupils until June 30, 2005:

(a) [H]01 - A pupil enrolled for the first time during the current year in either a public or nonpublic school in the United States;

(b) [I]02 - A pupil previously enrolled during the current school year in either a public or nonpublic school in another state who has not previously enrolled in Kentucky during the current school year;

(c) [I]03 - A pupil enrolling for the first time during the current school year in either a public or nonpublic school, who has withdrawn as a W06, W07, W13, W16 or W18 during the previous school year;

(d) [J]01 - A pupil received from another home roam in the same school;

(e) [L]02 - A pupil received from another public school in the same public school district;

(f) [L]03 - A pupil received from a nonpublic school in the same public school district;

(g) [L]04 - A pupil received from a public school in Kentucky outside this public school district;

(h) [L]05 - A pupil received from a nonpublic school in Kentucky outside this public school district;

(i) [L]06 - A pupil reentering the school after dropping out, discharge or expulsion from a school district in Kentucky during the current school year, who has not entered any other school during the intervening period;

(j) [L]07 - A pupil received from a school in another state after having been previously enrolled during the current school year in Kentucky as an E01, E02, or E03;

(k) [M]10 - An expelled pupil received from a state agency in the current school year prior to the completion of the expulsion period;

(l) [O]11 - An expelled pupil received in the current school
year, from a regional alternative facility not run by the expelling school district, prior to the completion of the expulsion period;

(m) [(43)] W01 - A pupil transferred to another homeroom in the same school. The reentry code to use with W01 shall be R01;

(n) [(44)] W02 - A pupil transferred to another public school in the same public school district. The reentry code to use with W02 shall be R02;

(o) [(45)] W03 - A pupil transferred to a nonpublic school in this public school district. The reentry code to use with W03 shall be R03;

(p) [(46)] W04 - A pupil transferred, without change of residence, to a school outside this public school district. The reentry code to use with W04 shall be R04, R05, or R07;

(q) [(47)] W05 - A pupil who has moved out of this public school district and for whom a request for student records has been received or enrollment has been substantiated. The reentry code to use with W05 shall be R04, R05, or R07;

(r) [(48)] W06 - A pupil who is at least sixteen (16), but not yet eighteen (18) years of age and has dropped out. The reentry code to use with W06 shall be R06;

(s) [(49)] W07 - A pupil withdrawn due to those communicable medical conditions that pose a threat in school environments listed in 902 KAR 2.20, Section 1(1), accompanied by a doctor’s statement certifying the condition, or any other health related condition for which the student is too ill to participate in regular school attendance, or local homebound instructional services, or if the student has obtained a doctor’s statement certifying the condition. The reentry code to use with W07 shall be R06;

(t) [(50)] W08 - A pupil withdrawn due to death;

(u) [(51)] W09 - A pupil who has graduated or completed a 504 plan or an [and] individual education plan prior to the end of the school term or year;

(v) [(52)] W10 - A pupil who has been expelled for behavioral reasons withdrawn to a state agency. The reentry code to use with W10 shall be:

1. [(aa)] R06, if the student returns to the expelling local school district in the current school year after the expulsion period has been completed or

2. [(bb)] R10, if the student returns to the expelling local district in the current school year prior to completion of the expulsion period;

(x) [(23)] W11 - A pupil who has been expelled for behavioral reasons and withdrawn to a regional alternative facility not run by the expelling local school district. The reentry code to use with W11 shall be:

1. [(aa)] R06, if the student, after the expulsion period has ended, returns during the current school year;

2. [(bb)] R11, if the student returns in the current school year prior to completion of the expulsion period;

(x) [(24)] W12 - A pupil under the jurisdiction of the court. The reentry code to use with W12 shall be R06. For end of year adjustments, for accountability purposes, a W12 shall be recorded as a W16 if the district cannot substantiate enrollment in the proper educational setting as designated by the court;

(u) [(26)] W13 - A pupil withdrawn for a second or subsequent time who initially withdrew as a W06, W07, W10, W13, W16 or W18, and has previously been reported as a drop out for accountability purposes. The reentry code to use with W13 shall be R05;

2. [(26)] W16 - A pupil who has moved out of the public school district for whom enrollment elsewhere has not been substantiated.

For end of year adjustments for accountability purposes, the W16 code shall be applicable to pupils enrolled at the end of the previous school year who failed to enroll in this or any other school district at the beginning of the current school year;

(aa) [(27)] W17 - An entry level student in the primary program, withdrawn during the first two (2) school months due to immaturity or mutual agreement by the parent, guardian or other custodian and the school in accordance with 704 KAR 6:080; and

(bb) [(28)] W18 - A pupil eighteen (18) years of age or older who has withdrawn. The reentry code to use with W18 shall be R06.

(2) Beginning July 1, 2005, the following entry, reentry and withdrawal codes shall be used to indicate the enrollment status of pupils:

(a) E01 - A pupil enrolled for the first time during the current year in either a public or nonpublic school in the United States;

(b) E02 - A pupil previously enrolled during the current school year in either a public or nonpublic school in another state who has not previously enrolled in Kentucky during the current school year;

(c) E03 - A pupil enrolling for the first time during the current school year in either a public or nonpublic school, who withdrew as a W06, W07, W13, W16 or W18 during the 2004-2005 school year or as a W24 or W25 for previous school years (beginning 2005-2006);

(d) R01 - A pupil received from another homeroom in the same school;

(e) R02 - A pupil received from another public school in the same public school district;

(f) R06 - A pupil reentering the school after dropping out, discharge or expulsion from a school district in Kentucky during the current school year, who has not entered any other school during the intervening period;

(g) R20 - A pupil previously enrolled in a home school in Kentucky during the current school year;

(h) R21 - A pupil previously enrolled in any public or nonpublic school (excluding home schools) in Kentucky during the current school year;

(i) W01 - A pupil transferred to another homeroom in the same school. The reentry code to use with W01 shall be R01;

(j) W02 - A pupil transferred to another public school in the same public school district. The reentry code to use with W02 shall be R02;

(k) W12 - A pupil under the jurisdiction of the court. For purposes of the W12 code, a pupil may be considered under the jurisdiction of the court on the day the petition is filed with the court. The reentry code to use with W12 shall be R05. For accountability purposes, a W12 shall be considered a dropout if the district cannot substantiate enrollment in the proper educational setting as designated by the court;

(l) W17 - An entry level student in the primary program, withdrawn during the first two (2) months enrolled due to immaturity or mutual agreement by the parent, guardian or other custodian and the school in accordance with 704 KAR 6:080;

(m) W20 - A pupil transferred to a home school. The reentry code to use with W20 shall be R02;

(n) W21 - A pupil transferred to a nonpublic school (excluding home school). The reentry code to use with W21 shall be R21;

(o) W22 - A pupil who has transferred to another public school district and for whom a request for student records has been received or enrollment has been substantiated, or a pupil who is known to have moved out of the United States;

(p) W23 - A pupil withdrawn for a second or subsequent time who initially withdrew as a W24 or W25 during the current school year;

(q) W24 - A pupil who has moved out of this public school district for whom enrollment elsewhere has not been substantiated;

(r) W25 - A pupil who is at least sixteen (16) years of age and has dropped out of public school;

(s) W26 - A pupil who has withdrawn from school after completing a secondary GED program and receiving a GED certificate; and

(t) W27 - A student who has withdrawn from school and subsequently received a GED;

Section 18. (1) The following suspension codes shall be used to indicate the suspension status of pupils:

(a) S - Suspension from school for one (1) full day; and

(b) N - Suspension from school for one-half (1/2) day.

(2) Suspension shall be considered an unexcused absence.

Section 19. The following ethnic codes shall be used to indicate the ethnic origin of pupils:

(1) 1 - White (not Hispanic) - A person having origins in any of the original peoples of Europe, North Africa or the Middle East;

(2) 2 - Black (not Hispanic) - A person having origins in any of the black racial groups of Africa;

(3) 3 - Hispanic - A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture of origin regardless of race;

(4) 4 - Asian or Pacific Islander - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;
Housing, Buildings and Construction and changes commissioner to executive director. This administrative regulation establishes the basic mandatory uniform statewide code provisions relating to construction of one (1) and two (2) family dwellings and townhouses.

Section 1. Definitions. (1) "Board of Housing" or "Board" means the Kentucky Board of Housing, Buildings and Construction.

(2) "Building" is defined by KRS 198B.010(4).

(3) "Commissioner" is defined by KRS 198B.010(9).

(4) "Department" is defined by KRS 198B.010(11).

(5) "Executive director" means the Executive Director of the Office of Housing, Buildings and Construction.

(6) "Farm" means property having a bona fide agricultural or horticultural use as defined by KRS 132.010(9) and (10) which is qualified by and registered with the property valuation administrator in the county in which the property is located.

(7) [69] "KBMC" means the Kentucky Building Code as established in 815 KAR 7:120.

(8) [72] "Manufactured home" is defined by KRS 198B.010(23) and 227.550(7).

(9) [68] "Modular home" means an industrialized building system, which is designed to be used as a residence and which is not a manufactured or mobile home.

(10) "Office" means the Office of Housing, Buildings and Construction.

(11) [69] "Ordinary repair" is defined by KRS 198B.010(19).

(12) [149] "Single-family dwelling" or "one (1) family dwelling" means a single unit providing complete independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation, and which shall not be connected to any other unit or building.

(13) [43] "Townhouse" means a single-family dwelling unit constructed in a group of three (3) or more attached units separated by property lines in which each unit extends from foundation to roof and with open space on at least two (2) sides.

(14) [142] "Two (2) family dwelling" means a building containing not more than two (2) family dwelling units which are connected.

Section 2. Mandatory Building Code Requirements for Dwellings. (1) Except as provided in subsection (2) of this section, a single-family dwelling, two (2) family dwelling or townhouse shall not be constructed unless it is in compliance with the International Residential Code, 2000 as amended by this administrative regulation and the 2003 Kentucky Residential Code Supplement.

(2) Exceptions.

(a) Permits, inspections and certificates of occupancy shall not be required for a single-family dwelling unless required by a local ordinance.

(b) All residential occupancies which are not single-family, two-family or townhouses shall comply with the Kentucky Building Code, 2002 as set forth in 815 KAR 7:120.


(4) Effective dates. Plans for single-family or one (1) family dwellings, two (2) family dwellings and townhouses shall be designed and submitted to conform to the Kentucky Residential Code/2002.

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


(3) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office [Department] of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

LAJUANA S. WILCHER, Secretary
DENNIS J. LANGFORD, Executive Director
APPROVED BY AGENCY: April 13, 2004
FILED WITH LRC: April 15, 2004 at noon
CONTACT PERSON: Frank L. Dempsey, Office of General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hen Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0365, fax (502) 573-1057.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Office of the State Fire Marshal
(As Amended at ARRS, June 8, 2004)


RELATES TO: KRS Chapters 198B, 227
STATUTORY AUTHORITY: KRS 227.300, 250.483
NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.300(1) requires the commission to promulgate an administrative regulation establishing the Kentucky Standards of Safety, which shall provide a reasonable degree of safety for human life against the exigencies of fire and panic and insure against fire loss. EO 2003-064 filed December 23, 2003 created the Environmental and Public Protection Cabinet, EO 2004-031 filed January 6, 2004, changes the Department of Housing, Buildings and Construction to the Office of Housing, Buildings and Construction and changes commissioner to executive director. This administrative regulation establishes the Kentucky Standards of Safety and supplements the Kentucky Building Code, promulgated as 815 KAR 7:120, in matters of fire safety.

Section 1. Definitions. (1) "Accepted" means the authority having jurisdiction has inspected a building or facility, or portion thereof, and the building or facility, or portion thereof, has been determined to satisfy the code requirements and deficiencies communicated, in writing, to the owner including the circumstance that no fire code deficiencies were noted during the inspection.

(2) "Distinct fire hazard" means property, or the practice or method of construction or operation, condition, or processes or materials being used which do not afford adequate protection because a fire, explosion or asphyxiation is likely to occur, or because it may provide a ready fuel supply to augment the spread, or intensity of a fire or explosion, and which also poses a threat to life or property, including a condition which is likely to unreasonably inhibit escape from danger in the event of fire or explosion.

Section 2. Scope. (1) Title and applicability. This administrative regulation, which includes the material incorporated by reference, shall be known as the Kentucky Standards of Safety and shall be enforced on all property except single family dwellings.

(2) Authority having jurisdiction. The jurisdiction for the enforcement of this administrative regulation shall be as follows:

(a) State Fire Marshal. The State Fire Marshal shall have primary jurisdiction over all property, except if a local government has established a fire inspection program by ordinance adopting this administrative regulation pursuant to KRS 227.320.

(b) Local fire marshal.
1. Except as provided in subparagraph 2 of this paragraph, the local official designated by ordinance to operate a fire inspection program pursuant to KRS 227.320 shall have primary jurisdiction for the enforcement of all property within the local governmental boundary.

2. The State Fire Marshal shall have exclusive jurisdiction over state-owned property and primary jurisdiction for code compliance for health care facilities and other facilities licensed by the Kentucky Cabinet for Health Services or the Cabinet for Families and Children.

Section 3. Existing Buildings and Conditions. (1) Buildings and conditions approved under the Kentucky Building Code which is incorporated by reference in 815 KAR 7:120.

(a) Minimaxi standard. The standards for the construction of a building constructed pursuant to the Kentucky Building Code in effect at the time of construction and for which there has been issued a lawful certificate of occupancy shall supersede different construction standards regarding the requirements for egress facilities, fire protection and built-in fire protection equipment of this administrative regulation. Those approved methods of construction shall not be deemed a distinct fire hazard.

(b) New construction. The design and construction of a new building to provide egress facilities, fire protection, and built-in fire protection equipment shall be controlled by the Kentucky Building Code. An alteration, addition or change to the structure which is within the scope of the building code shall be made in accordance with the applicable code.

(c) Change of use. It shall be unlawful to make a change in the use of a building or portion thereof which has the potential to create a greater hazard to the public because of increased structural or fire loading, or inadequate exits for the number of occupants, without approval of the authority having jurisdiction.

(2) Buildings and conditions approved under other codes.

(a) Pre-KBC buildings. A building, facility, or portion thereof, which was constructed and approved prior to the effective dates of the Kentucky Building Code and this administrative regulation, shall be maintained as previously permitted. An alteration of the building in excess of that required by the codes at the time of construction shall not be required if the building is used and maintained as originally approved.

(b) Previous fire code. A building, facility, or portion thereof, including an alternative, which was inspected and approved or accepted pursuant to the 1996 Kentucky Fire Prevention Code shall:
1. Be maintained as previously approved or accepted.
2. Not be required to make a modification or change if it is maintained and used as previously approved or accepted.

(3) Certificate of use. If the State Fire Marshal or local fire marshal finds an existing building or facility to be in substantial compliance with this administrative regulation, without a violation of an order of the building official or State Fire Marshal pending, he may issue a certificate authorizing the legal use of the building. The certificate is required to be recorded at the time of construction. The use may continue without change if it is used and maintained as approved.

(4) Hazardous conditions and buildings.

(a) If the State Fire Marshal or local fire marshal determines that a distinct fire hazard exists, he shall cause the fire hazard to be remedied so as to render the property reasonably safe.

(b) The State Fire Marshal shall use the standards specified in this paragraph to order the correction of a distinct fire hazard and shall act in accordance with the procedures established in KRS Chapter 227 and Section 5 of this administrative regulation. 
1. Except as provided in subparagraphs 2 and 3 of this paragraph, the following code standards shall be applicable:
   a. NFPA Fire Prevention Code (NFPA 1) and the NFPA referenced standards included in NFPA 1 and incorporated by reference in Section 9(1)(c) of this administrative regulation. The provisions of Section 7.1.3 through 7.1.3.2,2, High Rise Buildings, shall be mandatory unless adopted by local ordinance for a particular jurisdiction;
   b. NFPA 101, Life Safety Code and the NFPA referenced standards included in NFPA 101 and incorporated by reference in Section 9(1)(c) of this administrative regulation; and
   c. The Kentucky Building Code, which shall apply to a new building and to an alteration, addition, or change of use in accordance with Section 3(1)(2)(4) of this administrative regulation.
2. Other referenced standards. The fire prevention, life safety and building code standards specified in subparagraph 1 of this paragraph shall be deemed safe practices and shall be used to comply with this administrative regulation. A later edition of a code shall be deemed equivalent to the edition incorporated by reference in this administrative regulation.
3. Superceding provisions. If a provision of this administrative regulation establishes regulatory criteria different from the criteria established in a code specified in subparagraph 1 of this paragraph, the provisions of this administrative regulation shall supercede any provision incorporated by reference.

The State Fire Marshal accepts or approves an alternative to a code provision or issues an interpretation and the alternative or interpretation is of general
applicability, it shall be published and forwarded to all known fire inspectors and other persons requesting copies.

(c) A condition, equipment, building, facility or portion thereof or an alternative design which meet the intent of a code provision which has been accepted or approved in accordance with subsection (2) of this section shall not be considered a distinct fire hazard, if it is maintained and used as accepted or approved.

(5) Abatement of fire hazards. The abatement of a distinct fire hazard pursuant to this administrative regulation shall not require construction measures which would exceed the requirements of the current edition of the Kentucky Building Code if the building were being newly constructed.

(6) Maintenance of equipment. All fire suppression and fire protection equipment, systems, devices and safeguards shall be maintained in good working order. This administrative regulation shall not be the basis for removal or abrogation of a fire protection or safety system or device that exists in a building or facility.

(7) Cooperation with building official. When appropriate, the State Fire Marshal and the local fire marshal shall coordinate and cooperate with the building code official having jurisdiction in assessing a building for relative fire safety and to assure that the proper standards are being applied.

Section 4. Permits. (1) State permits required. A permit shall be required by the Office of the State Fire Marshal for the following types of installations:

(a) Elevator installations and alterations;
(b) Boiler installations and alterations; and
(c) Flammable, combustible and hazardous material storage vessel installations.

(2) Local permits allowed. A permit from a local government shall not be required unless it is required by local ordinance. An inspection or permit fee, if applicable, shall be stipulated in the local adopting legislation.

Section 5. Enforcement of Violations. (1) Notice of deficiency. If the State Fire Marshal or local fire marshal observes an apparent violation of a provision of this administrative regulation and the standards incorporated herein or other codes or ordinances under his jurisdiction, the State Fire Marshal or local fire marshal shall prepare a written notice of deficiency, citing the applicable code provision and specifying a time period in which the required repairs or improvements shall be completed.

(2) Service of notice. The written notice of deficiency shall be served upon the owner or his duly authorized agent and upon each other person responsible for the deficiency.

(3) Failure to correct deficiency. Except if an appeal is in process pursuant to Section 6 of this administrative regulation, each deficiency shall be considered a violation. If a correction required in the notice of deficiency is not completed within the time specified, the appropriate legal proceedings to compel compliance may be requested by the authority having jurisdiction.

Section 6. Means of Appeal. (1) State Fire Marshal appeals. An appeal to the State Fire Marshal from a notice of deficiency issued by an employee or deputy of the State Fire Marshal shall be in writing and shall be requested prior to the completion date required by the notice. If the matter is not resolved by agreement of the affected parties and the State Fire Marshal, other legal action may be instituted pursuant to KRS Chapter 227.

(2) Local appeals. If a local government adopts an ordinance for the enforcement of this administrative regulation, the appeal from a decision of the local fire marshal shall be to the local authority having jurisdiction as provided by the ordinance.

Section 7. Temporary Occupancies. A change in use, subject to Section 3(1)(c) of this administrative regulation, shall not be prohibited if the building is being used for temporary purposes, in accordance with the requirements of this section.

(1) Time limit. The use of the building shall not exceed a total of thirty (30) days in a calendar year.

(2) Prior notice. The owner of the property shall notify the State Fire Marshal or local fire marshal, in writing, of the proposed new use, stating the nature of the use of the building and the precise dates and times the building is to be occupied.

(3) Inspection. In the notification, the owner shall consent to inspection and an opportunity for the inspection of the building shall be afforded to the State Fire Marshal or local fire marshal, upon request.

(4) Safety requirements. The property owner shall be responsible for maintaining the fire safety of the building and shall comply with the applicable provisions of this administrative regulation for the proposed use, as required by the State Fire Marshal or local fire marshal.

Section 8. Special Provisions. (1) Passenger elevator accidents. (a) Notification of State Fire Marshal. The owner of the building shall immediately notify the State Fire Marshal of every accident involving personal injury or damage to the apparatus on, about or in connection with a passenger elevator and shall afford the State Fire Marshal every facility for investigating the accident.

(b) Discontinued use of elevator. If an accident involves the failure, breakage, damage or destruction of a part of the apparatus or mechanism, it shall be unlawful to use the device until an examination by the State Fire Marshal is made and approval of the equipment for continued use is granted.

(c) Removal of damaged parts. If an accident involves personal injury or damage to the apparatus, it shall be unlawful to remove a part of the damaged construction or operating mechanism of the elevator or other equipment from the premises until permission has been granted by the State Fire Marshal.

(2) Fire incident reporting. The fire chief or highest ranking fire department officer shall promptly notify the Office of the State Fire Marshal upon becoming aware of any of the following:

(a) A hazardous materials incident;
(b) A fire or fire-related fatality (including a vehicle or home);
(c) A fire or fire-related injury serious enough to become a fatality; or
(d) A fire involving major structural damage in the following buildings:

1. All institutional, educational, state-owned or state-leased and high-hazard occupancies;
2. All business, mercantile and industrial occupancies having a capacity over 100 persons;
3. All assembly occupancies, except churches, having a capacity over 100 persons;
4. Churches with a capacity over 400 persons and more than 6,000 square feet; or
5. Any other building more than three (3) stories in height or over 20,000 square feet of floor area;

(3) Fire protection systems testing and inspection. (a) Reporting. Except as provided in paragraph (c) of this subsection, an inspection or test required by Chapter 6, 7 or 8 of the NFPA Fire Prevention Code shall be conducted and reported by a person authorized or certified by the State Fire Marshal’s Office.

(b) Inspection and test reports. A required inspection or test shall be recorded on the appropriate State Fire Marshal’s Report of Inspection, using the following reports of inspection:

a. Form FM-FSU (factory-storage-utility);
b. Form FM-HM&D (hotel, motel and dormitory);
c. Form FM-APTS&BH (apartments and boarding houses);
d. Form FM-B&M (business and mercantile);
e. Form FM-LB&C (large board and care);
f. Form FM-SB&C (small board and care);
g. Form FM-E (education);
h. Form FM-HC (health care);
i. Form FM-ANNDC (day care);
j. Form FM-ASBLY (assembly);
k. Form FM-COMP (commercial); or
l. Form FM-IDC (day care facility survey report).

2. The appropriate forms [pages of the form] shall be forwarded to the State Fire Marshal’s Office within ten (10) working days of the date of the inspection.

(c) Reporting exceptions. A portable fire extinguisher or single station smoke detector inspection or test may be inspected and tested by the property owner and their agent. These reports shall not be required to be filed with the State Fire Marshal.
(d) Frequency. Periodic test and inspection of a fire suppression or alarm system shall be performed as follows:
1. Fire detection and alarm systems and all fire suppression systems in buildings other than state licensed hospitals, nursing homes and ambulatory surgical centers shall be inspected and tested for proper operation annually.
2. Fire detection and alarm systems and all fire suppression systems in state licensed hospitals, nursing homes and ambulatory surgical centers shall be inspected and tested quarterly.
3. Systems or components for which the manufacturer recommends more frequent checks shall be performed as described by the manufacturer's instructions.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) NFPA Fire Prevention Code (NFPA 1), 2000 Edition;
(c) NFPA referenced standards. If the edition date of the referenced standard referenced in the 2000 NFPA 1 or NFPA 101 is different, these editions shall supersede:
1. 10, Portable Fire Extinguishers-1998;
2. 11, Low-Expansion Foam-1998;
3. 11A, Medium- and High-Expansion Foam Systems-1999;
4. 12, Carbon Dioxide Extinguishing Systems-2000;
5. 15, Carbon Dioxide Extinguishing Systems-1997;
6. 13, Installation of Sprinkler Systems-1999;
7. 13D, Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes-1999;
8. 22, Water Tanks for Private Fire Protection-1998;
9. 24, Public Fire Service Mains-1995;
10. 25, Water-Based Fire Protection Systems-2001;
11. 30, Flammable and Combustible Liquids Code-2000;
13. 30B, Aerosol Products, Manufacture and Storage-1998;
14. 31, Installation of Oil-Burning Equipment-2001;
15. 32, Dyeing Plants-2000;
16. 33, Spray Application Using Flammable or Combustible Materials-2000;
17. 34, Dipping and Coating Processes Using Flammable or Combustible Liquids-2000;
19. 36, Solvent Extraction Plants-2001;
20. 37, Stationary Combusiton Engines and Gas Turbines-2002;
21. 40, Storage and Handling of Cellulose Nitrate Film-2001;
22. 42, Storage of Pyroxylin Plastic-1997;
24. 50, Bulk Oxygen Systems at Consumer Sites-2001;
25. 50A, Gaseous Hydrogen Systems at Consumer Sites-1999;
26. 50B, Liquefied Hydrogen Systems at Consumer Sites-1999;
28. 51A, Acetylene Cylinder Charging Plants-2001;
29. 51B, Welding, Cutting, Other Hot Work-1999;
30. 52, Compressed Natural Gas (CNG) Vehicular Fuel Systems-1998;
31. 53, Oxygen-Enriched Atmospheres-1999;
32. 54, National Fuel Gas Code-1999;
33. 55, Compressed and Liquefied Gases in Portable Cylinders-1998;
34. 57, Liquefied Natural Gas Vehicular Fuel Systems-1999;
35. 58, Liquefied Petroleum Gas Code-2001;
36. 59, Storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants-2001;
37. 59A, Liquefied Natural Gas (LNG)-2001;
38. 61, Fire and Dust Explosions in Agricultural and Food Products Facilities-1999;
39. 66, Venting of Deflagrations-2002;
40. 69, Explosion Prevention Systems-1997;
41. 70, National Electrical Code®-2002;
42. 70B, Electrical Equipment Maintenance-1998;
43. 70E, Electrical Safety Requirements for Employee Workplaces-2000;
44. 72, National Fire Alarm Code-1999;
45. 73, Electrical Inspection for Existing Dwellings-2000;
46. 75, Protection of Electronic Computer/Data Processing Equipment-1999;
47. 76, Telecommunications Facilities-2002;
48. 77, Static Electricity-2000;
49. 79, Electrical Standard for Industrial Machinery-1997;
50. 80, Fire Doors and Fire Windows-1999;
51. 80A, Exteror Fire Exposures-2001;
52. 82, Incinerators, Waste and Linen Handling Systems and Equipment-1999;
53. 85, Boiler and Combustion Systems Hazards-2001;
54. 86, Ovens and Furnaces-1999;
55. 86C, Industrial Furnaces Using a Special Processing Atmosphere-1999;
56. 86D, Industrial Furnaces Using Vacuum as an Atmosphere-1999;
57. 88A, Parking Structures-1998;
58. 88B, Repair Garages-1997;
60. 90B, Installation of Warm Air Heating and Air-Conditioning Systems-1999;
61. 91, Exhaust Systems for Air Conveying of Gases, etc.-1999;
62. 92A, Smoke-Control Systems-2000;
63. 92B, Smoke Management Systems in Malls, Atria, Large Areas-2000;
64. 96, Ventilation Control and Fire Protection of Commercial Cooking Operations-2001;
65. 97, Glossary of Terms Relating to Chimneys, Vents, and Heat Producing Appliances-2000;
66. 99, Health Care Facilities-2002;
67. 99B, Hypobaric Facilities-2002;
68. 101A, Alternative Approaches to Life Safety-2001;
69. 101B, Means of Egress-1999;
70. 102, Grandstands, Folding and Telescopic Seating, Tents, and Membrane Structures-1995;
71. 105, Smoke-Control Door Assemblies-1999;
72. 110, Emergency and Standby Power Systems-2002;
73. 111, Stored Electrical Energy Emergency and Standby Power Systems-2001;
74. 115, Laser Fire Protection-1999;
75. 120, Coal Preparation Plants-1999;
76. 130, Transit and Passenger Rail Systems-2000;
77. 140, Motion Picture and TV Production Facilities-1999;
78. 150, Fire Safety in Racerack Stables-2000;
79. 150, Flame Effects Before an Audience-2001;
80. 170, Fire Safety Symbols-1999;
81. 203, Roof Coverings and Roof Deck Constructions-2000;
82. 204, Smoke and Heat Venting-2002;
83. 211, Chimneys, Fireplaces, Vents, and Solid Fuel Burning Appliances-2000;
84. 214, Water-Cooling Towers-2000;
85. 220, Types of Building Construction-1995;
86. 221, Fire Walls and Fire Barrier Walls-2000;
87. 230, Storage, Fire Protection of-1999;
88. 232, Records, Protection of-2000;
89. 241, Construction, Alteration, and Demolition Operations-2000;
91. 252, Fire Tests of Door Assemblies-1999;
93. 255, Test of Surface Burning Characteristics of Building Materials-2000;
94. 256, Methods of Fire Tests of Roof Coverings-1998;
95. 257, Fire Tests of Window and Glass Block Assemblies-2000;
98. 260, Cigarette Ignition Resistance of Components of Upholstered Furniture-1998;
99. 261, Method of Test for Determining Resistance of Mock-Up Upholstered Furniture Material Assemblies to Ignition by Smoldering
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Division of Plumbing

(As Amended at ARRS, June 8, 2004)

815 KAR 20:020. Parts or materials list.

RELATES TO: KRS 318.010, 318.015, 318.130, 318.150, 318.200

STATUTORY AUTHORITY: KRS 318.130
NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130

requires the department [office] [department], after review by the
State Plumbing Code Committee, to promulgate an administrative
regulation establishing the Kentucky State Plumbing Code regulat-
ing plumbing, including the methods and materials that may be used in
Kentucky. EO 2003-064 filed December 23, 2003 created the
Environmental and Public Protection Cabinet. EO 2004-031 filed
January 6, 2004 changed the Department of Housing, Buildings
and Construction to the Office of Housing, Buildings and Con-
struction. This administrative regulation establishes [established] an
"approved parts or materials list" containing the parts and materi-
als that have been approved for use in Kentucky.

Section 1. Definitions. (1) "ABS" means acrylonitrile-butadiene-
styrene pipe.
(2) "APML" means the "Approved Parts or Materials List.
(3) "ASTM" means American Society for Testing Materials.
(4) "Code" is defined by KRS 318.010(11).
(5) "Committee" means the State Plumbing Code Committee.
(6) "Office [Department]" means the Office of Housing,
Buildings and Construction [as defined by KRS 318.010(4)].
(7) "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.
(8) "Person" is defined by KRS 318.010(9).
(9) "PVC" means polyvinyl chloride pipe.

Section 2. Approved Parts or Materials List (APML). (1) A 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 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 commit-
teeprofess or approved by the office [department] as being equal to or
better than other similarly approved items for inclusion in the APML.
The APML may specify methods of installation or restrictions appli-
cable 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) The committee shall consider all parts or materials for
which approval is sought and shall forward its recommendations
within thirty (30) days to the office [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 office [depart-
ment], the APML shall be amended by listing the new part or mate-
rial 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, Office [Department] of Housing, Buildings and
Construction, 101 Sea Hero Road, Frankfort, Kentucky 40601.

Section 5. Content of Approved Parts or Materials List. The fol-
lowing 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 connec-
tors for hot water heaters, minimum wall thickness, .032.
(2) (a) Flushmate water closet tank.
(b) Microphor company. Two (2) quart flush toilets.
(3) Jomar 3 and 4 water conservor water closets to operate effi-
ciently on three and one-half (3 1/2) gallons of water per flush.
(4) Supersize toilet that operates on one (1) gallon of water per
flush as manufactured by Universal Rundle for the Thetford Waste-
water Treatment Systems.
(5) (a) FIO Sanitor AB Model-3160 and 3180 China Water Closet
equipped with a Fluidmaster 4003A-F77 Ballcock.
(b) Cashsaver MX (quantum 150-1) Water Closet Combination
and Flushmate II Flushometer/Tank as manufactured by Mansfield
Plumbing Products.
(6) Dual flush water closets by Caroma, USA. The water closets
shall use eight-tenths (.8) gallons for the short flush cycle and one
and six-tenths (1.6) gallons for the full flush cycle.
(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 pro-
vided 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
use.
(5) 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 com-
mercial and household use.
(6) Sewage ejector pit - eighteen (18) inch by twenty-two (22)
inches with steel cover pit and eighteen (18) inch by thirty (30)
inches with steel cover sump pit as manufactured by A. K. Industries.
(7) Little Giant Pump Company, Dinosaur 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.
(8) Add A Drain (Waste Discharge System) as manufactured by
Lunsford and Associates.
(9) Sta-Rite Pump Corporation, laundry tray system approved
for residential and light commercial use.
(10) 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) Dektle pipe flashing system to be used on metal building
decks for plumbing vent stacks as manufactured by Buildex Corpo-
ration.
(6) Olsey eighteen (18) inch by eighteen (18) inch no caulk
thermoplastic flashing, one (1) piece construction, positive double
seal in three (3) inch only.
(7) 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.

(i) Kitchen sink faucets. 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 Nicbo 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. 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 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, bath tub and toilet overflow, traps, continuous sink waste and extension tubes as manufactured by J & B Products Corporation.


(b) Water heaters, point of use or instantaneous.


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. Viacl事を 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.


6. Elkay Aqua-Temp tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve.

7. International Technology Sales Corporation AG 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-fours (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.


13. 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. Ariston electric water heaters, model numbers P-10SS and P-10S and shall be equipped with an approved temperature and pressure relief valve.

15. Vaillant Corporation gas fired point of use water heater.

16. Trinom Hot Man Tankless Water Heater as manufactured by Siemens.

17. Field Controls Company Power Venter - Models PVAE and SWG for use in conjunction with gas and oil fired water heaters.

18. Aucutt Instantaneous Water Heater as manufactured by Keltech, Inc., Model #100/206; #100/240; #150/206; #150/240; #180/206; #180/240; #153/206; #153/240; #183/206; #183/240; #138/480 and #C138/480.


21. Bosch Aqua Star tankless water heater. Models 125X, 125B, 125S, 125SB, 125FX and 335. All models to be installed with temperature and pressure relief valves.

22. Controlled Energy Corporations “Powerstream” tankless water heater.

23. Ariston mini tank electric water heaters in 2.5, 4 and 6 gallon models.

24. Powerstar PS19T and PS28T Electric Instantaneous Water Heaters as manufactured by Controlled Energy Corporation, to be installed with temperature and pressure relief valves.

25. Aquastar AQ240 FX (LP, NG) gas fired instantaneous water heater, as manufactured by Controlled Energy Corporation, to be installed with temperature and pressure relief valve.

26. S.E.T.S. Tankless Water Heater Models: #220, #180, #165 and #145 to be installed with temperature and pressure relief valve.

27. Rinnai Continuous Flow Water Heaters: Models 2532FU(C), 2532W(C), 2532FFU and 2424W(C) all requiring an approved pressure and temperature relief valve.


29. Takagi Industrial Company USA, Inc., Instantaneous Water Heaters, Models: T-KLS, T-K JR; T-K2; T-KD20 to be installed with temperature and pressure relief valve.


31. Quietside Instantaneous Water Heater Models: OV098 - 100, 120, 175. All models shall be equipped with an approved temperature and pressure relief valve and temperature preset at 120 degrees.

32. Seisco Residential Tankless Water Heaters Model: RA 05, RA 07, RA 09, RA 11, RA 14, RA 18, RA 22 and RA 28. All models shall be equipped with an approved temperature and pressure relief valve.

(11) Compression joints. Fai-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. Fusible mechanical joint for the connection of polypropylene and waste piping.

(14) Johns Manville Flex I drain roof drain system.

(15) Hydroclad 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, and/or 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) 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.
(g) 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.


(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, GFS, GSS, OS, RHS, GSC, RMS, RSD, SD, SDE, GTD, and RTO 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 Kentune, Inc.

(24) Eljer plumbing ware - Elgers ultra one/G water closet.

(25)(a) "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) Hydromatic JB-1 System as manufactured by Hydromatic Pumps, Inc.

(27) Exemplar Energy garden solar water heater.

(28) 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.

(29)(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-Stee-Croix.

(c) Fullport Backwater Valve as manufactured by Mainline Backflow Products, Inc.

(30) Snap-All Corporation Pipe Coupling Systems is approved size for on dissimilar materials on new or existing installations. The use of Snap-All Inverter/Reducer transition bushings is included in this approval.

(31) Mission Rubber Company "Band-Seat 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.

(32) 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.

(33) DFW Elastomeric PVC coupling manufactured by DFW Plastics, Inc. for use on building sewers.

(a) Fenco 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) Fenco 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 designed for 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 schedulers of Schedule 40 PVC, ABS and SDR in four (4) inch and six (6) inch sizes.

(37) Advanced Drainage Systems, Inc., Series 35 polyethylene coupling to 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)(a) 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.

(b) Flex-Waxless Leakless Toilet System as manufactured by Flex-Wax Systems Inc.

(41)(a) Conbraco 78-RV Series In-Line Water Heater Shut-Off Thermal Expansion Control Valve preset at 125 psi to relieve thermal expansion.

(b) Watts Regulator BRV Expansion Relief Valve to relieve thermal expansion.

(42) Plastic Productions PVC "Quick Stup" approved as a solvent cement transfer between tubular PVC and schedule 40 PVC.

(43) HubSet In Line Test Coupling; PVC and ABS test couplings produced by HubSet Manufacturing Inc. for testing soil waste and vent systems.

(44) Viega/Rigid ProPress System: Copper press fittings for joining copper water tubing and using an elastomeric o-ring that forms the joint. The fitting shall be made by pressing the socket joint under pressure in accordance with the manufacturer's installation requirements. Approved for pipe sizes one-half (1/2) inch through four (4) inch for above slab installations only.

(45) TRIC Trenchless Systems for replacement sewers in four (4) inch and six (6) inch sizes. A video camera tape of the existing sewer shall be made to determine proper alignment. After the installation is complete, another tape shall be submitted to ensure that the installation was successful. The sewer shall be tested according to B15 (KAR 20:150). The interior heat fusion bead shall be removed to provide a smooth surface with no obstruction.

(46) Envirovac Inc.: Evac Vacuum Systems Condensate Collection System approved for condensate collection and the discharge from lavatories only.

(47) Macerating Systems from Sanitary-for-All, consisting of a sump with a macerating pump, with or without a macerating toilet. The drain shall be air tight and provided with a minimum one and one-fourth (1 1/4) inch vent. These systems shall be installed in accordance with the manufacturer's recommendations and shall not be used as a primary means of waste disposal.

(48) Rhino Wet Waste Interceptor manufactured by Ecosystems Inc. to be used as a pretreatment of wet wastes before discharging to a grease trap or interceptor.

(49) Quick Snap Multi Level Flange as manufactured by Jett Plumbing Products, Inc.

(50) Sioux Chief Manufacturers Stainless Steel Swivel Ring Closet Flange.

(51) Service Weight and No-Hub Cast Iron Pipe and Fittings furnished by DWV Casting Company complying with ASTM A74, A888 and CIP 301-00.

(52) American Pipe Lining, Inc. APL 2000, which is [I] an epoxy lining used in restoring water distribution systems. The use of APL 2000 shall be subject to the following conditions:

(a) A plumbing construction permit shall be required.
(b) Installation shall be by a licensed plumber.
(c) Water quality shall be tested [testing] before and after each project and all water distribution system treated with APL 2000 shall be clearly marked on all exposed piping and water heater with the following notice: "FLAMELESS TECHNIQUES MUST BE USED FOR ALL REPAIRS AND MODIFICATIONS TO THIS PIPE-
ING SYSTEM"

LAJUANA S. WILCHER, Secretary
DENNIS J. LANGFORD, Executive Director
STEVEN A. MILBY, Chairman

APPROVED BY AGENCY: April 13, 2004
FILED WITH LRC: April 15, 2004 at noon

CONTACT PERSON: Frank L. Dempsey, Office of General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0365, fax (502) 573-1057.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Division of Plumbing
(As Amended at ARRS, June 8, 2004)

815 KAR 20:090. Soil, waste and vent systems.

RELATES TO: KRS 318.010, 318.015, 318.130, 318.150, 318.200

STATUTORY AUTHORITY: KRS 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department (office) [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 for soil, waste, and vent systems. 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 each type of plumbing system. EO 2003-064, filed December 23, 2003 created the Environmental and Public Protection Cabinet. EO 2004-031 filed January 6, 2004 changed the Department of Buildings and Construction to the Office of Housing, Buildings and Construction. [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) A stack shall be supported at its base and each pipe shall be rigidly secured.

(3) No-hub pipe and fittings shall be supported at each joint of pipe and fittings.

(4) Polyvinyl chloride and acrylonitrile-butadiene-styrene schedule forty (40) horizontal piping shall be supported at intervals not to exceed four (4) feet and at the base of each vertical stack and at each trap branch as close to the trap as possible.

(5) Polyethylene pipe and fittings shall [must] be continuously supported with a V channel.

(6) A stack shall be rigidly supported at its base and at the floor level.

Section 2. Change in Direction. (1) Except as provided in subsections (2), (3), or (4) of this section, a change in direction shall be made by the appropriate use of a forty-five (45) degree wye, half-wye (1/2), quarter (1/4), sixth (1/6), eighth (1/8) or sixteenth (1/16) bend.

(2) A single sanitary tee may be used in a vertical stack.

(3) A sanitary tee may be turned on its back or side at an angle of not more than forty-five (45) degrees.

(4) A double sanitary tee may be used on a vertical soil, waste and vent line.

Section 3. Prohibited Fittings. A double hub bend and double hub tee or inverted hub shall not be used on a sewer, soil or waste line. The drilling and tapping of a house sewer or house drain, soil, waste or vent pipe, and the use of a saddle hub and band shall be prohibited. A pipe shall be installed without a hub or restriction that reduces the area or capacity of the pipe.

Section 4. Dead Ends. In the installation of a drainage system, a dead end shall not be used without special permission from the office [department].

Section 5. Protection of Material. A pipe passing under or through a wall shall be protected from breakage. A pipe 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) A main 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. (1) The following table, based on the rate of discharge from a lavatory as a unit, shall be employed to determine fixture equivalents:

<table>
<thead>
<tr>
<th>Pipe Size (In Inches)</th>
<th>Maximum Developed Length</th>
<th>Fixture Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 1/4</td>
<td>25 ft.</td>
<td>1</td>
</tr>
<tr>
<td>1 1/2</td>
<td>60 ft.</td>
<td>2</td>
</tr>
<tr>
<td>2</td>
<td>80 ft.</td>
<td>6</td>
</tr>
<tr>
<td>2 1/2</td>
<td>130 ft.</td>
<td>12</td>
</tr>
<tr>
<td>3</td>
<td>225 ft.</td>
<td>36</td>
</tr>
<tr>
<td>4</td>
<td>342</td>
<td>172</td>
</tr>
<tr>
<td>5</td>
<td>576</td>
<td>6</td>
</tr>
<tr>
<td>6</td>
<td>1600</td>
<td>8</td>
</tr>
<tr>
<td>8</td>
<td>2900</td>
<td>10</td>
</tr>
<tr>
<td>10</td>
<td>4600</td>
<td>12</td>
</tr>
</tbody>
</table>

(2) A water closet 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. (1) A building in which a plumbing fixture is installed shall have a soil or waste and vent stack, or stacks, extending full size through the roof.

(2) A soil or waste and vent stack shall be as direct as possible and free from sharp bends or turns.

(3) 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 more than three (3) water closets shall not 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 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 may 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. A soil and waste stack or branch shall have correctly faced inlets for fixture connections. Each fixture shall be independently connected to the soil or waste system. A fixture connection to a water closet, floor-outlet pedestal sink, pedestal urinal, or other similar plumbing fixture shall be either a cast iron, lead, brass, copper, or plastic closet bend. A three (3) inch closet bend 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 if the soil, waste and vent piping is not extended undiminished through the roof or if 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. A fixture connection shall not be made to a lead bend or a branch of a water closet or a similar fixture. A vent pipe 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 material and at least two (2) layers of two (2) ply tar paper, properly bound with copper wire, or the vent shall be increased in size, the size of the increase required as if it were passing through the roof.

Section 15. Roof Extensions. A roof extension 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 extension shall not be less than five (5) feet above the roof. A stack 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 is 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 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 a window within ten (10) feet of an existing vent stack on the lower building.

Section 18. Traps, Protected; Vents. A fixture trap shall be protected against siphonage and backpressure. Air circulation shall be assured by means of an individual vent. A crown vent 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 a water closet or a similar fixture, shall not be below the dip of the trap, and each ninety (90) degree turn in the waste line of the main waste, soil, or vent pipe shall be washed. A fixture trap shall have a vent located with a developed length not greater than that set forth in the table below:

<table>
<thead>
<tr>
<th>Size of Fixture Drain (In Inches)</th>
<th>Distance Trap to Vent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 1/4</td>
<td>2 ft. 6 in.</td>
</tr>
<tr>
<td>1 1/2</td>
<td>3 ft. 6 in.</td>
</tr>
<tr>
<td>2</td>
<td>5 ft.</td>
</tr>
<tr>
<td>3</td>
<td>6 ft.</td>
</tr>
<tr>
<td>4</td>
<td>10 ft.</td>
</tr>
</tbody>
</table>

(2) A fixture branch on a water closet shall not be more than three (3) feet.

Section 20. Main Vents to Connect at Base. (1) All main vents or vent stacks shall connect full size at the base of the main soil or waste pipe at or below the lowest fixture branch 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.

(b) If the height of a stack which does not serve as the main vent is less than forty-five (45) feet, it shall not be required to be increased from its base.

Section 21. Vents; Required Sizes. (1) The required size of a vent or vent stack shall be determined by the total number of fixture units it serves and the developed length of the vent, interpolating, if necessary, between permissible length of vent given in the following table:

<table>
<thead>
<tr>
<th>MAXIMUM PERMISSIBLE LENGTHS OF VENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pipe Size (In Inches)</td>
</tr>
<tr>
<td>-----------------------</td>
</tr>
<tr>
<td>1 1/4</td>
</tr>
<tr>
<td>1 1/2</td>
</tr>
<tr>
<td>2</td>
</tr>
<tr>
<td>2 1/2</td>
</tr>
<tr>
<td>3</td>
</tr>
<tr>
<td>4</td>
</tr>
<tr>
<td>5</td>
</tr>
</tbody>
</table>

(2) Except for a residential installation, 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 pipe, 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. A vent or branch vent pipe 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. If a vent pipe connects 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 shall 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. A vent 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 meas-
uring 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. If 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 this administrative regulation.

Section 26. Floor Drain Individual Vent Not Required. A manufacturer’s floor drain shall not require an individual vent if placed on a waste line for a floor drain 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 undimensioned through the roof, or connected to a main vent stack. An open receptacle may be connected to a floor drain line without being vented if the waste line discharges into a four (4) inch master trap before entering the sanitary sewer system.

Section 27. A floor drain or service sink installed on the operational floor level of a sewage and water treatment plant facility which discharges into an open sump and is not connected directly to the sanitary sewage system shall not be required to be trapped or vented.

Section 28. House Drain Material. A house drain 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[2] shall connect indirectly with the house drain, soil or waste pipe. The drain shall be vented to the outside air. The waste pipe shall discharge into an open sink or another approved open receptacle that is properly supplied with water in accordance with this administrative regulation. The connection shall not be located in an inaccessible or unventilated area.

Section 30. Bar and Soda Fountain Wastes. (1) A bar and soda fountain waste, sink or receptacle 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 in diameter. The 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.

(2) A floor receptacle or floor sink may be installed flush with the finished floor if provided. It has a full grate with an attached funnel to receive indirect waste [food storage-compartment drain shall be indirectly connected to a trapped receptacle whose upper edge is raised at least one (1) inch above the finished floor line].

(3) A floor receptacle or floor sink installed specifically for the indirect wastes from a tilting braising pan, tilting kettle, or other similar equipment may be installed level with or slightly recessed in the floor if the receptacle 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 if it discharges into a septic system.

Section 32. Refrigerator Wastes. A refrigerator waste pipe 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. A corrosive liquid 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 this administrative regulation and each fixture shall be individually trapped. (2) A continuous waste and vent pipe system may be used, if the waste discharges into a vented disposal pit outside the building with a vent equal to the size of the drain. The vent may be eliminated if the [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) A fixture branch 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) A fixture connection shall rise vertically to a height so that the trap arm 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 wall galvanized pipe, silicon iron, lead, polyethylene pipe and fittings produced and labeled as ASTM D-1204-62T, polyethylene pipe produced and labeled as ASTM D-4101-85, polyethylene pipe and fittings produced and labeled as ASTM F-1412, or other materials approved by the office [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, polyethylene 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. (1) Except as provided in subsection (2) of this section, a flat or wet vent serving a plumbing fixture shall be constructed with special permission from the office [department] if a plumbing system is being remodeled or if an addition is added to an original system. (2) A flat vent in new construction may be allowed in a commercial building if the design of the building prohibits the type of venting required by this administrative regulation.

Section 38. Basement Floor Drains and Sanitary Sewage Systems. (1) Except for a basement floor drain exempted under subsection (2) of this section, a basement floor drain shall be connected to the house sewer and properly trapped and vented as set forth in this administrative regulation. (2) A basement floor drain in a single family dwelling 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, 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 shall also be exempted from the trap, vent and trapping provisions of the State Plumbing Code.

LAJUANA S. WILCHER, Secretary DENNIS J. LANGFORD, Executive Director STEVEN A. MILBY, Chairman APPROVED BY AGENCY: April 13, 2004 FILED WITH LRC: April 15, 2004 at noon CONTACT PERSON: Frank L. Dempsey, Office of General Counsel, Office of Housing, Buildings and Construction, 101 Sea - 90 -
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Division of Plumbing
(As Amended at ARRS, June 8, 2004)

815 KAR 20:110. Traps and clean-outs.

RELATES TO: KRS 318.010, 318.130, 318.150
STATUTORY AUTHORITY: KRS 318.130
NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130
requires the department, through the State Plumbing Code Committee, to promulgate an administrative regulation establishing a State Plumbing Code. EO 2003-064 filed December 23, 2003 created the Environmental and Public Protection Cabinet. EO 2004-031 filed January 6, 2004 changed the Department of Housing, Buildings and Construction to the Office of Housing, Buildings and Construction. This administrative regulation establishes requirements for traps and clean-outs to prevent harmful gases and odors from entering a building or home that is served by a plumbing system and identifies the manufacturer's specification number of the material accepted in an installation.

Section 1. Traps, Kind and Minimum Size. (1) A Trap shall be self-cleaning.
(2) A trap for a bathtub, lavatory, sink or other similar fixture shall either be tubular brass, tubular ABS or PVC produced and labeled as ASTM F-409, cast brass, cast iron, lead or schedule 40 PVC (polyvinyl chloride) or ABS (acrylonitrile-butyadiene-styrene) trap.
(3) A tubular or schedule 40 PVC or ABS p-trap shall be either the union-joint or solvent welded type.
(4) A tubular brass trap shall be seventeen (17) gauge.
(5) A tubular brass, tubular PVC or tubular ABS trap shall not be installed below the finished floor serving a fixture.
(6) A trap shall have a full-bore, smooth interior waterway.
(7) The threads in a cast brass or cast iron trap shall be tapped out of solid metal.
(8) A lead trap shall be extra heavy.

Section 2. Traps, Prohibited. A trap which depends upon the action of a movable part or concealed interior partition for its seal shall not be used.

Section 3. Traps, Where Required. (1) A fixture shall be separately trapped by a water-seal trap placed as near as possible to the fixture but not to exceed ten (10) inches from the bottom of the fixture to the dip of the seal.
(2) Waste from a bathtub or other fixture shall not discharge into a water closet bend.
(3) A fixture shall not be double trapped.

Section 4. Water Seal. A fixture trap shall have a water seal not less than two (2) inches or more than four (4) inches.

Section 5. Trap Clean-outs. A trap clean-out shall be optional.

Section 6. Trap Levels and Protection. A trap shall be set true with respect to its water seal and shall be protected from frost and evaporation. Trap primers shall be required on all floor drains and open receptacles in commercial - mechanical/boiler rooms and on open receptacles that receive the discharge from a temperature and pressure relief device discharge only.

Section 7. Pipe Clean-outs. (1) The bodies of clean-out ferrules shall be made in a standard pipe size, conforming in thickness to that of the pipe and fittings and shall not extend less than one-quarter (1/4) inch above the hub in which it is placed.
(2) The clean-out cap or plug shall be yellow-brass, PVC, or ABS [heavy-red-brass] not less than one-eighth (1/8) inch thick and shall have a raised nut or recessed pocket for removal.

Section 8. Pipe Clean-outs, Where Required. In a building served by a stack over forty-five (45) feet in height, a clean-out shall be provided at the base of each vertical waste or soil stack. There shall be at least one (1) clean-out in the building drain with a full-size branch inside the wall or outside the building at a point not to exceed two (2) feet from the foundation wall. If located outside the building, the clean-out shall be extended to the finished grade for accessibility. A clean-out shall be of the same nominal size as the pipe it serves up to four (4) inches and shall not be less than four (4) inches for larger pipe.

Section 9. Manholes. An underground clean-out in a building, except if a clean-out is flush with the floor or wall, shall be made accessible by a manhole or with a proper cover.

Section 10. Clean-outs (Equivalents). A floor or wall connection of a fixture trap, whether bolted or screwed to the floor or wall, shall be regarded as a clean-out with the exception of the clean-out where the house drain enters a building.

Section 11. Grease Traps. (1) If a grease trap is installed, it shall be:
(a) Placed as near to the fixture it serves as practical; and
(b) Approved by the department.
(2) A grease trap used inside a building shall:
(a) Have a sealed cover; and
(b) Be properly vented.
(3) A grease trap shall be installed for a restaurant, food service establishment or other business establishment as required by:
(a) Applicable administrative regulations promulgated by the Office [Department] of Housing, Buildings and Construction; or
(b) Municipal ordinance.
(4) If a food establishment uses a private sewage system, a grease trap shall be installed as required by 902 KAR 10:005.

Section 12. Sand Traps. A sand trap shall be readily accessible and shall meet the requirements established in the applicable administrative regulations promulgated by the Office [Department] of Housing, Buildings and Construction.

Section 13. Basement Floor Drains. (1) A basement floor drain shall:
(a) Connect to a trap;
(b) Be readily accessible for cleaning; and
(c) Be of sufficient size to serve the purpose intended.
(2) If a drain is subject to back flow or back pressure, the drain shall be equipped with a backwater valve approved by administrative regulation of the Office [Department] of Housing, Buildings and Construction.

Section 14. Back Water Valves. A back water valve shall be:
(1) Of noncorrosive material; and
(2) Constructed to insure a positive mechanical seal except when discharging wastes.

Section 15. Residential Utility Room Floor Drains. A two (2) inch floor drain with an individual waste and vent may be installed in a residential utility room.

Section 16. Directional Flow Fittings and Continuous-waste. A kitchen sink unit or fixture with more than one (1) unit may be connected with a continuous-waste, if a directional flow fitting is used. Continuous-waste shall be either seventeen (17) gauge tubular brass or schedule 40 ABS or PVC or tubular ABS or PVC material.

LAUANA S. WILCHE, Secretary
DENNIS J. LANGFORD, Executive Director
STEVEN A. MILBY, Chairman
APPROVED BY AGENCY: April 13, 2004
FILED WITH LRC: April 15, 2004 at noon
CONTACT PERSON: Frank L. Dempsey, Office of General Counsel, Office of Housing, Buildings and Construction, 101 Sea
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Division of Plumbing
(As Amended at ARRS, June 8, 2004)

815 KAR 20:191. Minimum fixture requirements.

RELATES TO: KRS 58.200, 318.130, 318.160
STATUTORY AUTHORITY: KRS 199B.040(10), 318.130
NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130
requires the department [office] [department], after approval by the State Planning Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the materials and methods that may be used in Kentucky. KRS 58.200(2) 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 199B.040(10) requires the Kentucky Board of Housing, Buildings and Construction to promulgate administrative regulations for the safe installation and operation of plumbing fixtures. EO 2003-064 filed December 23, 2003 created the Environmental and Public Protection Cabinet. EO 2004-031 filed January 6, 2004 changed the Department of Housing, Buildings and Construction to the Office of Housing, Buildings and Construction. This administrative regulation establishes the minimum fixture requirements for buildings in Kentucky.

Section 1. General Requirements. (1) In a building 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 the Kentucky Building Code, incorporated by reference in 815 KAR 7:120 [7-166].

(3) All types of buildings shall be provided with toilet rooms on each level or floor, unless the department determines that:

(a) Separate facilities on each level or floor are unnecessary; and

(b) Toilet rooms on every other level or floor shall be sufficient.

(4) Toilet rooms for males and females shall be clearly marked.

Section 2. Toilet Floor Construction Requirements. (1) Floors in toilet rooms providing facilities for use by the general public or employees shall be constructed of nonabsorbent materials.

(2) If a wood floor is used, the wood floor shall be covered by other nonabsorbent materials.

(3) If two or more fixtures that receive human waste are installed, the toilet room shall have at least one (1) floor drain and one (1) accessible hose bibb.

Section 3. Facilities for Stages. (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.

Section 4. Theaters, Assembly Halls and Similar Occupancies. Separate toilet rooms for males and females shall be provided as indicated in Sections 1, 2, and 3 of this administrative regulation, and as follows:

(1) Water closets and urinals for males.

(a) Water closets for males shall be installed in the following proportions:

1. One (1) water closet for each 100 males;
2. Two (2) water closets for 101 to 200 males;
3. Three (3) water closets for 201 to 400 males; and
4. If over 400 males, three (3) water closets plus one (1) additional water closet for each additional 500 males or fraction thereof.

(b) Urinals for males shall be installed in the following proportions:

1. One (1) urinal for eleven (11) to 100 males;
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; and
3. If over 100 pupils, two (2) water closets plus one (1) additional
   water closet for each 100 pupils or fraction thereof.
   (b) Urinals for males shall be installed in the following propor-
   tions:
1. One (1) urinal for up to twenty-five (25) pupils;
2. Two (2) urinals for twenty-six (26) to fifty (50) pupils;
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; and
8. If over 500 pupils, twelve (12) urinals plus one (1) additional
   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. Seventeen (14) water closets for 401 to 500 pupils; and
8. If over 500 pupils, seventeen (14) water closets plus one (1)
   additional 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:
   a. One (1) lavatory for each twenty-five (25) pupils or fraction
      thereof; and
   b. If over fifty (50) pupils, two (2) lavatories plus one (1) addi-
      tional lavatory for each fifty (50) pupils or fraction thereof over
      fifty (50).
2. Twenty-four (24) inches of sink or eighteen (18) inches of cir-
   cular basin, if 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 detached relocatable classrooms are used, sanitary facili-
   ties shall not be required, if:
   (a) The classroom is within a distance not to exceed thirty-five
      (35) feet from the main structure;
   (b) There are sufficient fixtures in the main structure to serve
      the entire capacity of the school, including the relocatable
      classrooms.
5. Water closets in a school building shall be of the elongated
   bowl type with a split open front seat.

Section 7. Schools of Higher Education and Similar Educational
Facilities. (1)(a) Except as provided in paragraph (b) of this subsec-
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 frac-
   tion thereof;
3. One (1) drinking fountain for each seventy-five (75) persons
   or fraction thereof; and
4. One (1) urinal for each thirty (30) males or fraction thereof.
   (b) One (1) water closet less than the number specified in para-
   graph (a) of this subsection may be provided for each urinal installed
   except that the number of water closets in those cases shall not be
   reduced to less than two-thirds (2/3) of the minimum specified.
   (2) Water closets in a school of higher education or a similar
   education facility shall be of the elongated bowl type with a split
   open front seat.

Section 8. Public Garages and Service Stations. (1) Separate
   toilet rooms shall be provided with at least:
   (a) A water closet and lavatory for females; and
   (b) A water closet, lavatory and urinal for males.
   (2) Water closets shall be of the elongated bowl type with a split
   open front seat.

Section 9. Churches. (1) Sanitary facilities shall be provided in a
   church as follows:
   (a) One (1) drinking fountain for each 400 persons or fraction
      thereof;
   (b) One (1) water closet for each 150 females or fraction thereof;
   (c) One (1) water closet for each 300 males or fraction thereof;
   (d) One (1) urinal for each 200 males or fraction thereof;
   (e) One (1) lavatory for each 150 persons or fraction thereof;
   and
   (2) Water closets in public restrooms shall be of the elongated
       bowl type with a split open front seat.

Section 10. Transient Facilities. A transient facility shall be in
   compliance with the requirements established in 290 KAR 10:010
   (1) A hotel or motel 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 frac-
       tion 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 plus one (1) addi-
       tional urinal for each additional fifty (50) males 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) persons
       or fraction thereof on each floor; and
   (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, there shall be 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) males or fraction thereof;
   (b) One (1) water closet for one (1) to eight (8) females and one
       (1) for each additional twenty (20) females or fraction thereof;
   (c) One (1) urinal for eleven (11) to 100 males and one (1) for
       each additional fifty (50) males or fraction thereof over 100;
   (d) One (1) lavatory for each ten (10) males or females or frac-
       tion thereof; and
   (e) One (1) bathtub or shower for each ten (10) males or females
       or fraction thereof.

Section 11. Dormitories: School, Labor or Institutional. In a dor-
   mitory, [ ] There shall be installed the fixtures required by this sec-
   tion:
   (1) Water closets, there shall be:
   (a) One (1) water closet for up to ten (10) males with one (1)
       additional water closet for each additional twenty-five (25) males
       or fraction thereof; and
   (b) One (1) water closet for up to eight (8) females with one (1)
       additional water closet for each additional twenty (20) females
       or fraction thereof.
   (2) Urinals.
   (a) There shall be one (1) urinal for each twenty-five (25) males
       or fraction thereof, and, if there is over 150 males, one (1) addi-
       tional urinal for each additional fifty (50) males or fraction thereof.
   (b) If urinals are provided for women, the same number shall be
       provided for women as for men
   (c) If urinals are provided, a urinal may be substituted for a water
       closet, not to exceed one-third (1/3) of the required total number
       of water closers.
   (d) Trough urinals shall be figured on the basis of one (1) urinal
       for each twenty-four (24) inches of length.
   (3) Lavatories.
   (a) There shall be one (1) lavatory for one (1) to twelve (12)
       persons, with an additional one (1) lavatory for each twenty (20)
       males and each fifteen (15) females.
(b) Separate dental lavatories shall be provided in community toilet rooms at a ratio of one (1) dental lavatory to each fifty (50) persons.

(4) Additional fixtures. There shall be:
(a) One (1) bathtub or shower for each eight (8) persons. If there is over 150 persons, there shall be one (1) additional 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;
(b) One (1) drinking fountain for each seventy-five (75) persons;
(c) One (1) laundry tray or clothes washer for each fifty (50) persons; and
(d) One (1) service sink or slop sink for each 100 persons.

(5) If the dormitory is located in a youth camp, the requirements of 902 KAR 10:040 shall apply in addition to the requirements established in this section.

Section 12. Hospitals, Nursing Homes and Institutions. A hospital, nursing home, or institution shall comply with the requirements established in 902 KAR 20:031, 902 KAR 20:046, 902 KAR 20:056, 902 KAR 9:010, and this section. Sanitary facilities shall be provided on each floor level and shall conform to the following:

(1) Hospitals.
(a) Wards. There shall be:
1. One (1) water closet for each ten (10) patients;
2. One (1) lavatory for each ten (10) patients;
3. One (1) tub or shower for each fifteen (15) patients; and
4. One (1) drinking fountain for each 100 patients.
(b) Individual rooms. There shall be one (1) water closet, one (1) lavatory and one (1) tub or shower.

(2) Waiting rooms. There shall be one (1) water closet and one (1) lavatory.

(2) Nursing homes and institutions (other than penal). There shall be:
(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; and
(g) One (1) service sink or slop sink on each floor.

(3) Institutions, penal.
(a) Cell. There shall be:
1. One (1) prison type water closet; and
2. One (1) prison type lavatory.
(b) Day rooms and dormitories.
1. There shall be:
   a. 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;
   b. One (1) lavatory for each twelve (12) inmates or fraction thereof;
   c. One (1) shower for each fifteen (15) inmates or fraction thereof;
   d. One (1) drinking fountain per floor; and
   e. One (1) service sink or slop sink per floor.
2. One (1) urinal may be substituted for each water closet if the number of water closets is not reduced to less than one-half (1/2) the number required.
(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) There shall be one (1) drinking fountain on each floor.
(e) There shall be 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) There shall be:
   1. One (1) water closet for each twenty-five (25) males or fraction thereof, up to 100;
   2. One (1) lavatory for each twenty-five (25) males or fraction thereof, up to 100;
   3. One (1) urinal for eleven (11) to fifty (50) employees;
   4. Two (2) urinals for fifty-one (51) to 100 employees;
   5. One (1) lavatory for each twenty-five (25) females or fraction thereof, up to 100;
   6. One (1) water closet for each fifteen (15) females or fraction thereof up to 100;
   7. If in excess of 100, there shall be:
      a. One (1) additional water closet for each thirty (30) males and each thirty (30) females or fraction thereof;
      b. One (1) additional lavatory for each additional fifty (50) males and females or fraction thereof; and
      c. One (1) additional urinal for each 100 males or fraction thereof;
   8. One (1) shower for each fifteen (15) persons exposed to skin contamination from irritating, infectious or poisonous materials;
   9. One (1) drinking fountain on each floor for each fifty (50) employees. If there is more than 100 employees, there shall be an additional drinking fountain on each floor for each additional seventy-five (75) persons; and
   10. One (1) service sink or slop sink per floor.
(b) Individual sinks or wash troughs may be used in lieu of lavatories. Twenty-four (24) inches of sink or trough, if provided with water, or eighteen (18) inches of circular basin shall be deemed the equivalent of one (1) lavatory.

(2) Mercantile.
(a) Employees.
1. Except as provided in subparagraph 2 of this paragraph, sanitary facilities within each store shall be provided for employees. If more than five (5) persons are employed, separate facilities for each sex shall be provided.
   2. For a store 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) Customers.
1. Sanitary facilities shall be provided for customers if the building contains 5,000 square feet or more.
   2. In a mall or shopping center, the required facilities, based on one (1) person per 100 square feet of total area, shall be installed in individual stores or in a central toilet room area or areas, if:
      a. The distance from the main entrance of a store does not exceed 500 feet; and
      b. The toilet room area is accessible to physically disabled persons.
(c) Sanitary facilities shall be provided as stated in this section and there shall be:
   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. Three (3) water closets plus one (1) water closet for each 400 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. Three (3) urinals plus 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. Three (3) lavatories plus 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; and
   14. One (1) service sink or slop sink per floor.
(3) Office buildings.
(a) Employees.
1. Except as provided in subparagraph 2 of this paragraph, sanitary facilities within office buildings shall be provided for employees. If more than five (5) persons are employed, separate facilities for each sex shall be provided.
2. For an office building 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) Customers.
1. Sanitary facilities shall be provided for customers if the office building or space contains 5,000 square feet or more.

2. In an office building, the required facilities, based on one (1) person per 100 square feet of total area, shall be installed within the individual offices, or in a central toilet room area or areas if:
   a. The distance from the main entrance of an office does not exceed 500 feet; and
   b. The toilet room area is accessible to physically disabled persons.

(c) Sanitary facilities shall be provided as stated in this section.
1. There shall be:
   a. One (1) water closet for one (1) to fifteen (15) persons;
   b. Two (2) water closets for sixteen (16) to thirty-five (35) persons;
   c. Three (3) water closets for thirty-six (36) to fifty-five (55) persons;
   d. Four (4) water closets for fifty-six (56) to eighty (80) persons;
   e. Five (5) water closets for eighty-one (81) to 110 persons;
   f. Six (6) water closets for 111 to 150 persons;
   g. Six (6) water closets plus one (1) water closet for each forty (40) additional persons;
   h. One (1) lavatory for one (1) to fifteen (15) persons;
   i. Two (2) lavatories for sixteen (16) to thirty-five (35) persons;
   j. Three (3) lavatories for thirty-six (36) to sixty (60) persons;
   k. Four (4) lavatories for sixty-one (61) to ninety (90) persons;
   l. Five (5) lavatories for ninety-one (91) to 125 persons;
   m. Five (5) lavatories plus one (1) lavatory for each forty-five (45) additional persons; and
   n. One (1) drinking fountain for each seventy-five (75) persons or fraction thereof.
2. If urinals are provided, one (1) water closet less than the number specified may be provided for each urinal installed if the number of water closets is not reduced to less than seventy (70) percent of the minimum specified.

Section 14. Swimming Pool Bathhouses. A swimming pool bathhouse shall comply with the requirements established in 902 KAR 10:120 and this section.

(1) Bathhouses for public swimming pools shall be divided into two (2) parts separated by a light partition, with one (1) part designated for "Males" or "Men" and the other part designated for "Females" or "Women."

(2) Sanitary facilities shall be provided in each bathhouse to serve the anticipated bather load, as defined in 902 KAR 10:120, and shall conform to the following:
   a. For swimming pools in which the total bather capacity is 200 persons or less, there shall be:
      1. One (1) water closet for each seventy-five (75) males or fraction thereof;
      2. One (1) water closet for each seventy-five (75) males or fraction thereof;
      3. One (1) urinal for each seventy-five (75) males or fraction thereof;
      4. One (1) lavatory for each 100 persons or fraction thereof;
      5. One (1) shower per each fifty (50) persons or fraction thereof; and
      6. One (1) drinking fountain per each 200 persons or fraction thereof.
   b. For swimming pools in which the total bather capacity exceeds 200 persons, there shall be:
      1. Five (5) water closets for 201 to 400 females, with one (1) additional water closet for each additional 250 females;
      2. Three (3) water closets for 201 to 400 males, with one (1) additional water closet for each additional 500 males;
      3. Three (3) urinals for 201 to 400 males, with one (1) additional urinal for each additional 500 males or fraction thereof; and
      4. One (1) shower for up to 150 males or females; and
      5. Two (2) lavatories for 151 to 400 males or females;
   c. Three (3) lavatories for 401 to 750 males or females;
   d. If in excess of 750 males or females, three (3) lavatories plus one (1) additional lavatory for each additional 750 males or females over 750;
   e. One (1) shower per each fifty (50) persons or fraction thereof up to 150;
   f. If in excess of 150 persons, one (1) additional shower plus one (1) shower per each 500 persons over 650; and
   g. 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. One (1) to two (2) hours shall have one (1) shower for each ten (10) swimmers.
   (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 facilities are conveniently available to pool patrons within 150 feet from the pool.

Section 15. Park Service Buildings or Bathhouses. A park service building or bathhouse shall comply with the requirements established in 902 KAR 15:020 and this section.

(1) Except for a self-contained recreational vehicle park, each park shall provide one (1) or more central service buildings containing the necessary toilet and other plumbing fixtures specified in this section.

(2) Except for a self-contained recreational vehicle park, sanitary facilities shall be provided as follows:
   a. If there are one (1) to fifteen (15) vehicle spaces, there shall be:
      1. Males: [3] One (1) water closet, one (1) urinal, one (1)lavatory and one (1) shower; and
      2. Females: [3] One (1) water closet, one (1) lavatory and one (1) shower.
   b. If there are sixteen (16) to thirty (30) vehicle spaces, there shall be for:
      1. Males: [3] One (1) water closet, one (1) urinal, two (2) lavatories and two (2) showers; and
      2. Females: [3] Two (2) water closets, two (2) lavatories and two (2) showers.
   c. If there are thirty-one (31) to forty-five (45) vehicle spaces, there shall be for:
      1. Males: [3] Two (2) water closets, one (1) urinal, three (3) lavatories and three (3) showers; and
      2. Females: [3] Two (2) water closets, three (3) lavatories and three (3) showers;
   d. If there are forty-six (46) to sixty (60) vehicle spaces, there shall be for:
      1. Males: [3] Two (2) water closets, two (2) urinals, three (3) lavatories and three (3) showers; and
      2. Females: [3] Three (3) water closets, three (3) lavatories and three (3) showers;
   e. If there are sixty-one (61) to eighty (80) vehicle spaces, there shall be for:
      1. Males: [3] Three (3) water closets, two (2) urinals, four (4) lavatories and four (4) showers; and
      2. Females: [3] Four (4) water closets, four (4) lavatories and four (4) showers;
   f. If there are eighty-one (81) to 100 vehicle spaces, there shall be for:
      1. Males: [3] Four (4) water closets, two (2) urinals, five (5) lavatories and five (5) showers; and
      2. Females: [3] Five (5) water closets, five (5) lavatories and five (5) showers; and
   g. If over 100 vehicle spaces are provided, there shall be pro-
1. One (1) additional water closet and one (1) additional lavatory for each sex per additional thirty (30) spaces or fraction thereof;
2. One (1) additional shower for each sex per additional forty (40) vehicle spaces or fraction thereof; and
3. One (1) additional urinal for males per additional 100 vehicle spaces.

Section 16. Residential and Day Camp Sites. A residential or day camp site shall comply with the requirements established in 902 KAR 10:040 and this section.

(a) Each residential camp site shall be provided with sanitary facilities for each sex as specified in this section.

(b) A day camp shall:
1. Not be required to provide shower facilities; and
2. Provide all other sanitary facilities for each sex as specified in this section.

(2) Sanitary facilities shall be provided as follows:

(a) If there are one (1) to eighteen (18) persons served, there shall be for:
   1. Males; [ ] One (1) water closet, one (1) urinal, one (1) lavatory and one (1) shower; and
   2. Females; [ ] Two (2) water closets, one (1) lavatory and one (1) shower.
(b) If there are nineteen (19) to thirty-three (33) persons served, there shall be for:
   1. Males; [ ] Two (2) water closets, one (1) urinal, two (2) lavatories and two (2) showers; and
   2. Females; [ ] Two (2) water closets, two lavatories and two showers.
(c) If there are thirty-four (34) to forty-eight (48) persons served, there shall be for:
   1. Males; [ ] Two (2) water closets, two (2) urinals, two (2) lavatories and three (3) showers; and
   2. Females; [ ] Three (3) water closets, two (2) lavatories and three (3) showers.
(d) If there are forty-nine (49) to sixty-three (63) persons served, there shall be for:
   1. Males; [ ] Three (3) water closets, two (2) urinals, three (3) lavatories and four (4) showers; and
   2. Females; [ ] Four (4) water closets, three (3) lavatories and four (4) showers.
(e) If there are sixty-four (64) to seventy-nine (79) persons served, there shall be for:
   1. Males; [ ] Four (4) water closets, three (3) urinals, three (3) lavatories and five (5) showers; and
   2. Females; [ ] Five (5) water closets, three (3) lavatories and five (5) showers.
(f) If there are eighty (80) to ninety-five (95) persons served, there shall be for:
   1. Males; [ ] Four (4) water closets, three (3) urinals, four (4) lavatories and six (6) showers; and
   2. Females; [ ] Six (6) water closets, four (4) lavatories, and six (6) showers.
(g) If over ninety-five (95) persons are served, there shall be provided:
   1. One (1) additional water closet and one (1) additional lavatory for each twenty-five (25) persons or fraction thereof served;
   2. One (1) additional shower for each twenty (20) persons or fraction thereof served; and
   3. One (1) additional urinal for each fifty (50) additional males or fraction thereof.

(b) Coed day camps with equal number of males and females shall meet the fixture requirements of Section 6(2) of this administrative regulation, relating to one (1) elementary through secondary level school buildings.

(3) Water closets may be substituted for urinals if facilities are to be used by both sexes.

Section 17. Retail Food Stores and Restaurants. Sanitary facilities shall be provided for employees. A retail food store or restaurant shall comply with the requirements established in 902 KAR 10:020 and 902 KAR 45.005 and this section.

(1) Food stores.

(a) If more than 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 the building contains 5,000 square feet or more. In a mall or shopping center, the required facilities, based on one (1) person per fifty (50) square feet, shall be installed in individual stores or in a central toilet room area or areas, if the distance from the main entrance of a store does not exceed 500 feet.

(c) There shall be:
   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. Three (3) water closets plus 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. Three (3) urinals plus 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. Three (3) lavatories plus 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; and
   14. One (1) service sink, utility sink or curb mop basin per floor as required.

(2) Restaurants.

(a) If more than five (5) persons of different sex are employed, separate facilities shall be provided for the employees.

(b) In a new establishment or an establishment that is 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. Carryout type food service operations shall be exempt from providing toilet facilities for the use of their patrons.

(c) There shall be:
   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; and
   4. Four (4) water closets plus one (1) water closet for each additional 200 persons or fraction thereof over 300.

(d) There shall be:
   1. One (1) urinal for each eleven (11) to 200 males; and
   2. One (1) additional urinal for each additional 150 males or fraction thereof over 150.

(e) There shall be:
   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; and
   4. One (1) additional lavatory for each additional 200 persons or fraction thereof over 600.

(f) There shall be:
   1. One (1) drinking fountain for one (1) to 100 persons; and
   2. Two (2) drinking fountains for 101 to 500 persons or fraction thereof.

(g) If food is consumed indoors on the premises, water stations may be substituted for drinking fountains.

(h) There shall be one (1) service sink, utility sink or curb mop basin on each floor as required.

(i) Lavatories for hand washing shall be provided in the kitchen area, readily accessible to the employees. If the service or utility sink is placed in a location readily accessible to the employees as determined by the Cabinet for Health and Family Services, 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;
thereof; (5) One (1) lavatory per twenty (20) females or fraction thereof; and
(6) One (1) drinking fountain per 100 persons or fraction thereof.

LAJJUANA S. WILCHER, Secretary
DENNIS J. LANGFORD, Executive Director
STEVEN A. MILBY, Chairman
APPROVED BY AGENCY: April 13, 2004
FILED WITH LRC: April 15, 2004 at noon
CONTACT PERSON: Frank L. Dempsey, Office of General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone
(502) 573-0365, fax (502) 573-1057.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Division of Plumbing
(As Amended at ARRS, June 8, 2004)


RELATES TO: KRS 198B.050, 318.010
STATUTORY AUTHORITY: KRS 198B.050(2), (5), 318.130
NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.010(4)(e) included in the definition of "plumbing" medical gas piping. KRS 318.134 requires that a person shall obtain a permit from the department [office] [department] prior to the installation of plumbing and that the department [office] [department] shall cause inspections as it may deem necessary. EO 2003-084 filed December 23, 2003 created the Environmental and Public Protection Cabinet. EO 2004-031 filed January 6, 2004 changed the Department of Housing, Buildings and Construction to the Office of Housing, Buildings and Construction. This administrative regulation defines the term "medical gas piping" in accordance with industry practice; identifies the standard which a licensed plumber shall use when installing this piping; and identifies the permitting, fee and inspection requirements for this special type of installation.

Section 1. Definitions. (1) "Health care facility" means a hospital, nursing home, limited care facility, clinic, ambulatory care center, or office practice medical or dental office as defined in KFPA 99C.
(2) "Medical gas piping" means a permanent fixed piping system in a health care facility which is used to convey oxygen, nitrogen oxide, nitrogen, carbon dioxide, helium, medical air and mixtures of these gases from its source to the point of use and includes the fixed piping associated with a medical surgical inspiratory and suction system.
(3) "NFPA" means the National Fire Protection Association.

(2) Permit required. The required master plumber shall make application for a permit to install medical gas piping prior to the installation. To obtain the permit, the master plumber shall:
(a) Pay a fee of twenty-eight (28) dollars for the medical gas system for each building; and
(b) Identify the person who shall perform the installation. The person making the installation shall be a certified medical gas fitter as well as a licensed journeyman plumber.
(3) Supervision of the master. It shall be the responsibility of the licensed master plumber to assure that:
(a) The person doing the brazing.
1. Is properly certified as required by NFPA 99C; and
2. Uses the proper products and stores them correctly; and
(b) Required testing and purging of the piping system is done prior to putting the system into service.
(4) Final approval. Upon completion of the installation, the master plumber shall furnish the Division of Plumbing with the following certifications:
(a) Certification of the medical gas supplier or other qualified third party that the installation, including each outlet, meets the testing and purging requirements of the code; and
(b) Certification that the installation was performed by the certified fitter.

(2) This material [l] may be inspected, copied, or obtained, subject to applicable copyright laws, at the Office [Department] of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.
(3) A copy may also be obtained by contacting the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101.

LAJJUANA S. WILCHER, Secretary
DENNIS J. LANGFORD, Executive Director
STEVEN A. MILBY, Chairman
APPROVED BY AGENCY: April 13, 2004
FILED WITH LRC: April 15, 2004 at noon
CONTACT PERSON: Frank L. Dempsey, Office of General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone
(502) 573-0365, fax (502) 573-1057.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community-Based Services
Division of Policy Development
(As Amended at ARRS, June 8, 2004)

921 KAR 2:500. Family Alternatives Diversion or "FAD".

STATUTORY AUTHORITY: KRS 194B.050, 205.200(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 194B.050 authorizes the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds. [The Cabinet for Health and Family Services- Families and Children] has the responsibility under the provisions of KRS Chapter 205-2 to administer the-back program-funded under 42 U.S.C. 601 et seq.] EO 2003-084 reorganizes the executive branch of government and establishes the Cabinet for Health and Family Services, KRS 205.200(2) requires the cabinet to prescribe, by administrative regulation, the conditions of eligibility for public assistance, in conformity with the Social Security Act, 42 U.S.C. 601-619, and federal regulations. This administrative regulation establishes requirements for the Family Alternatives Diversion Program.

Section 1. Definitions. (1) "Benefit group" means a group that meets the eligibility requirements established in 921 KAR 2:006.
(2) ["Cabinet" means Cabinet for Families and Children-.
(3) ["Kentucky Transitional Assistance Program" or "K-TAP" or "K-TAP Program" means a money payment program for children who are deemed eligible by the individual or the individual who:
(4) [4] Overpayment means a FAD benefit received by an individual who:
(a) After an initial determination of eligibility is determined to be ineligible for the program and erroneous benefits were received by the individual; or
(b) is determined eligible for the program and refuses to apply the benefit to the provider of the service needed to resolve the short-term emergency as indicated by the individual at the time of the application.
(4) [5] "Self-supporting" means an individual who:
(a) Is employed in accordance with 921 KAR 2:006, Section 1; or
(b) Shall be employed in accordance with 921 KAR 2:006, Section 1, within the subsequent three (3) months.  
(5) (6) "Unsubsidized child care" means child care for which financial assistance is not provided.

Section 2. Eligibility for Family Alternatives Diversion or "FAD".
(1) To qualify for FAD benefits, the benefit group shall:
(a) Meet monthly income and resource requirements in the month of application as established in 921 KAR 2:016, Sections 2, 3(1), 4(1), and 6;
(b) Except for the thirty (30) day unemployment requirement for unemployed parent cases as described in 921 KAR 2:006, Section 8(7) [66(e) that shall not be required, meet technical requirements of K-TAP in accordance with 921 KAR 2:006;
(c) Not be currently receiving ongoing K-TAP benefits;
(d) Have a verified short-term need to include:
  1. Car repair, to be:
     a. Completed by a mechanic who is employed by a garage;
     b. Completed by a vocational school automotive program; or
   c. The responsibility of the FAD recipient, if a payment is made for a new or used automotive part;
   2. (ed) Other transportation assistance;
   3. (f) Unsubsidized child care;
   4. (g) Utilities payment assistance;
   5. (h) Housing payment assistance; or
   6. (i) Items required for employment; and
   (j) Be determined by the cabinet to be self-supporting if the short-term need is met.
(2) The FA-1, Transitional Assistance Self-assessment Survey, shall be used:
   (a) To screen applicants for K-TAP; and
   (b) Together with the FA-2, Family Alternatives Assessment, to determine eligibility for FAD.
(3) (a) The cabinet shall screen to determine if a potential K-TAP eligible benefit group may be a family eligible to receive FAD benefits.
   (b) The K-TAP eligible benefit group shall be notified of the option to decline FAD benefits in lieu of applying for ongoing K-TAP benefits.
(c) FAD shall be utilized instead of K-TAP if requested by the benefit group and if the benefit group is deemed eligible for FAD.
(4) (a) The benefit group's countable gross income shall include earned and unearned income in accordance with 921 KAR 2:016, Sections 3 and 4.
   (b) The benefit group's gross income shall be computed using the best estimate of income for the month of application in accordance with 921 KAR 2:016, Section 9.
   (c) The benefit group's total gross earned and unearned income as determined in paragraph (b) of this subsection shall be compared to the maximum gross income scale for K-TAP in accordance with 921 KAR 2:016, Section 8(2)(b).
   (d) If the benefit group's total gross earned and unearned income exceeds the maximum gross income limit for the appropriate benefit group size, pursuant to 921 KAR 2:016, Section 8(2), the family shall not be eligible for a FAD payment.
(5) (a) The FAD eligibility period for an approved FAD application shall be a three (3) consecutive month period beginning with the month of issuance of the first FAD check or voucher.
   (b) One (1) or more checks with a combined total of up to $1,300, to the extent funds are available, may be issued to resolve a short-term need as specified in subsection (1)(d) of this section during the three (3) month eligibility period.
   (c) One (1) approval during the three (3) month eligibility period shall be necessary to issue one (1) or more checks.
   (d) An adult member of a benefit group shall not be approved for FAD more than once during a twenty-four (24) month period.
   (e) An adult member of a benefit group shall not be approved for FAD more than twice in a lifetime.
   (f) If the adult member of a benefit group has voluntarily quit employment, the adult member shall not be eligible to receive FAD, unless the adult meets criteria specified in 921 KAR 2:370, Section 6(1)(a) through (k).

Section 3. Authorization of a FAD Payment. (1) The amount of the eligible FAD payment shall be issued in one (1) or more checks or vouchers to:
   (a) A vendor; or
   (b) The eligible FAD benefit group and vendor, as a two (2) party check[.] as
   (c) The eligible FAD benefit group if the vendor refuses to:
     1. Accept a payment or voucher; or
     2. Provide the cabinet with a tax identification number.
(2) Except for payments for purchases of merchandise or goods, a FAD payment shall not be issued to a vendor of services who is required and fails to provide signed documentation of:
   (a) A tax identification number or Social Security number; and
   (b) Verification of services.
(3) Total payments during the three (3) month FAD eligibility period shall not exceed $1,300, to the extent funds are available.

Section 4. Coordination with K-TAP and Other Benefit Programs. (1) Receipt of a FAD payment shall exclude the benefit group from receiving ongoing K-TAP benefits for twelve (12) months unless nonreceipt would result in:
   (a) Abuse or neglect of a child, as determined pursuant to KRS 600.020(1); or
   (b) The parent's inability to provide adequate care or supervision due to the loss of employment through no fault of the parent.
(2) A benefit group shall not be eligible to receive Work Incentive (WIN) and K-TAP or FAD funds concurrently.
(3) An application shall be taken or a referral made for the following benefits as needed for a FAD eligible family:
   (a) Food stamps;
   (b) Medicaid; [and]
   (c) Child care; and
   (d) Child support
(4) For a FAD eligible benefit group, [referral for other services shall be made as needed to:
   (a) Other Kentucky state agencies including:
     1. The Division of Child Support;
     2. The Cabinet for Health Services; and
     3. The Department for Employment Services; or
   (b) Charitable organizations.
   (4) A referral shall be made as needed for other services[as needed] offered through other state agencies, contractors, or charitable organizations [the Department for Employment Services or other contractors to the FAD eligible benefit group] to include the following services:
   (a) Job search;
   (b) Job readiness assessment; and
   (c) Life skills; and
   (d) Other food benefit programs.

Section 5. [Eligibility for Employment Retention Assistance, or "ERA". This section shall be in effect until the date of implementation of the program established by 921 KAR 2:520, Work Incentive, or "WIN".]
(1) ERA funds shall be available to a family that:
   (a) Has a parent-who has been discontinued from K-TAP with earnings;
   (b) Has a parent-who is employed at the time services are requested; and
   (c) Has total gross income at or below 200 percent of federal poverty level;
   (d) Requires a service or item which would stabilize the family and allow continued employment and
   (e) Has not received an ERA payment during the previous twelve (12) months.
(2) The ERA eligibility period for a discontinued K-TAP recipient shall be twelve (12) months, beginning with the effective date of discontinuance.
(3) During the eligibility period, one (1) or more checks totaling up to $1,600 may be issued in order to resolve an emergency situation.
(4) A benefit group may receive K-TAP funds following the ERA eligibility period, if all K-TAP eligibility requirements are met.
(5) A benefit group shall not be eligible to receive ERA and K-
Section 6. Overpayments. (1) The cabinet shall recover the amount of an overpayment, including assistance paid pending the outcome of a hearing, from the claimant-payee.

(2) An overpayment shall be recovered through:
(a) Repayment by the claimant-payee to the cabinet; or
(b) Cabinet initiation of a civil action in the court of appropriate jurisdiction after the claimant-payee has exhausted or abandoned the administrative and judicial remedies specified in 921 KAR 2:055.

Section 7. Hearing Rights. Hearing rights for FAD shall be the same as hearing rights for a K-TAP recipient in accordance with 921 KAR 2:055.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "FA-1, Transitional Assistance Self-assessment, edition 8/04" and [11/02-2].
(b) "FA-2, Family Alternatives Assessment, edition 8/04 [4/02]."

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community-Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday 8 a.m. to 4:30 p.m.

MIKE ROBINSON, Commissioner
JAMES W. HOLISINGER, JR., M.D., Secretary
APPROVED BY AGENCY: April 13, 2004
FILED WITH ERC: April 14, 2004 at 11 a.m.
CONTACT PERSON: Becky Conner, Cabinet for Health and Family Services, Office of Legal Services, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, phone (502) 564-7900, fax (502) 564-9126.

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(As Amended at ARRS, June 8, 2004)

922 KAR 1:310. Standards for child-placing agencies.


STATUTORY AUTHORITY: KRS 194B.050(1), 199.640(5)(a)(6), 615.050.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194B.050(1) provides that the Secretary of the Cabinet for Families and Children shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. EO 2003-064 reorganizes the executive branch of government and establishes the Cabinet for Health and Family Services, [by administrative regulation,] develops policies necessary to implement programs and fulfills the responsibilities vested in the cabinet.] KRS 199.640(5)(a) requires the Cabinet for Families and Children to promulgate administrative regulations establishing basic standards of care and service for child-caring facilities and child-placing agencies. This administrative regulation establishes basic standards for child-placing agencies.

Section 1. Definitions. (1) "Adoption" means the legal process by which a child becomes the child of a person or persons other than biological parents.

(2) "Aftercare" means services provided to the child after discharge from a child-placing agency.

(3) "Applicant" means an individual or a family subject to approval by the child-placing agency as a:
(a) Foster home; or
(b) Adoptive home.

(4) "Approved home" means a home that has met or surpassed the requirements of a child-placing agency.

(5) "Case management" means the process whereby a state agency or child-placing agency assesses the individual needs of a child or family, arranges for the provisions of services, and maintains documentation of actions and outcomes.

(6) "Child" means a person who has not reached:
(a) Eighteen (18) years of age, unless there is an extended commitment for purposes in accordance with KRS 610.110(8) or 620.140(1)(d); or
(b) Twenty-one (21) years of age for a child committed to the Department of Juvenile Justice.

(6) "Cabinets" means the Cabinet for Families and Children.

(7) "Child-placing agency" is defined by [at] KRS 199.011(7).

(8) "Community resource" means a service or activity available in the community that shall supplement those provided by the child-placing agency in the care and treatment of a child.

(9) "Division" means the Division of Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621.

(10) "Executive director" means the person employed by the board of directors to be responsible for the overall administration and management of a child-placing agency.

(11) "Home study" means an assessment done on a prospective foster or adoptive [or foster] home by a social services worker.

(12) "Independent living program" means a planned program that:
(a) Is licensed and designed to teach a child age sixteen (16) or older life skills that enable a child to become self-sufficient; and
(b) Meets requirements specified in Section 17(1)(b) of this administrative regulation.

(13) "Independent living services" means services provided to an eligible child, as defined in Section 16 of this administrative regulation, to assist the child in the transition from dependency to living independently. [designed to teach youth life skills that enable the youth to become self-sufficient.]

(14) "Individual treatment plan" or "ITP" means a plan of action developed and implemented to address the needs of a child.

(15) "Licensed health care professional" is defined by [at] KRS 216.300(1).

(16) "Medically-fragile child" means a child who is determined to have a medical condition as specified in 922 KAR 1:350, Section 6(1)(b).

(17) "Mental health treatment" means [psychological or psychiatric services provided to an individual determined to have emotional, mental, or behavioral problems.]

(18) "Placing home" means a foster or adoptive home that has been approved by completing an [the] application process, home study and required preparation.

(19) Placement services is defined by [at] KRS 199.011(13).

(20) "Program director" means the person responsible for supervising the day-to-day operation of the program [for a child served by the child-placing agency].

(21) "Respite care" means temporary care provided by another individual or family to:
(a) Provide relief to a foster care parent, therapeutic foster care parent, or medically-fragile foster parent;
(b) Allow an adjustment period for the child placed in out-of-home care [a temporary interlude of care which gives relief to the person who normally gives care for a child or providing for an adjustment period for the child]. This care is provided by a person who...
has received the preparation required for placement of a child into a foster or adoptive home.

(22) [20] "Social services" means a planned program of assistance to help an individual move toward a mutual adjustment of the individual and the individual's [a] environment.

(23) [24] "Social services worker" means a person who meets the qualifications as specified in Section 2(4)(c) of this administrative regulation.

(24) "Therapeutic foster care" is defined by KRS 158.135(1)(c) as a medical program;
(a) For a child whose severe emotional or behavioral needs cannot be met in the child's own home or in a traditional foster home;
(b) That meets requirements specified in Section 8(1) through 9(9) of this administrative regulation.

(25) "Therapeutic services" means clinical or intensive-clinical and supportive services provided to a child with severe emotional or behavioral needs.

(26) "Treatment director" means an individual who meets the qualifications as specified in Section 2(4)(d) of this administrative regulation; the person:
(a) Responsible for social-work, counseling or planning and coordinating services to a child; and
(b) Who has at least a bachelor's degree in social-work or the human services field.

(27) "Therapeutic foster care" is defined at KRS 158.135(1)(c).

(28) "Treatment director" means an individual who:
(a) Oversees the day-to-day operation of the treatment program;
(b) Holds at least a master's degree in a human services discipline; and
(c) Has at least five (5 years') experience in mental health treatment of children with emotional or behavioral disabilities and their families.

Section 2. Administration and Operation. (1) Licensing procedures.
(a) Licensing procedures for a child-placing agency shall be administered pursuant to KAR 2.13005.
(b) An independent living program is an optional component of the child-placing agency's license.

(2) Board of directors. The child-placing agency shall have a board of directors, or an advisory board if the child-placing agency is a privately-held for-profit organization, that [pursuant to KRS Chap-
ter 27.18.8. The board of directors] shall:
(a) Consist of a minimum of seven (7) members;
(b) Meet at least quarterly;
(c) Cause minutes of the meeting to be taken and kept in written form;
(d) Be responsible for and have the authority to ensure the continuing compliance with the requirements established by [of] this administrative regulation;
(e) Obtain a criminal records check of the executive director prior to employment;
(f) Approve a mission statement delineating the:
1. Purpose;
2. Objective;
3. Scope of services to be provided; and
4. Intake policy specifying the type of child to be accepted for care;
5. Hire, supervise, and annually evaluate the executive director of the child-placing agency; and
(a) Delineate in writing the duties of the executive director.
(3) Executive director.
(a) The executive director shall:
1. Be responsible for the child-placing agency and its affiliates, pursuant to the child-placing agency's written policies and procedures.
2. Oversee all aspects of the child-placing agency; and
3. Be responsible for:
   a. Evaluation of program services;
   b. Client services;
   c. Staff training; and
   d. Incident reports.

(b) The duties of the executive director shall be determined by the board-of-directors.
(b) The executive director shall be responsible for the child-placing agency and its affiliates, pursuant to the child-placing facility's written policy.
(c) The executive director shall oversee:
(d) The executive director shall report to the board, on a quarterly basis, evaluation of program services, addressing measurable goals, staff training, and incident reports.
(e) The criteria and process of this evaluation shall be approved by the board annually.
(f) If the executive director is not available, a designated staff person shall be responsible for the day-to-day operation of the child-placing agency [program].

(4) Staff qualifications.
(a) An executive director shall possess the following qualifications:
1. A master's degree in any of the following human services fields:
(a) Social work;
(b) Sociology;
(c) Psychology;
(d) Guidance and counseling;
(e) Education;
(f) Religious education;
(g) Business administration;
(h) [h] Criminal justice;
(i) [i] Public administration;
(j) [k] Child-care administration;
(k) [l] Nursing;
(l) Family studies;
(m) Another human service field related to working with a family or child; and
2. Two (2) years of work experience in a human services program; or
3. A bachelor's degree in social work or in a discipline designated in paragraph (a) of this subsection; or
4. A bachelor's degree in social work or in a discipline designated in paragraph (a) of this subsection; and
5. At least two (2) years professional experience in working with a child or family.

(c) A social services worker shall:
1. Be responsible for social work, counseling or planning and coordinating services to a child; and
2. Hold [have] at least a bachelor's degree in social work or a human services field.

(d) A treatment director shall:
1. Oversee the day-to-day operation of the treatment program;
2. Hold at least a master's degree in a human services discipline; and
3. Have at least five (5 years') experience in mental health treatment of children with emotional or behavioral disabilities and their families.

(e) A child-placing agency contracting for the service of a social worker or social services worker not on the staff of the child-placing agency shall document that the social worker or social services worker meets the qualifications in paragraph (c) or the subsection.

2. [described in Section 1(22) of this administrative regulation.]
An agreement for this provision of service shall be on file at the child-placing agency and shall specify the qualifications of the social worker or social services worker.

(f) [60] The program director shall supervise social service staff.
(a) [60] In a therapeutic foster care program, approval and evaluation [supervision] of services [a foster-parent] shall be carried out by a person meeting the qualifications of a treatment director.
(b) [61] Social services staff shall not carry a caseload of more
than twenty (20) children.

(5) Personnel policy
(a) A child-placing agency shall have written personnel policies and procedures [policy and procedure].
(b) An employee shall:
   1. Be at least eighteen (18) years of age and
   2. Submit to a criminal background check in accordance with KRS 17.165 and a central registry check in accordance with 922 KAR 1:470.
(c) The employment of an individual shall be governed by KRS 47.165, with regard to a criminal record check.

(d) A person against whom has been made [with] a substantiated allegation of abuse, neglect, or exploitation of a child shall not be employed in a position involving direct contact with a child.
   1. The cabinet shall respond to allegations in accordance with 922 KAR 1:330 and 922 KAR 1:480. [The following shall not be employed in a position involving direct contact with a child:]
   2. A person listed on the Nurse's Aide-Abuse Registry of the Kentucky-Board of Nursing;
   3. A person with a substantiated allegation of exploitation of a child. [A cabinet response to allegations is regulated by 922 KAR 1:330 and 922 KAR 1:330.]
   4. [A current personnel record shall be maintained for an employee that includes the following:]
      1. Name, address, Social Security number, date of employment, and date of birth;
      2. Evidence of qualifications, including degree, current registration, certification, or licensure;
      3. Record of participation in staff development;
      4. Record of performance evaluation;
      5. Criminal records check pursuant to paragraph (b) of this subsection;
      6. [Record of a check with the cabinet pursuant to paragraph (d) of this subsection;]
      7. Record of a physical exam related to employment, as specified in the child-placing agency's policies and procedures [agency];
      8. [Personnel action;]
      9. [Application for employment, [and] resume, or contract; and]
      10. Evidence of personnel orientation.

   (e) [The child-placing agency shall have an ongoing staff development program under the supervision of a designated staff member.
      (f) An employee under indictment, [or] legally charged with a felony or conduct, or subject to a cabinet investigation in accordance with 922 KAR 1:330 shall be:]
      1. Be immediately removed from contact with a child; and
      2. Not be allowed to work with the child until:
         a. A prevention plan has been written and approved by a designated regional cabinet staff;
         b. The person is cleared of the charge.
   (g) Unless the volunteer is a practicum student, the person is cleared of the charge, and if the charge is based upon a substantiated finding of abuse, the employee shall not be allowed to work with a child.
3. Recreation;  
4. Medical care; and  
5. Community facilities; and  
6. Faith-based organization;  
(p) (q) If an applicant or household member will be transporting  
a foster child, proof that the individual possess{es}:  
1) possesses a valid driver's license;  
2) Possesses proof of liability insurance; and  
3) Agrees to abide by passenger restraint laws [Age-appropriate passenger restraint for all passengers];  
(q) (r) Documentation that the applicant's home:  
1. Does not present a hazard to the health and safety of a child; 
2. Is well heated and ventilated; and  
3. Complies with state and local health requirements regarding  
water and sanitation; and  
4. Provides in- or out-of-door recreation space appropriate to the  
developmental needs of a [ ] child placed in the applicant's home;  
(r) (s) Verification that:  
1. No more than four (4) children, including the applicant's [foster parent's] own children, shall share a bedroom; and  
2. A foster parent shall not share a bedroom with a child in the custody of a state agency, unless prior approval is obtained from the state agency;  
(s) (t) Verification that an individual bed, crib, playpen, or cot:  
1. Is provided for each child in the home;  
2. Meets the Consumer Products Safety Commission Standards; and  
3. Is age and size appropriate for the child; and  
4. Is at least three (3) feet away from another bed;  
(t) (u) (v) Verification that:  
1. Medication is locked;  
2. Alcoholic beverages and poisonous or hazardous materials are inaccessible to the child; and  
3. Ammunition and firearms are locked and stored separately;  
and  
4. A dangerous animal is inaccessible to a child that is placed in  
an applicant's home [the following are]:  
(a) Locked:  
1. Medication;  
2. Alcoholic beverages; and  
3. Poisonous or cleaning materials;  
(b) Locked and stored separately:  
1. Ammunition; and  
2. Firearms;  
(v) (w) (x) (y) (z) Proof that the applicant shall have:  
1. First aid supplies with unexpired dates available and stored in  
a place easily accessible by the foster parent;  
2. A working telephone; and  
3. A working smoke alarm within ten (10) feet of each bedroom; and  
y) (w) (x) If a business open to the public adjoins the applicant’s household, consideration of potential negative impacts on the child and family, including:  
1. Hours of operation;  
2. Type of business; and  
3. Clients;  
(q) Exception to subsection (3)(e)2 of this section may be  
granted if the applicant is:  
(a) Between eighteen (18) and twenty-one (21) years of age;  
(b) A relative to the child to be placed in the applicant's home; and  
c) Able to meet the needs of the child to be placed in the applicant's home.  
(5) For each potential applicant evaluated, the child-placing agency shall keep a written record of the findings of the home study and the evidence on which the findings are based.  
(6)(a) Following approval as a foster home, the foster home or  
the approving child-placing agency may request written approval  
from the state agency, with custody of the child, for the foster home  
to provide services as a certified;  
1. Provider of Supports for Community Living in accordance with  
907 KAR 1:145;  
2. Therapeutic foster care provider for adults in accordance with  
907 KAR 3:030; or  
3. Family child care home in accordance with 922 KAR 2:100;  
(b) Except as provided in paragraph (a) of this subsection, an  
approved foster home shall not simultaneously:  
1. Provide day care center services in accordance with 922 KAR  
2:090; and  
2. Be used [simultaneously] as a licensed or certified health care  
or social service provider, except as provided in paragraph (a) of  
this subsection;  
(c) The written approval specified in paragraph (a) of this subsection shall be required upon the effective date of this administrative regulation.  
(7) An employee of the department who provides protection and  
permanency services shall be prohibited from becoming a foster  
parent or respite care provider for a child in the custody of the  
cabinet, unless the  
(a) Employee was a foster parent or respite care provider for the  
child at the time employment with the department in protection and  
permanency services began; and  
(b) Commissioner approves, in writing, the employee to be a  
foster parent or respite care provider for the child.  
(8) An employee of the department who provides protection and  
permanency services may apply to adopt a child in the custody of the  
cabinet if the:  
(a) Employee had:  
1. No relationship with the child or a parent of the child prior to the  
termination of parental rights in accordance with KRS Chapter  
625, unless the employee is a relative of the child; or  
2. Adopted a sibling of the child available for adoption; and  
(b) Commissioner approves, in writing, the employee to adopt.  
(9)(a) A child-placing agency shall develop written policies and  
procedures regarding employees of the child-placing agency serving  
as a:  
1. Foster parent;  
2. Adoptive parent; or  
3. Respite care provider;  
(b) Policies and procedures developed in accordance with paragraph (a) of this subsection shall address the prevention or appearance of:  
1. A conflict of interest; or and  

Section 5. Orientation and Preparation of a Foster Home. A  
child-placing agency shall:  
(1) Develop and maintain an orientation and preparation curricu- 
lum to be kept on file;  
(2) Provide a minimum of twenty-four (24) hours of orientation  
and preparation to a prospective foster parent, to include the follow- 
rings:  
(a1. Child-placing agency program description with mission statement;  
2. Information about the rights and responsibilities of the home; and  
3. Background information about the foster child and the child’s family, including in information in accordance with KRS 605:090(1)(b);  
(b) An example of an actual experience from a foster parent that has fostered a child;  
(c) Information regarding:  
1. The stages of grief;  
2. Identification of the behavior linked to each stage;  
3. The long-term effect of separation and loss on a child;  
4. Permanency planning for a child, including independent living 

5. The importance of attachment on the growth and development, and how a child may maintain or develop a healthy attachment;  
6. Family functioning, values, and expectations of a foster home;  
7. Attachment disorder and associated behavior; and  
8. Cultural competency;  
9. How a child enters and experiences foster care, and the impor- 
tance of achieving permanency; and  
9. The importance of birth family and culture and helping children leave foster care;
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(d) Identification of changes that may occur in the home if a placement occurs, to include:
1. Family adjustment and disruption;
2. Identity issues; and
3. Discipline issues and child behavior management; and
(a) Specific requirements and responsibilities of a foster parent.
(3) Maintain an ongoing foster home preparation and training program that:
(a) Provides a minimum of six (6) hours foster home training annually; and
(b) Maintains a record of preparation and training completed.

Section 6. Placement and Case Management of a Child in a Foster Home, Medically-fragile Foster Home, or Therapeutic Foster Care Home. (1) The child-placing agency shall place a child only in an approved foster home.
(2) The child-placing agency shall select a foster home for a child based upon:
(a) Individual needs of the child; and
(b) Child's ITP.
(3) A child shall participate in the intake process and in the decision that placement is appropriate, to the extent that the child's age, maturity, adjustment, family relationships, and the circumstances necessitating placement justify justifies the child's participation.
(4)(a) The number of children residing in a foster home by a child-placing agency shall not exceed six (6), including the foster parent's own children.
(b) The number of children residing in a foster home that cares for a child in the custody of the cabinet shall not exceed five (5), including the foster parent's own children.
(5) A child-placing agency shall have a maximum of two (2) children under two (2) years of age placed in the same foster home at the same time, with the exception of a sibling group, who may remain together.
(6)(a) Justification for an exception to subsection (4)(a) or (5) of this section shall be:
1. Documented in the foster parent file; and
2. Authorized by the program director.
(b) For a foster home that cares for a child in the custody of the cabinet, the child-placing agency shall submit a written justification for an exception to subsection (4)(b) or (5) of this section in accordance with 922 KAR 1:350, Section 2(2).
(7) The child-placing agency shall:
(a) Assess a child to be placed in foster care and develop an ITP individualized for the child prior to or within thirty (30) days of placement;
(b) Have a written agreement with the foster home stating the:
1. Responsibilities of the:
   a. Child-placing agency; and
   b. Foster home; and
2. Terms of each placement;
(c) Require a foster home to certify, in writing, that supervision from the child-placing agency or the state agency, which has custody of the child, shall be allowed;
(d) Document a placement in the foster home file;
(e) Report immediately to the state agency, which has custody of the child, if there is:
   1. A life-threatening accident or illness;
   2. An absence without official leave;
   3. A suicide attempt;
   4. Criminal activity by the child requiring notification of law enforcement; or
   5. Death; or
   6. A child's possession of a deadly weapon;
(f) Report, if applicable, within two (2) business days to the state agency, which has custody of the child, if there is:
   1. Change in address;
   2. Change in the number of people living in the home; or
   3. Significant change in the foster home;
(g) Establish policies and procedures for supervision of a foster home by a worker other than the social services worker assigned to the foster home, who meets qualifications specified in section 2(4)(c) of this administrative regulation to:
1. Include:
   a. Frequency of an in-home visit with the foster parent;
   b. Means of supervision;
   c. Methods of supervision; and
   d. Personnel conducting the supervision;
2. Ensure a foster child's placement stability and safety; and
3. Be individualized, as needed, for the:
   a. Child; or
   b. Foster home;
(h) Identify and make available necessary supports to a foster home, including:
1. A plan for respite care in accordance with Section 13 of this administrative regulation;
2. Twenty-four (24) hour crisis intervention; and
3. A foster home support group.
(i) Assure that a child receives care and services, including independent living services:
1. In accordance with Section 16 of this administrative regulation; and
2. As prescribed by the child's needs as assessed in the child's ITP:
(i) Provide information to a foster parent regarding the behavior and development of the child placed by the child-placing agency.
(1) Inform the foster parent, in accordance with KRS 605 KAR 00(1)(b), of:
   1. Inappropriate sexual acts or sexual behavior of the child as specifically known to the child-placing agency; and
   2. Any behaviors of the child that indicate a safety risk for the placement;
(2) Document each effort to:
   1. Protect the legal rights of the family and the child; and
   2. Maintain the bond between the child and the child's family, in accordance with the child's permanency plan.
(m) Assure that a child shall have, for the child's exclusive use, clothing comparable in quality and variety to that worn by other children with whom the child may associate.
(n) Be responsible for monitoring the child's school progress and attendance.
(o) Secure psychological and psychiatric services, vocational counseling, or other services if indicated by the child's needs.
(p) Reassess and document, in the child's ITP, placement and permanency goals every ninety (90) calendar days, including independent living services, in accordance with Section 16 of this administrative regulation.
(q) Conduct and document a face-to-face visit with the child at least once per month; and
(r) Maintain foster care records in accordance with Section 18 of this administrative regulation.
(8) Without prior notification to and written authorization from the Kentucky Interstate Compact Administrator, a child shall not be:
(a) Placed with a family that normally resides in another state; or
(b) Permitted to go with a person to take up residence in another state.
(9)(a) An approved foster home in use shall be evaluated on an annual basis for compliance with responsibilities listed in the written agreement described in subsection (7)(b) of this section.
(b) Results shall be recorded in the foster parent file.
(10) Factors that shall result in a review of a foster home shall include:
(a) Death or disability of a family member;
(b) Sudden onset of a health condition that impair a foster parent's ability to care for a child placed in the home;
(c) Change in marital status;
(d) Sudden, substantial decrease in, or loss of, income;
(e) Child birth;
(f) Use of a form of punishment that includes:
   1. Cruel, severe, or humiliating actions;
   2. Corporal punishment inflicted in any manner;
   3. Denial of food, clothing, or shelter;
   4. Withholding implementation of the child's treatment plan;
   5. Denial of visits, telephone or mail contacts with family members, unless authorized by court of competent jurisdiction; and
   6. Assignment of extremely strenuous exercise or work;
(g) A report of abuse, neglect, or dependency that results in a finding that is:
1. Substantiated, or
2. Reveals concern regarding the care of the child;

(b) If the foster parent is cited with, charged with, or arrested due to a violation of law other than a minor traffic offense; or
(i) Other factors [factor] identified by child-placing agency staff that jeopardize the physical, mental, or emotional well being of the child;

(1) The documentation [narrative] of a review, specified in subsection (10) of this section, shall contain:
(a) Identifying information;
(b) Current composition of the household;
(c) Description of the situation that initiated the review;
(d) An assessment of the family functioning to determine if the child's needs are met; and
(e) A plan for corrective action that may include a recommendation for closure of the foster home,

(2) A child-placing agency shall provide two (2) weeks advance notice to the cabinet prior to physically relocating the child to another foster home placement;

(b) Exception to paragraph (a) of this subsection shall require the approval of designated regional cabinet staff.

(1) A child-placing agency shall conduct a meeting, prior to or within ten (10) days of placement change, as described in subsection (10) of this section, and invite:
(a) The cabinet worker assigned to the child;
(b) Community resource providers;
(c) The child's parents, if the parental rights have not been terminated in accordance with KRS Chapter 625; and
(d) The child's foster parent.

Section 7. Orientation and Preparation of a Therapeutic Foster Care Home. (1) A child-placing agency shall:

(a) Maintain the orientation and preparation curriculum on file; and
(b) Provide a minimum of thirty-six (36) hours of orientation and preparation for a prospective therapeutic foster care parent that shall incorporate the following topic areas:
1. a. Child-placing agency program description with mission statement;
   b. Information about the rights and responsibilities of the therapeutic foster care home; and
   c. Background information about a foster child and the child's family;
2. An example of an actual experience of a therapeutic foster care parent that has fostered a child;
3. Stages of grief;
4. Behaviors linked to each stage of grief;
5. Long-term effects on a child from separation and loss;
6. Permanency planning for a child, including independent living services;
7. Importance of attachment on a child's growth and development and the way a child maintains and develops a healthy attachment, including attachment disorder and associated behaviors;
8. Family functioning, values and expectations of a therapeutic foster care home;
9. Changes that may occur in the home with placement of a child regarding:
   a. Family functioning;
   b. Family adjustment;
   c. Identity issues;
   d. Discipline issues and child behavior management; and
   e. Family disruption;
10. Specific requirements and responsibilities of a therapeutic foster care home;
11. Behavior management;
12. Communication skills;
13. Skill teaching;
14. Cultural competency;
15. Behavior management deescalation techniques;
16. The dynamics of the sexually-abused child; and
17. The effect of chemical abuse or dependence by the child or the child's biological parent;

(2) A therapeutic foster care home shall receive a minimum of twenty-four (24) hours of annual training,

(3) A child-placing agency that provides therapeutic foster care shall maintain an ongoing therapeutic foster care preparation and training program that:
(a) Provides a minimum of twenty-four (24) hours of annual training; and
(b) Maintains a record of preparation and training completed.

Section 8. Additional Requirements for Therapeutic Foster Care.
(1) A therapeutic foster care home shall accommodate the needs of a child who is unable to live with the child's own family and who:
(a) May benefit from care in a family setting; and
(b) Has clinical or behavioral needs that exceed supports available in a foster home; or
2. Is transitioning from group care as part of the process of returning to family and community;

(2) The number of children residing in a therapeutic foster care home that does not care for a child in the custody of the cabinet, shall be limited to a total of six (6) children, including no more than two (2) therapeutic foster care children.

(3) Justification for an exception to subsection (2) of this section shall be:
(a) Documented in the therapeutic foster care parent's file; and
(b) Authorized by the treatment director.

(4) The number of children residing in a therapeutic foster care home that cares for a child in the custody of the cabinet, shall be limited to a total of four (4) children, including no more than two (2) therapeutic foster care children.

(5) The child-placing agency shall submit a justification for an exception to subsection (4) of this section in accordance with 922 KAR 1.350, Section 2(2).

(6) A treatment director shall supervise a treatment team and shall participate in the development of the ITP and the quarterly case consult.

(7) A child-placing agency shall provide or contract, as specified in KRS 199.640(5)(a)(2), for therapeutic services individualized for the child, as needed, at least twice (2) times per month.

(8) A therapeutic foster care parent shall be responsible for:
(a) Participation in the development of an assessment and ITP that includes visitation, health, education and permanency goals;
(b) Consultation with the child and the child's family, including the child's guardians, prior to any plan change;
(c) Establishing and implementing individualized behavior management plans for the child;
(d) Facilitating in-home services provided by a social services worker at least twice (2) times per month;
(e) Supervision of the child and implementation of components of the treatment plan, including daily log documentation as specified in the treatment plan;
(d) Working with the child-placing agency to promote stability and avoid disruption for the [a] child;
(e) Working with the child-placing agency in the development of a plan for the smooth transition of the child to a new placement, in the event of a disruption; and
(f) Providing independent living services for a child twelve (12) years of age or older consistent with the child's ITP.

(9) Except for a child who is the legal responsibility or in the custody of the cabinet or the Department of Juvenile Justice, the child-placing agency shall be responsible for:
(a) A preplacement conference, in a nonemergency placement, for the purpose of:
1. Developing permanency goals and a discharge plan for the child, including independent living services;
2. Developing a plan for the implementation of services;
3. Identifying the treatment goals; and
4. Developing a behavior management plan if applicable; and
(b) Inviting and encouraging attendance to the preplacement conference of:
1. The prospective therapeutic foster care home;
2. A respite care provider approved in accordance with section 13(4) of this administrative regulation;
3. The child, if appropriate; and
4. The child's family.

(10) The social services worker shall:
(a) Have a first face-to-face visit with a child and therapeutic foster care parent on the day of placement;
(b) Have another face-to-face visit with the therapeutic foster care parent or child within ten (10) calendar days of placement;
(c) Telephone or visit, on a weekly basis, at least one (1) of the
therapeutic foster care parents of each child on the therapeutic foster care worker's caseload;

(d) Visit a therapeutic foster care parent a minimum of two (2) times a month with at least one (1) visit being in the foster home;
(e) Visit the foster child face to face a minimum of two (2) times a month with at least one (1) visit in the therapeutic foster care home and one (1) visit outside the foster home;
(f) Carry a caseload of not more than twelve (12) therapeutic foster care children, taking into account:
1. Required responsibilities other than the case management of a child in foster care;
2. Additional support, contact and preparation needed by a therapeutic foster care home, due to the extent of the needs of the child served; and
3. The extent of intensive services provided to the child and the child's family;
(g) Conduct a quarterly case consultation, including the:
1. Foster home;
2. Child's public agency worker;
3. Child-placing agency treatment director and social services worker; and
4. Child and the child's family of origin, to the extent possible;
(h) Provide or contract for therapeutic services individualized for a child at least two (2) times each month based on the child's needs assessed in the child's ITP;
(i) Identify the support needed by the foster family, including:
1. Plan for respite care as provided in section 13 of this administrative regulation;
2. Plan for twenty-four (24) hour on-call crisis intervention; and
3. Foster home support group;
4. Recommend and prepare an aftercare plan for a child, prior to discharge from therapeutic foster care, to ensure a successful transition and revision to the child's ITP as determined by the case consultations.
5. The child-placing agency shall:
(a) Meet requirements specified in Section 6(1) through (3) and (7) through (11) [29] [45] of this administrative regulation; and
(b) Annually reevaluate a therapeutic foster care home in accordance with Section 16 of this administrative regulation.

Section 9. Medically-fragile Child. (1) A medically-fragile child shall be:
(a) A child in the custody of the cabinet; and
(b) Determined by the cabinet to meet the medically-fragile requirements of 922 KAR 1:350 [criteria specified in 922 KAR 1:350, Section 6(3)(b)].
(2) The decision to accept a medically-fragile child shall be optional to a child-placing agency.

Section 10. Preparation of a Medically-fragile Foster Home. (1) A child-placing agency shall create a medically-fragile foster home only if the child-placing agency has:
(a) Staff meeting qualifications established in Section 2(4) of this administrative regulation supervising the home, who have received medically-fragile training in accordance with subsection 2(b) and (c) of this section; and
(b) A liaison established with the approval of the cabinet, a foster home may be approved to care for a medically-fragile child by a child-placing agency if their:
(a) Cabinet approves of the creation of the medically-fragile foster home, based on the needs of the geographical area; and
(b) foster home;
(a) [3] Includes a primary caregiver who is not employed outside the home, unless approved in writing by designated cabinet staff;
(b) [2] Completes, in addition to training specified in Section 5 of this administrative regulation;
1. [a] Twenty-four (24) hours of cabinet training; or
2. [b] Training approved in advance by the cabinet, in the areas of:
   a. [i] Growth and development;
   b. [ii] Nutrition; and
   c. [iii] Medical disabilities;
   (c) [3] Maintains certification in:
1. [a] Cardiopulmonary resuscitation or "CPR"; and
2. [b] First aid;
3. [c] Is located within a:
1. [a] One (1) hour drive of a medical hospital with an emergency room; and
4. [b] Thirty (30) minute drive of a local medical facility; and
(c) [3] Is evaluated in accordance with Section 4(2) through (9) of this administrative regulation.
3. Professional health care services related to the care of a medically-fragile child who may substitute for the training requirement specified in subsection (2)(b) and (c) of this section:
(a) Upon the approval of a designated cabinet staff; and
(b) If the foster parent is a licensed health care professional, to include:
1. Physician as defined in KRS 311.720(9);
2. Registered nurse as defined in KRS 314.011(5); or
3. Licensed practical nurse as defined in KRS 314.011(9);
4. Physician's assistant as defined in KRS 311.840(3); or
5. Advanced registered nurse practitioner as defined in KRS 314.011(7).

(3) The cabinet determines that a child currently in the care of a foster parent approved by the child-placing agency is a medically-fragile child in accordance with Section 9 of this administrative regulation, then the cabinet shall prioritize the foster home's enrollment in training as specified in subsection 2(b) and (c) of this section.
(4) An approved medically-fragile foster home may be approved to care for a child in the custody of the cabinet only if the cabinet determines that a child currently in the care of a foster parent approved by the cabinet is a medically-fragile child in accordance with Section 9 of this administrative regulation, the cabinet shall prioritize the foster home's enrollment in training as specified in subsection 2(b) and (c) of this section.

2. Does so before the anniversary date of approval as a medically-fragile foster home.
(b) Continues to meet the requirements in Section 15 of this administrative regulation.
1. [a] Foster home;
2. [b] Annually completes:
   a. Twenty-four (24) hours of ongoing cabinet training; or
   b. Training approved in advance:
   (i) By the cabinet; and
   (ii) Before the anniversary date of approval as a medically-fragile foster home;
(b) Continues to meet the requirements in Section 15 of this administrative regulation; and
(b) Cabinet determines and provides documentation that a need for the medically-fragile foster home continues to exist.

(6) Except for a sibling group or unless approved by designated cabinet staff, no more than four (4) children, including the medically-fragile foster parent's own children, shall reside in a medically-fragile foster home.
(7) Unless approved by designated cabinet staff:
1. One (1) parent medically-fragile foster home shall not care for more than one (1) medically-fragile child; and
2. Two (2) parent medically-fragile foster home shall not care for more than two (2) medically-fragile children.
(b) A child-placing agency shall submit a justification for an exception to subsection (6) or (7) of this section, in accordance with 922 KAR 1:350, Section 2(2).

Section 11. Placement of a Medically-fragile Child. (1) An approved medically-fragile foster parent shall receive training on how to care for the specific needs of a medically-fragile child placed in the home.
(a) The training shall be conducted by a licensed health care professional, as specified in Section 10(3)(b) of this administrative regulation, including:
1. Physician as defined in KRS 311.720(9);
2. Registered nurse as defined in KRS 314.011(5); or
3. Licensed practical nurse as defined in KRS 314.011(9).
(b) A medically-fragile child shall be placed in an approved medically-fragile foster home.
(b) A child-placing agency shall:
1. Submit a justification for an exception to subsection (2) of
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this section in accordance with 922 KAR 1:350, Section 2(2); (b) Provide case management services; 1. As described in Section 6(1) through (3) and (7) through (11) [90] [11(3)] of this administrative regulation; and 2. In accordance with the child’s: a. Health plan developed by designated cabinet staff and b. ITP; (c) Support the child’s health plan developed by designated cabinet staff; and (d) Conduct a face-to-face visit with the child at least two (2) times per month.

Section 12. Expectations for a Foster Home or Therapeutic Foster Care Home. An approved foster parent or therapeutic foster care parent shall: (1) Provide a child placed by the child-placing agency with a family life, including: (a) Nutritious food; (b) Clothing comparable in quality and variety of that worn by other children with whom the child may associate; (c) Affection; (d) Training; (e) Recreation opportunities; (f) Education opportunities; (g) Nonmedical transportation; (h) Opportunities for development consistent with the child’s religious, ethnic, and cultural heritage; and (i) Independent living services for a child twelve (12) years of age or older; (2) Permit a child-placing agency and, if applicable, staff of a state agency, which has custody of the child, to visit the home; (3) Share with the child-placing agency and, if applicable, staff of the state agency which has custody of the child, information about the child placed by the child-placing agency; (4) Notify the child-placing agency ten (10) days prior if the home is approved to provide foster or adoptive services through another private child-placing agency or the cabinet; in accordance with 922 KAR 1-350, Section 12(13); (5) Notify the child-placing agency prior to: (a) Leaving the state with a child placed by the child-placing agency for more than two (2) nights; or (b) A child placed by the child-placing agency being absent from the foster home for more than three (3) days, except for regular school attendance; (6) Report immediately to the child-placing agency through which the child is placed, if there is: (a) A life-threatening accident or illness; (b) An absence without official leave; (c) A suicide attempt; (d) Criminal activity by the child requiring notification of law enforcement; or (e) Death; or (f) A child’s possession of a deadly weapon; (7) Report, if applicable, within two (2) business days to the child-placing agency if there is a: (a) Change in address; (b) Change in the number of people living in the home; or (c) Significant change in circumstance in the foster home; (8) Cooperate with the child-placing agency if child-placing agency staff arrives for a child, placed in the foster home by the child-placing agency, and the child’s birth family regarding: (a) Visits; (b) Telephone calls; or (c) Mail; (9) Surrender a child or children to the authorized representative of the child-placing agency or the state agency, which has custody of the child, upon request; (10) Keep confidential all personal or protected health information as shared by the cabinet or child-placing agency, in accordance with KRS 194B.060 and 45 C.F.R. Parts 160 and 164, concerning a child placed in a home or the child’s birth family; (11) Support an assessment of the service needs, including respite care, and the development of an ITP of a child placed by the child-placing agency; (12) Participate in a case planning conference concerning a child placed by the child-placing agency; (13) Cooperate with the implementation of the permanency plan established for a child placed by the child-placing agency; (14) Ensure that a child in the custody of the cabinet receives the child’s designated per diem allowance; (15) Provide medical care to a child placed by the child-placing agency as needed, including: (a) Administration of medication to the child and daily documentation of the administration; and (b) Annual physicals and examinations for the child; (16) Treat a child placed by the child-placing agency with dignity; (17) Report suspected incidents of child abuse, neglect, and exploitation in accordance with KRS 820.030; and (18) Comply with general supervision and direction of the child-placing agency or, if applicable, the state agency which has custody of the child, concerning the care of the child placed by the child-placing agency.

Section 13. Respite For Foster Care, Medically-fragile Foster Care, or Therapeutic Foster Care. (1) The child-placing agency shall develop written policies and procedures to address the respite care needs of a child or a foster parent. (2) Respite care shall not be used as a means of placement for a child. (3) Respite care shall be in accordance with Section 3(3) of this administrative regulation. (4) The child-placing agency shall approve a respite care provider in accordance with Section 4(2); and (3)(a), (g), and (n) through (v) (v) of this administrative regulation. (5) A respite care provider shall: (a) Receive preparation for placement of a child, including information in accordance with KRS 605.090(1)(b); and (b) Give relief to a foster parent caring for a child; or 2. Provide for an adjustment period for a child.

Section 14. Private Placement Process. Except for a child in the custody of, or otherwise made the legal responsibility of the cabinet or the Department of Juvenile Justice, the following shall be the responsibility of the child-placing agency if a private placement is conducted: (1) For a child being placed with a child-placing agency, the child-placing agency shall obtain: (a) Agreement for voluntary care signed by the custodian; or (b) Order from a court of competent jurisdiction placing the child into the custody of the child-placing agency; (2) The child-placing agency shall: (a) Complete an intake assessment of the strengths and needs of the child and the child’s family of origin; and (b) Ascertain the appropriateness of the referral for the child; (3) The child-placing agency shall be responsible for developing an ITP individualized for a child and the child’s family based on an individualized assessment of the child’s and family’s needs; (b) The assessment shall be revised as needed; (c) The assessment and ITP shall include the type and extent of services to be provided to the child and the child’s family; (4) Unless not in the best interest of the child, the child, parent, and foster parent shall be included in developing the assessment and ITP; (5) A foster home selected for placement shall be the most appropriate home based on the child’s needs and the strengths of the foster family; (6) The foster home shall be located as close as possible to the home of the family of origin, in order to facilitate visiting and reunification; (6) The social services worker and the foster parent shall work collaboratively to prepare the child prior to the placement; (7) Unless a circumstance precludes preparation and the circumstance is documented in the case record, a child shall have a period of preparation prior to the placement in the foster home.
(b) Assess and document the parent's capacity for reunification quarterly;
(c) Provide for review of the child in order to evaluate the progress toward achieving the child's permanency goal every six (6) months; and
(d) Assure that foster care continues to be the best placement for the child.

(8)(a) Services to the family of origin and to the child shall be adapted to their individual capacities, needs, and problems.
(b) A reasonable effort shall be made to return the child to the family of origin.

(9) Planning for the child regarding treatment program matters, including visitation, health, education, and permanency goals, shall be developed in collaboration with the:
(a) Family of origin;
(b) Treatment director;
(c) Social services worker; and
(d) Foster home.

(10)(a) The child-placing agency shall work with a foster home to promote stability and avoid disruption for a child, to include:
1. Services specified in Section 6(1) through (3) and (7) through (11) [§9] [143] of this administrative regulation; and
2. Annual reevaluation of the foster home in accordance with Section 15 of this administrative regulation.
(b) A request for the removal of a child from a foster home shall be explored immediately and shall be documented by the social services worker.
(c) If disruption is unavoidable, the child-placing agency and foster home shall develop a plan for the smooth transition of the child to a new placement.

(11)(a) Preparation for the return of a child to the family of origin shall be supervised by a social services worker.
(b) The family shall participate in planning for the child’s return.
(c) If regular contact with the child’s family does not occur, a plan for the child’s return shall include at least one (1):
1. Prior visit between the child and the family; and
2. Preliminary visit of the child to the child’s family home.

(12) The child-placing agency shall recommend a plan for aftercare services for a child and the family.

Section 15. Annual Reevaluation of an Approved Adoptive Home Awaiting Placement or an Approved Foster Home. Annually, a child-placing agency shall:

(1) Conduct a personal interview in the home with an approved:
(a) Adoptive home awaiting placement; or
(b) Foster home;
(2) Assess:
(a) Any change in the home;
(b) The ability of the home to meet the needs of a child placed in the home; and
(c) The home’s continued compliance with the requirements of this administrative regulation in:
1. Sections 4(3)(a), (b), (d), (f), and (l) through (v) [ix] and (6) through (8) of this administrative regulation, with regard to evaluation, if the home is approved as a foster or adoptive home;
2. Sections 6(9)(a) and 12 of this administrative regulation, with regard to case management and expectations, if the home is approved as a foster home;
3. Sections 5(3)(a), (7), or 10(5)(a) of this administrative regulation, with regard to annual training, if the home is approved as a foster home; and
4. Section 19(3) of this administrative regulation, with regard to annual training, if the home is approved as an adoptive home.
(3) If a child-placing agency requests a statement regarding the foster parent’s general health and medical ability to care for a child, the foster home parent shall comply with the request.

Section 16. Independent Living Services. A child-placing agency shall:

(1) Provide independent living services:
(a) [43][a] To a child;
1. [a][i] In the custody of a state agency (ie: cancer);
2. [a][ii] That is twelve (12) to twenty-one (21) years of age; and
3. [a][iii] Directly or indirectly through a foster parent with whom the child is placed; and
(b) [6][a][i] As prescribed in the child’s ITP; and
(c) [6][a][ii] In accordance with 42 U.S.C. 677(a)(1) through (6); and
(2) Teach [an] independent living curriculum;
(a) To a child:
1. In the custody of a state agency; and
2. Sixteen (16) years of age and older; and
(b) Developed in accordance with Section 17(1)(e) of this administrative regulation.

Section 17. Independent Living Programs. (1) A child-placing agency shall teach an independent living curriculum, developed in accordance with subsection (2)(e) of this section, to a child sixteen (16) years of age and older.
(2) A child-placing agency preparing independent living programs shall:
(a) Conduct and document an assessment of the child’s skills and knowledge:
1. Within thirty (30) days of the child’s placement with the child-placing agency; and
2. Using a tool approved by the cabinet, including:
   a. Money management and consumer awareness;
   b. Job search skills;
   c. Job retention skills;
   d. Use of and access to;
   i. Community resources;
   ii. Housing; and
   iii. Transportation;
   e. Educational planning;
   f. Emergency and safety skills;
   g. Legal knowledge;
   h. Interpersonal skills, including communication skills;
   i. Health care knowledge, including knowledge of nutrition;
   j. Human development knowledge, including sexuality;
   k. Management of food, including food preparation;
   l. Ability to maintain personal appearance;
   m. Housekeeping; and
   n. Leisure activities;
(b) Develop and update quarterly a written ITP within thirty (30) calendar days of a child’s placement with a child-placing agency in an independent living program, to include:
1. Educational, job training, housing, and independent living goals;
2. Objectives to accomplish a goal;
3. Methods of service delivery necessary to achieve a goal and an objective;
4. Person responsible for each activity;
5. Specific timeframes to achieve a goal and an objective;
6. Identification of a discharge plan;
7. Plan for aftercare services; and
8. Plan for services from a cooperating agency;
(c) Maintain written policies and procedures for the independent living program;
(d) Train and document the training provided to designated independent living staff within thirty (30) days of employment on:
1. Content of the independent living curriculum;
2. Use of the independent living materials;
3. Application of the assessment tool; and
4. Documentation methods used by the child-placing agency, and
(e) Maintain and teach [an] independent living curriculum:
1. In accordance with 42 U.S.C. 677(a)(1) through (6);
2. Approved in advance by the cabinet, including:
   1. [a][i] Money management and consumer awareness;
   2. [b][i] Job search skills;
   3. [c][i] Job retention skills;
   4. [d][i] Educational planning;
   5. [e][i] Community resources;
   6. [f][i] Housing;
   7. [g][i] Transportation;
   8. [h][i] Emergency and safety skills;
   9. [i][i] Legal skills;
   10. [j][i] Interpersonal skills, including communication skills;
   11. [k][i] Health care, including nutrition;

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12. (l) Human development, including sexuality;
13. (m) Food management, including food preparation;
14. (n) Maintaining personal appearance;
15. (o) Housekeeping;
16. (p) Leisure activities;
17. (q) Voting rights and registration;
18. (r) Registration for selective service, if applicable;
19. (s) Self-esteem;
20. (t) Anger and stress management;
21. (u) Problem-solving skills; and
22. (v) Decision-making and planning skills.

(2) (g) A social services worker from an independent living program shall:
   (a) Be responsible for a child sixteen (16) to eighteen (18) years of age in an independent living program; and
   (b) Be available for twenty-four (24) hours, seven (7) days a week crisis support for a child in the independent living program, regardless of the child's age, and
   (c) Have:
       1. Daily face-to-face contact with a child:
          a. Sixteen (16) to eighteen (18) years of age; and
          b. In the independent living program;
       2. A minimum of one (1) face-to-face, in-home contact per week for a child:
          a. Eighteen (18) to twenty-one (21) years of age; and
          b. In the independent living program;
       3. Conduct a visual and exploratory review of a child's living unit at least monthly, to include a review for:
          a. Safety;
          b. Use of alcohol and
          c. Illegal contraband;
       d. Maintain a caseload of no more than ten (10) children; and
       e. Document annual compliance with fire and building codes for any living unit in which the agency places a child.

(3) (f) (a) A living unit for a child in an independent living program shall be occupied by only a child or children approved to occupy the living unit by the child-placing agency.
   (b) Nonresidents shall be asked to vacate the living unit.

(4) (f) (6) The child-placing agency shall assure and document that the living unit of a child in an independent living program:
   (a) Does not present a hazard to the health and safety of the child;
   (b) Is well ventilated and heated; and
   (c) Complies with state and local health requirements regarding water and sanitation.

(5) (f) (6) The child-placing agency shall maintain documentation for each child concerning:
   (a) Assistance to the child in finding and keeping in touch with family, if possible;
   (b) Health care and therapeutic services received by a child;
   (c) Progress each child has made in the independent living program, including independent living services received;
   (d) Progress in an educational program, including vocational education;
   (e) An assessment of the child's readiness to live independently; and
   (f) The social services worker's contacts with the child, including observation of the child's living arrangement.

Section 18. Maintenance of a Foster Care, Medically-fragile Foster Care, or Therapeutic Foster Care Record. (1) (a) The child-placing agency shall maintain a record on each child and foster home, including medically-fragile foster homes and therapeutic foster care homes.

(b) The child's record and the foster home record shall show the reason for placement change and steps taken to ensure success.

(c) A case record shall be maintained in conformity with existing laws and administrative regulations pertaining to confidentiality, pursuant to KRS 198.430(3), 199.640, and 45 C.F.R. Parts 160 and 164.

(2) The record of the child, including information of the child's family, shall include:
   (a) Identifying information for child, parent, and foster home;
   (b) Commitment order or custodian's consent for admission;
   (c) Birth and immunization certificate;
   (d) Educational record;
   (e) Medical and dental record since placement;
   (f) Social history and assessment;
   (g) ITP and review;
   (h) Permanency goals, including independent living services;
   (i) Incident reports;
   (j) Monthly progress notes based on the ITP;
   (k) Quarterly revisions to the child's ITP;
   (l) Correspondence with the;
      1. Court;
      2. Family;
      3. Department for Community Based Services; or
      4. Department of Juvenile Justice;
   (m) Discharge report; and
   (n) Aftercare plan.

(3) The foster home's record shall include documentation relating to the:
   (a) Orientation and preparedness of the home, including all adult caregivers in the household;
   (b) Required preparation hours and the topics covered;
   (c) Placement of the child;
   (d) Narrative summary of the initial and annual foster home's home study;
   (e) Supervision of the foster home, including critical incidents;
   (f) Annual training requirements that are met in accordance with Section 5(3) of this administrative regulation by the foster parent and all adult caregivers in the household;
   (g) If applicable, annual training requirements in accordance with Section 7(2) or 10(5)(a) of this administrative regulation; and
   (h) Background checks in accordance with Section 4(3)(m) (f) (9) of this administrative regulation.

Section 19. Orientation and Preparation of an Adoptive Home. A child-placing agency shall:

(1) Prepare and maintain the orientation and preparation curriculum on file;

(2) Provide orientation and preparation to a prospective adoptive home in accordance with the child-placing agency's policies and procedures to include the following:

(a) An example of an actual experience from a parent that has adopted a child;
(b) Challenging behavior characteristics of an adoptive older child;
(c) Referral resources for a developmental delay;
(d) Transition issues with focus on stages of grief, and a honeymoon period;
(e) Loss and the long-term effects on a child;
(f) Attachment and identity issues of the child;
(g) Cultural competency;
(h) Medical issues including referral resources;
(i) Family functioning, family values, and expectations of an adoptive home;
(j) Identification of changes that may occur in the family unit upon the placement of a child to include:
       1. Family adjustment and disruption;
       2. Identity issues; and
       3. Discipline; and
   (k) Financial assistance available to an adoptive home; and

(3) Ensure that an approved adoptive home awaiting the placement of a child receives adoptive home training annually in accordance with the child-placing agency's established policies and procedures.

Section 20. Adoption Placement Process. (1) A child shall not be placed for adoption until the:

(a) Adoptive home has been approved;
(b) Parental rights of the mother, legal or birth father, and putative father of the child, if not the same person as the legal father, are terminated by a circuit court order entered pursuant to KRS Chapter 625; and
(c) Child [Child's custody] is placed with the child-placing agency for the purpose of adoption placement.

(2) A child's parent shall not be induced to terminate parental
rights by a promise of financial aid or other consideration.

(3)(a) The authority granted to a child-placing agency licensed by the cabinet authorizing the agency to place a child for adoption shall not be used to facilitate an adoptive placement planned by a doctor, lawyer, clergyman, or person or entity outside the child-placing agency.

(b) The child-placing agency shall comply with provisions of §22

KAR 1:010.

(4) The following shall be obtained by the child-placing agency:

(a) A developmental history of the adoptive child to include:

1. Birth and health history;
2. Early development;
3. Characteristic ways the child responds to people and situations;
4. Any deviation from the range of normal development;
5. The experiences of the child prior to the decision to place the child for adoption;
6. Maternal attitude during pregnancy and early infancy;
7. Continuity of parental care and affection;
8. Out-of-home placement history;
9. Separation experiences; and
10. Information about the mother, legal father, and putative father, if not the same person as the legal father, and family background:

a. That may affect the child’s normal development in order to determine the presence of a significant hereditary factor or pathology; and
b. Including an illness of the biological mother or father;

(b) A social history of the biological or legal parent, to include:

1. Name;
2. Age;
3. Nationality;
4. Education;
5. Religion or faith; and
6. Occupation;
(c) Information obtained from direct study and observation of the child by:

1. Social services worker;
2. Physician or other licensed health care professional, and, if indicated;
3. Foster home;
4. Nurse;
5. Psychologist; and
6. Other consultants; and
(d) Information from the mother, if possible, identifying the biological father, or legal father, if different from the biological father, for the purpose of:

1. Determining the father’s parental rights; and
2. Establishment of possible hereditary endowments.

(5) Exception to subsection (4)(a)1 and 2 of this section may be granted, if the adoption involves a child born in a country other than the United States.

(6) If either biological or legal parent is unavailable, unwilling, or unable to assist with the completion of information necessary to comply with KRS 199.520 and 199.572, the child-placing agency shall document information, to the extent possible, from the existing case record.

(7) Prior to finalization of the adoptive placement, a medical examination shall be made by a licensed physician or other licensed health professional to determine:

(a) The state of the child’s health;
(b) Any significant factor that may interfere with normal development; and
(c) The implications of any medical problem.

(b) The condition under which an adoptive home agrees to accept the child shall be decided upon, prior to placement of the child.

The written agreement between the child-placing agency and the adoptive home shall embody the following provisions:

(a) The adoptive home shall agree to:

1. Comply with KRS 199.470;
2. File an adoptive petition at a time agreeable to them and the child-placing agency; and
3. Permit supervision by the child-placing agency in accordance with the child-placing agency’s policies and procedures;

(a) After placement and
(b) Proceeding a final judgment of adoption by the circuit court;

(b) The child-placing agency shall be responsible for providing the adoptive home with written information regarding the child’s:

1. Background;
2. Medical history;
3. Current behavior; and
4. Medical information necessary to comply with KRS 199.520 and 199.572;

(c) The adoptive home and the child-placing agency shall agree that the child may be removed from the placement, at the request of either party, before the filing of the adoptive petition.

(9)(a) Preplacement visits shall be arranged for the adoptive home and a child.

(b) The pattern and number of visits shall be based on the:

1. Age;
2. Development; and

(10) During preparation, the child-placing agency shall discuss the child’s readiness to accept the selected placement with the child, in accordance with the child’s age and ability to understand.

(11)(a) Unless the child-placing agency and, if applicable, the state agency which has custody of a child belonging to a sibling group, determines that it is more beneficial for siblings to be placed in separate adoptive homes, siblings who have had a relationship with each other shall be placed together.

(b) If siblings have been separated in placements:

1. The case record shall reflect a valid basis for the separation;
2. The decision to separate siblings shall be made by the executive director of the child-placing agency; and
3. Continued contact between siblings shall be maintained, if possible.

Section 21. Supervision of an Adoptive Placement. (1) The child-placing agency placing a child shall remain responsible for the child until the adoption has been granted. This responsibility involves the following:

(a) Two (2) meetings by the social services worker with the child and the adoptive home, including both adoptive parents if not a single parent adoption, one (1) visit of which shall be in the adoptive home before filing of the adoption petition;

(b) The continuation of case management, visits, and telephone contacts based upon the needs of the child until the adoption is legally granted; and

(c) Awareness of a chance in the adoptive home including health, education, or behavior.

(2) Upon request of the cabinet, the child-placing agency shall:

(a) Provide information pursuant to KRS 199.510, as necessary to report to the court to proceed with adoption;

(b) Prepare and provide the original confidential report to the court; and

(c) Forward to the cabinet a copy of:

1. The confidential report that was provided to the court; and
2. Information required by KRS 199.520 and 199.572.

(3) If the court finds the adoptive home to be unsuitable and refuses to grant a judgment, the child-placing agency shall remove the child from the home.

Section 22. Maintenance of Adoptive Case Record. (1) The child-placing agency shall maintain a case record from the time of the application for services through the completion of legal adoption and termination of child-placing agency services for:

(a) A child accepted for care, and the child’s family; and

(b) An adoptive applicant.

(2) The case record shall contain material on which the child-placing agency decision may be based and shall include or preserve:

(a) Information and documents needed by the court;
(b) Information about the child and the child’s family;
(c) A narrative or summary of the services provided with a copy of legal and other pertinent documents; and
(d) Information gathered during the intake process including the following:

1. A description of the situation that necessitated placement of
the child away from the child’s family, or termination of parental rights; 
2. A certified copy of the order of the circuit court terminating parental rights and committing the child to the child-placing agency for the purpose of adoption; 
3. Verification of the child’s birth record and the registration number; 
4. A copy of the child’s medical record up to the time of placement; 
5. A copy of the required evaluation of the adoptive placement; 
6. Date of placement; 
7. A statement of the basis for the selection of this adoptive home for the child; 
8. A record of after-placement services with dates of: 
   a. Visits; 
   b. Contacts; 
   c. Observations; 
   d. Filing of petition; 
   e. Granting of judgments; and 
   f. Other significant court proceedings relative to the adoption; 
9. Child’s adoptive name; and 
10. Verification of preparation and orientation and annual training in accordance with Section 5 of this administrative regulation; 
3. If there is need to share background information with a party to a completed adoption, or to have the benefits of information from a closed adoption record to offer services following completion of an adoption, the child-placing agency shall comply with KRS 199.570. 
4. Records on adoption that contain pertinent information shall be: 
   a. Maintained indefinitely following final placement of a child; and 
   b. Sealed and secured from unauthorized scrutiny. 
5. A child-placing agency shall submit adoptive case records to the cabinet, if: 
   a. The child-placing agency closes; and 
   b. No other [existing] operational governing entity exists.

Section 23. Closure of an Approved Foster or Adoptive Home. 
(1) A foster or adoptive home shall be closed if: 
(a) Sexual abuse or exploitation by a resident of the household is substantiated; 
(b) Child maltreatment (physical abuse or neglect of a child) by a resident of the household occurs that is serious in nature or warrants the removal of a child; 
(c) A serious physical or mental illness develops that may impair or prohibit adequate care of the child by the home; or 
(d) The home fails to meet requirements of this administrative regulation in: 
   i. Section 4(3)(a) through (h), and (l) through (v), [x], and (x) through (8) of this administrative regulation, with regard to evaluation, if the home is approved as a foster or adoptive home; 
   ii. Sections 6(3)(a) through (y) and 12 of this administrative regulation, with regard to placement and case management, if the home is approved as a foster home; 
   iii. Sections 5(3)(a), 7(2), or 10(5)(a) of this administrative regulation, with regard to annual training, if the home is approved as a foster home; and 
   iv. Section 19(3) of this administrative regulation, with regard to annual training, if the home is approved as an adoptive home. 
(2) A foster or adoptive home may be closed: 
(a) In accordance with the terms specified in the written agreement between the child-placing agency and the foster or adoptive home; or 
(b) In accordance with the terms specified in the written contract between the cabinet and the child-placing agency.

Section 24. Foster Care Registry. (1) Upon the effective date of this administrative regulation, a child-placing agency shall register a foster home with the cabinet, approved by the child-placing agency, to include medically-fragile foster homes and therapeutic foster care homes. 
(2) Information shall be provided to the cabinet in a format prescribed by the cabinet, to include: 
   a. The foster parents;
   b. Full name; 
   c. Social Security number; and 
   d. Address, including county of residence; 
   e. The child-placing agency’s name; 
   f. Mailing address; 
   g. The date the foster home was approved; and 
   h. Whether the foster home is active or inactive.

[Section 25. Federal Outcome. For a child-placing agency that 
gains a child in the custody of the cabinet, the cabinet may re-
quest consultation or support from the child-placing agency to 
assist the cabinet in its efforts to meet: 
(1) Goals and objectives as specified in Kentucky’s child and family 
services plan developed pursuant to 45 C.F.R. 1357.15; 
(2) Goals and objectives as specified in Kentucky’s annual pro-
gress and services report developed pursuant to 45 C.F.R. 1357.16; 
(3) Criteria established in 45 C.F.R. 1355.34; and 
(4) Action steps as specified in Kentucky’s program improve-
ment plan developed pursuant to 45 C.F.R. 1355.35.] from the so-
cial services worker in the Department for Community-Based Ser-
cices who has case responsibility. 
3. If an emergency placement of a child into a licensed child-
plac ing agency is made, compliance with KRS 615.030 to 615.040 shall be the responsibility of the placement source.

Section 4. Orientation and Preparation of an Adoptive Home for a Child Under One (1) Year of Age. A child-placing agency shall: 
(1) Maintain the orientation and preparation curriculum on file; 
(2) Provide orientation and preparation to a prospective adoptive 
   parent to include the following: 
   a. Child-placing agency program—description with mission 
      statement; 
   b. Information about the rights and responsibilities of the adoptive 
      parent; and 
   c. Background information about the adopted child and his family.
   (b) Example of an actual experience from a parent who has 
   adopted a child; 
   (c) Information regarding: 
      i. The stages of grief; 
      ii. Identification of the behavior linked to each stage; and 
      iii. The long-term effect of separation and loss on a child; 
   4. Attachment; and 
   5. Family functioning, values, and expectations of the adoptive 
   parent; and 
   (d) Identification of a change that may occur in the family unit 
   when a placement occurs, to include: 
      i. Family adjustment and disruption; 
      ii. Identify issues; and 
      iii. Discipline.

Section 5. Orientation and Preparation of the Adoptive Home for a Child Older than One (1) Year. A child-placing agency shall: 
(1) Maintain the orientation and preparation curriculum on file; 
(2) Provide orientation and preparation to a prospective adoptive 
   parent to include the following: 
   (a) Example of an actual experience from a parent who has 
   adopted a child; 
   (b) Challenging behavior characteristic of an adoptive older 
   child; 
   (c) Referral resources for a developmental delay; 
   (d) Transition issues with focus on stages of grief, and a hone-
  ymoon period; 
   (e) Loss and the long-term effect on a child; 
   (f) Attachment issues; 
   (g) Medical issues including referral resources; 
   (h) Family functioning, family values, and expectations of the 
   adoptive parent; and 
   (i) Identification of change that may occur in the family unit upon 
   the placement of a child to include: 
      i. Family adjustment and disruption;
2. Identity issues; and
3. Discipline.

Section 6. Orientation and Preparation of a Foster Home. A child-placing agency shall:

(1) Maintain the orientation and preparation curriculum on file;
(2) Provide a minimum of twenty-four (24) hours of orientation and preparation to a prospective foster parent to include the following:
(a) Child-placing agency program description with mission statement;
(b) Information about the rights and responsibilities of the foster parent;
(c) Background information about the foster child and his family;
(d) Example of an actual experience a foster-family who has fostered a child;
(e) Information regarding:
   1. The stages of grief;
   2. Identification of the behavior linked to each stage;
   3. The long-term effect of separation and loss on a child;
   4. Permanency planning for a child;
   5. The importance of attachment on the growth and development and how a child may maintain or develop a healthy attachment;
   6. Family functioning, values, and expectations of the foster family;
   (d) Identification of change that may occur in the family unit when a placement occurs, to include:
      1. Family adjustment and disruption;
      2. Identity issues; and
      3. Discipline issues; and
   (e) Specific requirements and responsibilities of a foster family; and
   (f) Maintain an ongoing foster parent preparation program that:
      (a) Provides a minimum of six (6) hours foster parent preparation annually; and
      (b) Maintains a record of preparation completed.

Section 7. Evaluation of a Potential Foster Home. (1) The child-placing agency's social service staff shall perform the function of recruitment of prospective foster parents.
(2) A foster home evaluation shall be completed and the home approved prior to the placement of a child. Documentation shall include the following information:
(a) A personal interview, joint and separate, with each member of the household;
(b) An assessment of the attitude of each household member toward the placement of a foster child into the home;
(c) Observations of the foster family functioning, including interpersonal relationships and patterns of interaction;
(d) The foster parents' ability to accept the child's relationship with the child's family of origin;
(e) Information regarding the foster family's support system;
(f) The family's ability to meet financial needs of the child;
(g) A signed statement by a licensed physician or licensed health professional, current within the last twelve (12) months, regarding the family's physical ability to provide necessary care for the child;
(h) Acceptability of the standards of household safety, housekeeping, and cleanliness;
(i) Compliance with state and local health requirements regarding water supply and sanitation;
(j) Suitability of in- and out-of-door play space according to the age and need of the child;
(k) For each adult residing in the household:
   1. A criminal record check, including an out-of-state check if the applicant resides outside of state within the past ten (10) years;
   2. Child and adult abuse registry check; and
   3. Nurse's aide registry check;
(l) Verification of current marriage and any prior divorce or death of a spouse of the prospective foster parent; and
(m) At least three (3) written personal references indicating the suitability of the home and of the potential foster parent;
(3) The child-placing agency shall keep a written record of the findings of the home study and the evidence on which the findings are based.
(4) A foster home shall be selected for a particular child based upon the individual need of the child.
(5) A home providing care of a foster child shall not be used simultaneously for any other social service, including a day care center or a home for the elderly except for a home certified as a provider of Supports for Community Living, as established in 907 KAR 1:145, if determined by the cabinet to be in the best interest of the child. An exception shall be approved, before continuing foster care services in the home, by the child-placing agency and the state agency with custody of the child. This shall not preclude a foster parent being approved for adoption or an adoptive parent being approved as a foster parent.
(6) Each approved foster home in use shall be evaluated on an annual basis. The results of the evaluation shall be recorded in the case record.
(7) A child shall participate in the intake process and in the decision that placement is appropriate, to the extent that the child's age, maturity, adjustment, family relationships, and the circumstance necessitating placement justify the child's participation.
(8) The child-placing agency shall maintain an ongoing orientation and preparation program for its foster families. A record of orientation and preparation shall be maintained.

Section 8. Placement of Foster Child. (1) The child-placing agency shall place a child only in an approved foster home.
(2) A child-placing agency shall have a maximum of two (2) children under two (2) years of age placed in the same foster home at the same time, with the exception of:
(a) A sibling group, who may remain together; or
(b) A foster home where there are (3) or more adult caregivers reside, in which case the maximum number of children one (1) year of age and younger shall not exceed three (3) at one (1) time; and
(c) Justification for an exception shall be documented in the foster parent file.
(3) The child-placing agency shall:
(a) Have a written agreement with the foster parent stating:
   1. The responsibilities of the child-placing agency;
   2. The responsibilities of the foster parent; and
   3. Explains the terms of each placement;
   (b) Require the foster parent to certify in writing that supervision from the child-placing agency shall be allowed; and
   (c) Document the placement in the foster parent file.
(4) The total number of children residing in the foster home shall not exceed six (6), including the foster parent's own children. Justification for an exception shall be documented in the foster parent file.
(5) Without prior notification to and written authorization from the Kentucky Interstate Compact Administrator, a child shall not be:
(a) Placed with a family that normally resides in another state; or
(b) Permitted to go with a person to take up residence in another state.
(6) A foster home providing care of a foster child shall not be used simultaneously for any other social service, including a day care center or home for the elderly. This shall not preclude a foster parent being approved for adoption or an adoptive parent being approved as a foster parent.
(7) An approved foster home in use shall be evaluated on an annual basis for compliance with:
   1. Responsibilities listed in the written agreement described in subsection (3)(a) of this section; and
   2. The preparation requirements described in Section 6(2) of this administrative regulation.
(8) Results shall be recorded in the foster parent file.

Section 9. Orientation and Preparation of a Therapeutic Foster Family Care Home. (1) A child-placing agency shall:
(a) Maintain the orientation and preparation curriculum on file; and
(b) Provide a minimum of thirty-six (36) hours of orientation and preparation for a prospective therapeutic foster care parent that shall incorporate the following topics:
   1. Child-placing agency program description with mission statement; information about the rights and responsibilities of the foster
parent, and background information about a foster-child and his family;
2. Cardiopulmonary resuscitation and first aid;
3. Example of an actual experience of a foster family who has fostered a child;
4. Stages of grief;
5. Behaviors linked to each stage of grief;
6. Long-term effects on a child from separation and loss;
7. Permanency planning for a child;
8. Importance of attachment on a child's growth and development and the way a child maintains and develops a healthy attachment;
9. Family functioning, values and expectations of the foster family;
10. Change that may occur in the family unit with placement of a child regarding:
a. Family functioning;
b. Family adjustment;
c. Identifying a potential issue;
d. Discipline; and
e. Family disruption;
11. Specific requirements and responsibilities of a therapeutic foster family;
12. Behavioral management;
13. Communication skills;
14. Skill teaching;
15. Behavior management de-escalation techniques;
16. The dynamics of the sexually abused child; and
17. The effect of chemical abuse or dependence by the child or the child's biological parent.
(2) A therapeutic foster parent shall receive a minimum of twenty-four (24) hours of annual preparation.

Section 10. Therapeutic Foster Care. (1) A therapeutic foster home shall have a limit of two (2) therapeutic foster children and four (4) minor children of their own, in the home at the same time. Justification for an exception with a therapeutic basis shall be documented in the therapeutic foster parent file.
(2) A treatment director shall supervise therapeutic services to a foster parent and shall participate in the development of the ITP and the quarterly case conference.
(3) A child-placing agency shall provide or arrange for individualized therapeutic services for the child or foster parent, as needed, on at least a semi-monthly basis.
(4) A therapeutic foster care plan shall be responsible for:
   (a) Participation in the development of an assessment and ITP that includes visitation, health, education, and permanency goals;
   (b) Participation with weekly in-home services by a social service worker;
   (c) Supervision of the child and implementation of components of the treatment plan, including daily documentation when specified in the treatment plan; and
   (d) Working with the child-placing agency to promote stability and avoid disruption for a child; and
   (e) in the event of a disruption, working with the child-placing agency in the development of a plan for the smooth transition of the child to a new placement.
(5) Except for a committed child or a child who is the legal responsibility of the cabinet or the Department for Juvenile Justice, the child-placing agency shall be responsible for:
   (a) A preplacement conference, in a nonemergency placement, for the purpose of:
   1. Developing permanency goals and a discharge plan for the child;
   2. Developing a plan for the implementation of services;
   3. Identifying the treatment goals; and
   4. Developing a behavior management plan when applicable;
   (b) Inviting and encouraging attendance to the preplacement conference of:
   1. The prospective therapeutic foster care parent;
   2. A respite care parent;
   3. The child, if appropriate; and
   4. The child's family.
(6) The social service worker shall:
   (a) Telephone or visit, on a weekly basis, at least once (1) of the therapeutic foster parents of each child on the therapeutic foster care worker's caseload;
   (b) Visit the foster parent a minimum of two (2) times a month with at least one (1) visit being in the foster home;
   (c) Visit the foster child face to face a minimum of two (2) times a month with at least one (1) visit in the therapeutic foster home and one (1) visit outside the foster home; and
   (d) Carry a caseload of not more than twelve (12) children, taking into account:
      1. Required responsibilities other than the case management of a child in foster care;
      2. Additional support, contact, and preparation needed by a therapeutic foster parent, due to the extent of the needs of the child served; and
      3. The extent of intensive services provided to the child and the child's family;
   (e) Conduct a quarterly case consultation, including the foster parent, the child's public agency worker, the child-placing agency treatment director and social services worker and, to the extent possible, the child and his family of origin;
   (f) Identify the support needed by the foster family, including a plan for respite care, a plan for twenty-four (24) hour on call crisis intervention, and a foster family support group.

Section 11. Private Placement Process. The following shall be the responsibility of the child-placing agency when a private placement is conducted, except for a child committed or otherwise made the legal responsibility of the cabinet or the Department for Juvenile Justice. Services for an exempted child shall be coordinated by the cabinet, the Department of Juvenile Justice, and child-placing agency staff. Final casework shall be the responsibility of the cabinet or the Department of Juvenile Justice.
(1) For a child entering into care, the child-placing agency shall obtain an:
   (a) Agreement for voluntary care signed by the custodian; or
   (b) Order from a court of competent jurisdiction placing the child into child-placing agency custody.
(2) The child-placing agency shall:
   (a) Complete an intake assessment of the strengths and needs of the child and his family of origin; and
   (b) Ascertain the appropriateness of the referral for the child.
(3) The child-placing agency shall be responsible for developing an ITP for a child and his family based on an individualized assessment of the child's and family's needs. The assessment shall be reviewed as needed. The assessment and ITP shall include the type and extent of service to be provided to the child and his family.
(4) The child, his parent, and caregiver shall be included in developing the assessment and ITP, unless not in the best interest of the child.
(5) The foster home selected for placement shall be the most appropriate family based on the child's needs and the strengths of the foster family. The foster home shall be located as close as possible to the home of family of origin, in order to facilitate visiting and reunification.
(6) The social services worker and the foster parent shall work collaboratively to prepare the child for placement. A child shall have a period of preparation for the placement unless a circumstance precludes preparation and the circumstance is documented in the case record.
(7) A preplacement visit shall be scheduled before final placement in the foster home, unless a circumstance, that shall be documented in the case record, precludes a preplacement visit.
(8) There shall be a semiannual review of the child's family home of origin.
(9) The child-placing agency shall:
   (a) Provide or arrange for basic support for the family of a child for whom family reunification is the goal;
   (b) Quarterly assess the parent's capacity for reunification;
   (c) Provide for review of the child in order to evaluate the progress toward achieving the child's permanency goal; and
   (d) Assist that foster care continues to be the best placement for the child.
(10) Services to the family of origin and to the child shall be
adapted to their individual capacities, needs, and problems. A reasonable effort shall be made to return the child to the family of origin.

(11) Planning for the child regarding treatment program matters, including visitation, health, education, and permanency goals, shall be developed in collaboration with the:

(a) Family of origin;
(b) Treatment director;
(c) Social services worker; and
(d) Foster parent.

(12) The child-placing agency shall work with a foster parent to promote stability and avoid disruption for a child. A request for the removal of a child from a foster home shall be explored immediately and shall be documented by the social services worker. If disruption is unavoidable, the child-placing agency and foster parent shall develop a plan for the smooth transition of the child to a new placement.

(13) Preparation for the return of a child to the family of origin shall be supervised by a social services worker. The family shall participate in planning for the child's return. If the child has not had regular contact with his family, a plan for the child's return shall include:

(a) At least one (1) prior visit between the child and the family; and
(b) At least one (1) preliminary visit of the child to his family's home.

(14) The child-placing agency shall:

(a) Provide for aftercare service to a child and his or her family; if supportive service is needed; and
(b) Document each aftercare service provided.

Section 12. Supervision of a Child in a Foster Home. The child-placing agency shall:

(1) Make a supervisory visit to the foster home at least one (1) time per month;
(2) Document, in the child's placement plan, each supervisory contact and the reason for the contact;
(3) Identify and make available necessary support to the foster family, including a plan for respite care, twenty-four (24) hour crisis intervention and a foster family support group;
(4) Assure that the child is receiving care in accordance with his needs;
(5) Provide information to a foster parent regarding the child's behavior and development;
(6) Document each effort to:
   (a) Protect the legal rights of the family and the child; and
   (b) Maintain the bond between the child and his family, in accordance with the child's permanency plan;
(7) Assure that a child shall have, for his exclusive use, clothing comparable in quality and variety to that worn by other children with whom he will associate;
(8) Be responsible for monitoring the child's school attendance;
(9) Secure psychological and psychiatric services, vocational counseling, or other service if indicated by the child's needs; and
(10) Assess the child's placement and permanency goal semi-annually.

Section 13. Maintenance of the Foster Care Record. (1) The child-placing agency shall maintain a record for each child, his family, and the foster parent. The record shall show the reason for placement change and steps taken to insure success. A case record shall be maintained in conformity with existing laws and administrative regulations pertaining to confidentiality, pursuant to KRS 61.878, 199.430(3), 199.640, and 200 KAR 1.020.

(2) The record of the child shall include:
   (a) Identifying information for child, parent, and foster parent;
   (b) Commitment order or custodian's consent for admission;
   (c) Birth and immunization certificate;
   (d) Educational record;
   (e) Medical and dental record since placement;
   (f) Social history and assessment;
   (g) ITP and review;
   (h) Permanency goals;
   (i) Incident reports;
   (j) Monthly progress notes based on the ITP;

(k) Correspondence with the court, family, Department for Community Based Services, or Department for Juvenile Justice; and
(l) Discharge report.

(3) The foster parent's record shall include documentation relating to the:
   (a) Orientation and preparation of the parent, including a narrative summary of the foster-home evaluation;
   (b) Required preparation hours and the topics covered;
   (c) Placement of the child;
   (d) Narrative summary of the annual foster-home evaluation; and
   (e) Supervision of the foster-home, including critical incidents.

Section 14. Evaluation of Potential Adoptive Placement. (1) The child-placing agency shall assess an adoptive parent, an applicant who:

(a) Is capable of providing for the child's care, support, education, and character development; and
(b) Has the ability to understand and accept the child's characteristics, potential, and limitations.

(2) The child-placing agency shall complete a written study of the adoptive placement containing the following information:

(a) At least one (1) adoptive home visit by the adoptive worker;
(b) A face-to-face interview, both joint and separate, conducted with each member of the household;
(c) Social services worker's evaluation of the adoptive home;
(d) The functioning of the entire adoptive family considered in determining the suitability of the placement;
(e) Three (3) written personal references indicating the suitability of the adoptive home and of the potential adoptive parent;
(f) Attitude of each household member toward sharing the home with an adoptive child;
(g) Observation of the functioning of the potential adoptive family, including interpersonal relationships and patterns of interaction;
(h) The nonfamilial relationship;
(i) Certification by a licensed physician or other licensed health care professional, current within the last twelve (12) months, regarding the physical and mental ability of the adoptive family to provide necessary care for the child;
(j) Acceptable standards of household, safety, housekeeping, and cleanliness;
(k) Water supply and sanitation compliance with state and local health requirements;
(l) Suitability of indoor and outdoor play space according to the age and needs of the child;
(m) Accessibility of the adoptive home to necessary community resources;
(n) A criminal record check, including an out-of-state check, if the parent has lived outside the state within the past ten (10) years; a child abuse and neglect registry check; adult protective services registry check; and a nurse's aide registry check on each adult residing in the household;
(o) Verification of a current marriage and a prior divorce or death of a spouse of the potential adoptive parent, as appropriate;
(p) At least three (3) written references; and
(q) The sufficiency of the economic circumstances of the potential adoptive parent.

(3) A child-placing agency shall clearly define the qualifications required of the potential adoptive applicant.

Section 15. Adoption Placement Process. (1) A child shall not be placed for adoption unless:

(a) Adoptive home has been approved;
(b) Parental rights of the mother, legal father, and putative father of the child, if not the same person as the legal father, are terminated by a court order entered pursuant to KRS Chapter 625; and
(c) Child's custody is placed with the child-placing agency for the purpose of adoption placement.

(2) A parent shall not be induced to terminate parental rights by a promise of financial aid or other consideration.

(3) The authority granted to a child-placing agency licensed by the cabinet authorizing the agency to place a child for adoption shall not be used to facilitate an adoptive placement planned by a doctor;
lawyer, clergyman, or person or entity outside the child-placing agency. The child-placing agency shall comply with provisions of KRS 199.520(4)(a).

(4) The following shall be obtained by the child-placing agency:
(a) A developmental history of the adoptive child to include:
   1. Birth and health history;
   2. Early development;
   3. Characteristic ways the child responds to people and situations;
   4. Any deviation from the range of normal development;
   5. The experiences of the child prior to the decision to place him for adoption;
   6. Maternal attitude during pregnancy and early infancy;
   7. Continuity of parental care and affection;
   8. Out-of-home placement history;
   9. Separation experiences; and
   10. Information about the mother, legal father, and putative father. If not the same person as the legal father, about family background that may affect the child's normal development in order to determine the presence of a significant hereditary factor or pathology, including an illness of the biological mother or father.
(b) A social history of the biological or legal parent, to include:
   1. Name;
   2. Age;
   3. Nationality;
   4. Education;
   5. Religion; and
   6. Occupation.
(c) Information obtained from direct study and observation of the child by:
   1. Social service worker;
   2. Physician or other licensed health care professional; and, if indicated;
   3. Foster parent;
   4. Nurse;
   5. Psychologist; and
   6. Other consultants.
(d) Information from the mother, if possible, identifying the biological father, or legal father, if different from the biological father, for the purpose of:
   1. Determining the father's parental rights; and
   2. Establishment of possible hereditary endowments.
(5) If either biological or legal parent is unavailable, unwilling, or unable to assist with the completion of information necessary to comply with KRS 199.520 and 199.572, the child-placing agency shall document information, to the extent possible, from the existing case record.
(6) A medical examination shall be made by a licensed physician or other licensed health professional to determine:
(a) The state of the child's health;
(b) Any significant factor that may interfere with normal development; and
(c) The implications of any medical problem.
(7) The condition under which an adoptive parent agrees to accept the child shall be decided upon, prior to placement of the child. The written agreement between the child-placing agency and the adoptive parent shall embody the following provisions:
(a) The adoptive parent shall agree to:
   1. Comply with KRS 199.470;
   2. File an adoptive petition at a time agreeable to them and the child-placing agency; and
   3. Permit supervision by the child-placing agency during the period of time:
      a. After placement; and
      b. Preceding a final judgment of adoption by the circuit court.
(b) The child-placing agency shall be responsible for providing the adoptive parents with written information regarding the child's:
   1. Background;
   2. Medical history;
   3. Current behavior; and
   4. Medical information necessary to comply with KRS 199.520(4)(a).
(c) The adoptive parent and the child-placing agency shall agree that the child may be removed from the placement, at the request of either party, before the filing of the adoptive petition.
(8) Preplacement visits shall be arranged for the adoptive parent and a child. The pattern and number of visits shall be based on the age, development, and needs of the child.
(9) During preparation, the child-placing agency shall discuss with the child his readiness to accept the selected placement, in accordance with the child's age and ability to understand.
(10) Siblings who have had a relationship with one another shall be placed together unless it is determined to be more beneficial for them to be placed in separate adoptive homes. If siblings have been separated in placements:
(a) The case record shall reflect a valid basis for the separation;
(b) The decision to separate siblings shall be made by the executive director of the child-placing agency; and
(c) Continued contact between siblings shall be maintained, if possible.

Section 16. Supervision of an Adoptive Placement. (1) The child-placing agency placing a child shall remain responsible for him until the adoption has been granted. This responsibility involves the following:
(a) Two (2) meetings by the social services worker with the child and the adoptive family. Including both adoptive parents if not a single parent adoption. One (1) visit of which shall be in the adoptive home before filing of the adoption petition.
(b) The continuation of supervisory visits and contacts until the adoption is legally granted.
(c) Awareness of a change in the adoptive family. Including health, education, or behavior.
(2) Upon request of the cabinet the child-placing agency shall:
(a) Provide information pursuant to KRS 199.510, as necessary to report to the court to proceed with adoption.
(b) Prepare a confidential report to the court; and
(c) Forward to the cabinet:
   1. A copy of the confidential report to the court; and
   2. A copy of information required by KRS 199.520 and 199.572.
(3) If the court finds the adoptive parent to be unsuitable and refuses to grant a judgment, the child-placing agency shall remove the child from the home.

Section 17. Maintenance of Adoptive Case Record. (1) The child-placing agency shall maintain a case record from the time of the application for services through the completed legal adoption and termination of child-placing agency service for:
(a) A child accepted for care;
(b) His family; and
(c) An adoptive applicant.
(2) The case record shall contain material on which the child-placing agency decision may be based and shall include or preserve:
(a) Information and documents needed by the court;
(b) Information about the child and his family;
(c) A narrative or summary of the services provided with a copy of legal and other pertinent documents; and
(d) Information gathered during the intake study, including the following:
   1. A description of the situation that necessitated placement of the child away from his family or termination of parental rights;
   2. A certified copy of the order of the circuit court terminating parental rights and committing the child to the child-placing agency for the purpose of adoption;
   3. Verification of the child's birth record and the registration number;
   4. A copy of the child's medical record up to the time of placement;
   5. A copy of the required evaluation of the adoptive placement;
   6. Date of adoptive placement;
   7. A statement of the basis of the selection of this adoptive home for the child;
   8. A record of all placement services with dates of visits, contact and observations;
   9. Dates of filing of petition and granting of judgments and other significant court proceedings relative to the adoption; and
   10. Child's adoptive name.
(3) If there is need-to-share background information with a party to a completed adoption, or to have the benefits of information from a closed adoption record to offer services following completion of an adoption, the child-placing agency shall comply pursuant to KRS 199.670.

(4) Records on adoption, that contain pertinent information, shall be:
   (a) Maintained indefinitely following final placement of a child;
   and
   (b) Sealed and secured from unauthorized scrutiny.

Section 18. Independent Living. The following additional requirements apply to a child placing agency providing independent living programming:
(1) The child placing agency shall develop and implement written policy and procedure that addresses the agency’s independent living program, including:
   (a) Curriculum for teaching and practicing of the following independent living skills:
      1. Employment;
      2. Education;
      3. Money management;
      4. Housing and home management;
      5. Use of community resources including:
         a. Transportation;
         b. Voting rights and registration; and
         c. Personal and legal documents;
      6. Interpersonal skills;
      7. Communication;
      8. Self-esteem;
      9. Anger management;
      10. Problem solving;
      11. Decision making and planning; and
      12. Basic knowledge of:
         a. Nutrition;
         b. Food preparation;
         c. Health; and
         d. Sexuality issues;
   (b) Written ITP developed within twenty-one (21) days of placement to include:
      1. Goals;
      2. Objectives;
      3. Method of service delivery;
      4. Person responsible for each activity;
      5. Specific time frames; and
      6. Identification of a discharge plan.
   (c) Written plan for aftercare services; and
   (d) Written plan for services from a cooperating agency.

(2) Independent living services shall be tailored to meet the needs of the individual.

(3) A child placing agency shall document compliance with fire and building codes for any independent living program in which the agency places a child.

(4) A staff person shall be responsible for, and have daily contact with each child in the independent living program.

(5) The child placing agency shall maintain documentation for each child concerning:
   (a) An assessment of the child’s readiness to live independently;
   (b) Progress each child has made in independent living skills training;
   (c) Assistance to the child in finding and keeping in touch with family, if possible;
   (d) Staff observation of the living arrangement; and
   (e) Progress in an educational program.

JAMES W. HOLINGER, M.D., Secretary
APPROVED BY AGENCY: February 12, 2004
FILED WITH AGENCY: February 12, 2004 at 4 p.m.
CONTACT PERSON: Becky Conner, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, phone (502) 564-7900, fax (502) 564-9128.
KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY  
Division of Student and Administrative Services  
(Amendment)

11 KAR 3:100. Administrative wage garnishment.

RELATES TO: KRS 164.744(1), 164.748(4), (10), (19) 164.753(2), 34 C.F.R. 682.410(b)(10), 20 U.S.C. 1071-1087-2, 1095a

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(2), 20 U.S.C. 1095(a)

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 164.744(1) and 164.748(2), the Kentucky Higher Education Assistance Authority has entered into agreements with the secretary to provide loan guarantees in accordance with 20 U.S.C. 1071 through 1087-2. 20 U.S.C. 1095a permits a student loan guarantee agency to garnish the disposable pay of a borrower to recover a loan guaranteed pursuant to 20 U.S.C. 1071 through 1087-2, notwithstanding a provision of state law. That section also permits the student loan guarantee agency to establish procedures for requesting and conducting a hearing related to the wage garnishment. KRS 164.748(19) authorizes the authority to collect from borrowers loans on which the authority has met its guarantee obligation, and KRS 164.748(19) authorizes the authority to conduct administrative hearings, exempt from KRS Chapter 13B, pertaining to wage garnishment. This administrative regulation establishes the procedures for implementing wage garnishment in accordance with requirements of the federal act.

Section 1. (1) Following payment of a claim by the authority to a participating lender by reason of the borrower's default in repayment of an insured student loan, the authority, acting through its executive director or other designee, may issue an administrative order for the withholding of the debtor's disposable pay, which order shall conform to the requirements of this section.

(2) This administrative regulation shall apply to a debtor who is either a borrower or an endorser of an insured student loan.

(3) An order for withholding of disposable pay shall not be issued under this section nor become effective less than thirty (30) days after the authority provides a written notice to the debtor by personal service or mail, addressed to the debtor at the residence or employment location last known to the authority. The notice shall include at least the following information:

(a) The name and address of the debtor;
(b) The amount of the debt determined by the authority to be due;
(c) Information sufficient to identify the basis for the debt;
(d) A statement of the intention of the authority to issue an order for withholding of disposable pay;
(e) A statement of the right to dispute the existence or amount of the debt or the terms of a proposed repayment schedule under the garnishment order (other than a repayment schedule agreed to in writing pursuant to paragraph (g) of this subsection);
(f) A statement of the right to inspect and copy any records relating to the debt open to inspection in accordance with 20 U.S.C. 61.870 through 61.884;
(g) A statement of the opportunity to enter into a written agreement with the authority, on terms satisfactory to the authority, establishing a schedule for repayment of the debt;
(h) A statement that, unless there is good cause determined by the authority for the debtor's failure to timely request a hearing, the debtor's acquiescence to the withholding of disposable pay shall be presumed; and
(i) A statement that if the debtor requests a hearing, but fails to appear without good cause determined by the hearing officer, the hearing officer shall affirm the issuance of an order for withholding of disposable pay.

(4) An amount shall not be withheld from the disposable pay of an individual during the first twelve (12) consecutive months of reemployment commenced within twelve (12) months following an involuntary separation from employment.

(5) Establishment of a written repayment schedule in accordance with subsection (3)(g) of this section shall be deemed, for purposes of subsection (3)(e) of this section, conclusive acknowledgement by the debtor of the existence and amount of debt agreed to be paid.

(6) Service of the notice required by subsection (3) of this section shall be conclusively presumed to be effected five (5) days after mailing of the notice by the authority, unless the notice is returned to the authority undelivered by the postal service. The date of service of the notice shall otherwise be evidenced by affidavit of a person executing personal service or a delivery receipt.

Section 2. (1) (a) A hearing shall be provided if the debtor, on or before the fifteenth day following the date of service of the notice required by Section 1(3) of this administrative regulation, files with the authority a written request for a hearing in accordance with procedures prescribed by this administrative regulation. The timely filing of a request for a hearing (evidenced by a legibly dated U.S. Postal Service Postmark or mail receipt) shall automatically stay further collection activity under this administrative regulation pending the outcome of the hearing.

(b) If the debtor requests a hearing, but the request is not timely filed, a hearing shall be provided, but the request shall not stay further action pending the outcome of the hearing.

(c) A hearing officer, appointed by the authority (who shall not be an individual under the supervision or control of the board other than an administrative law judge), shall conduct the hearing.

(d) A hearing officer shall voluntarily disqualify himself and withdraw from a case in which he cannot afford a fair and impartial hearing or consideration.

1. A party shall request the disqualification of a hearing officer by filing an affidavit, upon discovery of facts establishing grounds for a disqualification, stating the particular grounds upon which he claims that a fair and impartial hearing cannot be accorded.

2. The request for disqualification and the disposition of the request shall be a part of the official record of the proceeding.

3. Grounds for disqualification of a hearing officer shall include the following:

a. Participating in an ex parte communication which would prejudice the proceedings;

b. Having a pecuniary interest in the outcome of the proceeding;

c. Having a personal bias toward a party to a proceeding which would cause a prejudgment on the outcome of the proceeding.

(e) A dispute hearing shall be conducted in Franklin County or another location agreed to by the parties.

(f) In lieu of an in-person hearing, upon request of the debtor, a hearing may be conducted by telephone or the hearing officer may conduct a review based solely upon submission of written material by both the debtor and the authority. An in-person or telephonic hearing shall be mechanically, electronically or stenographically recorded.

(g) Unless required for the disposition of an ex parte matter specifically authorized by this administrative regulation, a hearing officer shall not communicate off the record with a party to the hearing concerning a substantive issue, while the proceeding is pending.

2(a) The hearing officer's decision, reason therefore and an explanation of the appeal process shall be rendered in writing no more than sixty (60) days after receipt by the authority of the request for the hearing. The decision shall establish the debtor's liability, if any, for repayment of the debt and the amount to be withheld from the debtor's disposable pay.

(b) Subject to subsection (3)(b) of this section, the hearing officer's decision shall be final and conclusive pertaining to the right of the authority to issue an administrative order for the withholding of the debtor's disposable pay.

(c) A person, upon request, shall receive a copy of the official record at the cost of the requester. The party requesting a recording or transcript of the hearing shall be responsible for transcription costs. The official record of the hearing shall consist of:

1. All notices, pleadings, motions, and intermediate rulings;
2. Any prehearing order;
3. Evidence received and considered;
4. A statement of matters officially noticed;
5. Proffers of proof and objections and rulings thereon;
6. Ex parte communications placed upon the record by the hearing officer;
7. A recording or transcript of the proceedings; and
8. The hearing officer's decision or an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation.

(3) (a) Following the issuance of the hearing officer's decision, the debtor or the authority may petition the board to review the decision.

(b) An adverse decision by the hearing officer shall be appealed in writing to the board not later than twenty (20) calendar days after the date of the hearing officer's decision. A petition for review of the hearing officer's decision shall be timely filed if received by the executive director within twenty (20) calendar days after the date of the hearing officer's decision. If there is no appeal to the board within twenty (20) days, the findings of the hearing officer shall be conclusive and binding upon the parties.

(c) A petition for review of the hearing officer's decision shall not stay a final order pending the outcome of the appeal. If the debtor's liability is established by the hearing officer's decision, an administrative order for withholding of disposable pay shall be issued by the authority within sixty (60) days after the date of the hearing officer's decision. If the debtor petitions the board to review the hearing officer's decision and obtains reversal, modification or remand of the hearing officer's decision, the authority shall return to the debtor any money received pursuant to the withholding order contrary to the final order of the board.

(d) The respondent may, within ten (10) calendar days from the date the petition was received by the executive director, provide a brief statement to the board responding to the petition for review. The response shall be timely filed if received by the executive director within ten (10) calendar days from receipt by the executive director of the petition for review.

(e) A petition for review of the hearing officer's decision shall contain the following information:

1. A concise statement of the reason that the petitioner asserts as the basis pursuant to paragraph (g) of this subsection for reversing, modifying or remanding the hearing officer's decision or an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation;
2. A statement specifying the part of the official record that the petitioner relies upon to support reversing, modifying or remanding the hearing officer's decision pursuant to paragraph (g) of this subsection; and
3. A statement of whether the petitioner believes that oral argument to the board is necessary.

(f) The board shall review the hearing officer's decision at its next regularly scheduled meeting convened at least thirty (30) days after the petition for review of the hearing officer's decision is received or at a special meeting convened for that purpose within ninety (90) days after receipt of the petition for review of the hearing officer's decision, whichever first occurs.

(g) The board shall decide the dispute upon the official record, unless there is fraud or misconduct involving a party, and may consider oral arguments by the debtor and the authority. The board shall:
1. Not substitute its judgment for that of the hearing officer as to the weight of the evidence on questions of fact; and
2. a. Uphold the hearing officer's decision unless it is clearly unsupported by the evidence and the applicable law;
   b. Reject or modify, in whole or in part, the hearing officer's decision;
   c. Remand the matter, including an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation, in whole or in part, to the hearing officer for further proceedings as appropriate if it finds the hearing officer's final order is:
      (i) In violation of constitutional or statutory provisions;
      (ii) In excess of the statutory authority of the agency;
      (iii) Without support of substantial evidence on the whole record;
      (iv) Arbitrary, capricious, or characterized by abuse of discretion;
   or
   v. Based on an ex parte communication which substantially prejudiced the rights of a party and likely affected the outcome of the hearing.

(h) The final order of the board shall be in writing. If the final order differs from the hearing officer's decision, it shall include separate statements of findings of fact and conclusions of law.

(4) The remedies provided in this section shall not:

(a) Preclude the use of other judicial or administrative remedies available to the authority under state or federal law; and

(b) Be construed to stay the use of another remedy.

Section 3. Hearing Procedure. (1) The debtor shall have the right to be heard by the hearing officer, be represented by counsel, present evidence, cross examine, and make both opening and closing statements.

(2) (a) Upon request of a party, the hearing officer may issue subpoena for the production of a document or attendance of a witness.

(b) Not more than ten (10) business days after the date of filing the request for a hearing or a request of written material, the debtor shall submit to the counsel for the authority a written statement specifically stating the basis of dispute.

2. Not less than fifteen (15) business days prior to the hearing, the parties shall:
   a. Confer and jointly stipulate the issues that are in controversy to be resolved by the hearing officer;
   b. Discuss the possibility of informal resolution of the dispute;
   c. Exchange a witness list of the names, addresses, and phone numbers of each witness expected to testify at the hearing and a brief summary of the testimony of each witness that the party expects to introduce into evidence; and
   d. Exchange an exhibit list identifying documents to be admitted into evidence at the hearing and provide a legible copy of all exhibits.

3. (a) If the debtor is unavailable or otherwise fails to confer and jointly stipulate the issues pursuant to subparagraph (2) of this paragraph, the authority shall serve upon the debtor proposed stipulation of issues. If within five (5) calendar days, the debtor fails to respond to the proposed stipulation of issues, the debtor shall be precluded from raising an additional issue not identified in the proposed stipulation of issues.

   b. If the debtor is unavailable or otherwise fails to cooperate in a timely manner for the exchange of the witness or exhibit lists, the debtor shall be precluded from admitting the information as part of the evidence at the hearing.

4. The authority shall provide to the hearing officer the documentation submitted in accordance with subparagraph 1 of this paragraph and shall report to the hearing officer the results of the discussions between the parties described in subparagraphs 2 and 3 of this paragraph.

5. Additional time for compliance with the requirements of this paragraph may be granted by the hearing officer, upon request, if it does not prejudice the rights of the authority or delay the rendering of a hearing decision within the time prescribed by Section 2(2) of this administrative regulation.

6. If the debtor requests a hearing, but the debtor's written statement and supporting documentation, considered from a viewpoint most favorable to the debtor, does not reflect a genuine issue of fact or prima facie defense to the legal enforceability of the authority's claim, the hearing officer, on petition of the authority and notice to the debtor, may enter an order dismissing the request for a hearing and authorizing issuance of the order described in Section 5 of this administrative regulation.

(c) Facts recited in the authority's notice pursuant to Section 1(3) of this administrative regulation that are not denied shall be deemed admitted. Each party shall remain under an obligation to disclose new or additional items of evidence or witnesses which may come to their attention as soon as practicable.

(g) (1) Either party, without leave of the hearing officer, may depose a witness, upon reasonable notice to the witness and the opposing party, and submit to the opposing party interrogatories or request for admissions.

2. The party receiving interrogatories or request for admissions
shall respond within fifteen (15) calendar days.

3. Each matter of which an admission is requested shall be deemed admitted unless, within fifteen (15) days after service of the request or a shorter or longer time that the hearing officer may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter.

(e) Sufficient grounds for entry of an appropriate order by the hearing officer, including postponement, exclusion of evidence, dismissal of the appeal, quashing the withholding order, or vacating the stay, shall exist if there is:
1. Noncompliance with this subsection;
2. Failure of the authority to:
   a. Timely appoint a hearing officer; or
   b. Respond to a request for inspection of records; or
3. Failure of the debtor to submit information in accordance with paragraph (b) of this subsection.

(3) Order of proceeding.
(a) The hearing officer shall:
1. Convene an in-person or telephonic hearing;
2. Identify the parties to the action and the persons participating;
3. Admit into evidence the notice required by Section 1(3) of this administrative regulation and the debtor's statement and the stipulations required by subsection (2)(b)1 and 2 of this section;
4. Solicit from the parties and dispose of any objections or motions;
5. Accept into evidence any documentary evidence not objected to;
6. Solicit opening statements; and
7. Proceed with the taking of proof.
(b) The taking of proof shall commence first by the debtor and then by the authority, with opportunities for cross-examination, rebuttal, and closing statements.

(4) Rules of evidence.
(a) All testimony shall be made under oath or affirmation.
1. The hearing officer shall not admit evidence that is excludable as a violation of an individual's constitutional or statutory rights or a privilege recognized by the courts of the Commonwealth.
2. Statutes or judicial rules pertaining to the admission of evidence in a judicial proceeding shall not apply to a hearing under this section.
3. The hearing officer may receive evidence deemed reliable and relevant, including evidence that would be considered hearsay if presented in court, except that hearsay evidence shall not be sufficient to set aside the hearing officer's decision.
4. A copy of a document shall be admissible if:
   a. There is minimal authentication to establish a reasonable presumption of its genuineness and accuracy; or
   b. It is admitted without objection.
5. The hearing officer may exclude evidence deemed unreliable, irrelevant, incompetent, irrelevant, or unduly repetitious.
(b) An objection to an evidentiary offer may be made by any party and shall be noted in the record.
(c) The hearing officer:
1. May take official notice of:
   a. Statutes and administrative regulations;
   b. Facts which are not in dispute; and
   c. Generally-recognized technical or scientific facts;
2. Shall notify all parties, either before or during the hearing of a fact so noticed and its source; and
3. Shall give each party an opportunity to contest facts officially noticed.
(d) At the discretion of the hearing officer, the parties may be allowed up to fifteen (15) days following the hearing to submit written arguments or briefs.
(e) Upon request of either party, the record of the hearing shall be transcribed, and shall be available to the parties at their own expense.

(6) Burden of proof.
(a) The authority shall have the burden to establish the existence and amount of the debt.
(b) The debtor shall have the burden to establish an affirmative defense.
(c) The party with the burden of proof on an issue shall have the burden of going forward and the ultimate burden of persuasion as to that issue. The ultimate burden of persuasion shall be met by a prima facie establishment of relevant, uncontested facts or, if relevant facts are disputed, a preponderance of evidence in the record.
(d) Failure to meet the burden of proof shall be grounds for a summary order from the hearing officer.

Section 4. Defenses. (1) Except as provided in subsection (2) of this section, a debtor may assert a defense to the issuance of an administrative order to withhold the debtor's disposable pay, legal or equitable, pertaining to the existence or amount of the debt or the terms of a proposed repayment schedule under the garnishment order (other than a repayment schedule agreed to in writing pursuant to Section 1(3)(g) of this administrative regulation).

(2) The hearing officer shall not consider as a defense a question of law or fact that has previously been adjudicated by a court of competent jurisdiction or by an independent third-party trier of fact in an administrative proceeding involving the debtor and the authority pertaining to the existence, amount, or the debtor's liability on the particular debt in question or the terms of a prior repayment schedule.

(3) If the debtor asserts as a defense a question of law or fact that has previously raised in an administrative proceeding before the authority pursuant to 11 KAR 4:030 or 11 KAR 4:050, the hearing officer:
(a) Shall:
   1. Consider the matter; and
   2. Give deference to the prior decision by the authority in the same manner that a court would give deference in reviewing the decision of an administrative agency; and
(b) May reverse the prior decision if the debtor presents evidence that:
   1. Circumstances have charged or new information is available; or
   2. The prior decision:
      a. Substantially disregarded or ignored the defense; or
      b. Was arbitrary, capricious, not supported by the facts or made through fraud.

(4) If the debtor asserts as a defense a claim of entitlement to discharge of the particular debt pursuant to 34 C.F.R. 682.402, except for reason of bankruptcy, but has not previously sought discharge by the authority for that specific reason, the hearing officer shall stay the hearing for a period sufficient to permit the debtor to submit documentation to the authority for a determination of eligibility for entitlement to the discharge. At the expiration of the period of stay, the hearing officer shall review the circumstances and:
   (a) Uphold the right of the authority to issue an order of wage withholding if the debtor has failed to submit documentation to the authority for review of entitlement to discharge;
   (b) Dismiss the request for hearing if the debtor has submitted documentation and the authority has approved discharge of the debt; or
   (c) Proceed with the hearing if the debtor submitted documentation and the authority denied discharge, except that the hearing officer shall consider the defense of entitlement to discharge in accordance with subsection (3) of this section.

(5) If the debtor asserts as a defense a claim that the debt was dischargeable in a previous bankruptcy pursuant to 11 U.S.C. 523(a)(6), but the debtor did not previously seek discharge by the bankruptcy court, the hearing officer shall stay the hearing for a period sufficient to permit the debtor to reopen the bankruptcy case. At the expiration of the period of stay, the hearing officer shall review the circumstances and:
   (a) Uphold the right of the authority to issue an order of wage withholding if the debtor has failed to obtain the bankruptcy court's permission to reopen the bankruptcy case to seek discharge of the particular debt; or
   (b) Dismiss the request for hearing if the bankruptcy court has reopened the bankruptcy case to consider discharge of the particular debt.

(6)(a) If the debtor asserts as a defense a claim that withholding of his disposable pay would constitute an extreme financial hardship, the debtor shall submit documentation of all available re-
sources and actual expenses and shall have the burden of demonstrating the necessity of actual expenses.

(b) The hearing officer shall compare the debtor's available resources and the necessary expenses and current debt obligations of the debtor and debtor's dependents. The hearing officer shall determine that extreme financial hardship exists if the debtor currently is not able to provide at least minimal subsistence for the debtor and debtor's dependents who could be claimed on a federal income tax return. The hearing officer shall consider as available resources of the debtor income of the debtor, the debtor's spouse, and debtor's dependents from all sources, including nontaxable income and government benefits, expenses paid on behalf of the debtor by another person, and the cash value of any current liquid assets, such as bank accounts and investments. The hearing officer shall consider the claim of extreme financial hardship in accordance with the following presumptions:

1. Withholding of an amount of disposable pay shall constitute an extreme financial hardship if:
   a. The debtor resides in the District of Columbia or a state other than Alaska or Hawaii and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

<table>
<thead>
<tr>
<th>Size of family unit</th>
<th>Poverty guideline</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$31,310 [8,680]</td>
</tr>
<tr>
<td>2</td>
<td>$12,490 [4,420]</td>
</tr>
<tr>
<td>3</td>
<td>$16,670 [4,260]</td>
</tr>
<tr>
<td>4</td>
<td>$18,860 [4,400]</td>
</tr>
<tr>
<td>5</td>
<td>$22,030 [4,640]</td>
</tr>
<tr>
<td>6</td>
<td>$25,210 [4,680]</td>
</tr>
<tr>
<td>7</td>
<td>$28,390 [4,820]</td>
</tr>
<tr>
<td>8</td>
<td>$31,570 [5,060]</td>
</tr>
<tr>
<td>Each additional person</td>
<td>Add $3,180 [3,140]</td>
</tr>
</tbody>
</table>

   b. The debtor resides in Alaska and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

<table>
<thead>
<tr>
<th>Debitor's Available Resources</th>
<th>Annual Expenditures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than $5,000</td>
<td>$5,000 to $9,999</td>
</tr>
<tr>
<td>$10,000 to $14,999</td>
<td>$15,000 to $19,999</td>
</tr>
<tr>
<td>$20,000 to $29,999</td>
<td>$30,000 to $39,999</td>
</tr>
<tr>
<td>$40,000 to $50,000</td>
<td>$70,000 and over</td>
</tr>
</tbody>
</table>

   - Owned dwelling
   - Rented dwelling
   - Other lodging
   - Utilities, fuels, and public services
   - Household services
   - Housekeeping and miscellaneous supplies
   - Household furnishing and equipment
   - Vehicle purchases (net outlay)
   - Gasoline and motor oil
   - Vehicle maintenance and repairs
   - Vehicle insurance
   - Vehicle lease, license and other charges
   - Public transportation

2. a. If the debtor resides in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, or Vermont, except for a metropolitan area listed in clause b of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debitor's Available Resources</th>
<th>Annual Expenditures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than $5,000</td>
<td>$5,000 to $9,999</td>
</tr>
<tr>
<td>$10,000 to $14,999</td>
<td>$15,000 to $19,999</td>
</tr>
<tr>
<td>$20,000 to $29,999</td>
<td>$30,000 to $39,999</td>
</tr>
<tr>
<td>$40,000 to $50,000</td>
<td>$70,000 and over</td>
</tr>
</tbody>
</table>

   - Owned dwelling
   - Rented dwelling
   - Other lodging

- 119 -
<table>
<thead>
<tr>
<th>Utilities, fuels, and public services</th>
<th>1,498</th>
<th>1,495</th>
<th>1,584</th>
<th>2,167</th>
<th>2,378</th>
<th>2,580</th>
<th>2,592</th>
<th>3,060</th>
<th>3,925</th>
</tr>
</thead>
<tbody>
<tr>
<td>Household services</td>
<td>176</td>
<td>184</td>
<td>340</td>
<td>299</td>
<td>374</td>
<td>447</td>
<td>392</td>
<td>536</td>
<td>1,784</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>205</td>
<td>269</td>
<td>407</td>
<td>421</td>
<td>461</td>
<td>477</td>
<td>560</td>
<td>782</td>
<td>1,406</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>1,021</td>
<td>500</td>
<td>627</td>
<td>668</td>
<td>912</td>
<td>1,167</td>
<td>1,498</td>
<td>1,632</td>
<td>3,326</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>1,918</td>
<td>740</td>
<td>2,033</td>
<td>998</td>
<td>2,129</td>
<td>3,347</td>
<td>3,544</td>
<td>4,212</td>
<td>4,579</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>569</td>
<td>364</td>
<td>493</td>
<td>601</td>
<td>880</td>
<td>4,039</td>
<td>1,189</td>
<td>1,417</td>
<td>1,739</td>
</tr>
<tr>
<td>Vehicle maintenance and repairs</td>
<td>357</td>
<td>197</td>
<td>281</td>
<td>341</td>
<td>487</td>
<td>536</td>
<td>1,035</td>
<td>635</td>
<td>1,116</td>
</tr>
<tr>
<td>Vehicle insurance</td>
<td>337</td>
<td>239</td>
<td>388</td>
<td>510</td>
<td>641</td>
<td>749</td>
<td>980</td>
<td>1,046</td>
<td>1,374</td>
</tr>
<tr>
<td>Vehicle lease, license and other charges</td>
<td>260</td>
<td>96</td>
<td>163</td>
<td>164</td>
<td>266</td>
<td>374</td>
<td>500</td>
<td>779</td>
<td>1,660</td>
</tr>
<tr>
<td>Public transportation</td>
<td>386</td>
<td>220</td>
<td>309</td>
<td>406</td>
<td>391</td>
<td>544</td>
<td>459</td>
<td>566</td>
<td>1,244</td>
</tr>
</tbody>
</table>

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor’s family that exceed the applicable amount for a category shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Category</th>
<th>New York</th>
<th>Philadelphia</th>
<th>Boston</th>
<th>Pittsburgh</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned dwellings</td>
<td>7,627</td>
<td>6,987</td>
<td>5,924</td>
<td>4,237</td>
</tr>
<tr>
<td>Owned dwellings</td>
<td>(7,180)</td>
<td>(6,038)</td>
<td>(5,308)</td>
<td>(3,733)</td>
</tr>
<tr>
<td>Rented dwellings</td>
<td>3,864</td>
<td>3,110</td>
<td>3,082</td>
<td>1,514</td>
</tr>
<tr>
<td>Rented dwellings</td>
<td>(3,793)</td>
<td>(1,481)</td>
<td>(3,006)</td>
<td>(4,466)</td>
</tr>
<tr>
<td>Other lodging</td>
<td>712</td>
<td>516</td>
<td>672</td>
<td>612</td>
</tr>
<tr>
<td>Other lodging</td>
<td>(681)</td>
<td>(551)</td>
<td>(674)</td>
<td>(696)</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>3,004</td>
<td>3,114</td>
<td>2,656</td>
<td>2,844</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>(2,886)</td>
<td>(3,034)</td>
<td>(2,566)</td>
<td>(2,737)</td>
</tr>
<tr>
<td>Household services</td>
<td>1,168</td>
<td>766</td>
<td>675</td>
<td>681</td>
</tr>
<tr>
<td>Household services</td>
<td>(1,094)</td>
<td>(660)</td>
<td>(674)</td>
<td>(622)</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>548</td>
<td>493</td>
<td>416</td>
<td>607</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>(543)</td>
<td>(608)</td>
<td>(386)</td>
<td>(689)</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>1,245</td>
<td>1,497</td>
<td>1,249</td>
<td>1,523</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>(1,767)</td>
<td>(1,424)</td>
<td>(1,233)</td>
<td>(1,674)</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>2,917</td>
<td>2,341</td>
<td>3,021</td>
<td>3,857</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>(2,776)</td>
<td>(2,862)</td>
<td>(2,342)</td>
<td>(3,462)</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>1,061</td>
<td>1,146</td>
<td>1,134</td>
<td>1,117</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>(1,044)</td>
<td>(1,076)</td>
<td>(1,086)</td>
<td>(1,147)</td>
</tr>
<tr>
<td>Other vehicle expenses (repairs, insurance, lease, license, and other charges)</td>
<td>2,618</td>
<td>2,672</td>
<td>2,363</td>
<td>2,721</td>
</tr>
<tr>
<td>Other vehicle expenses (repairs, insurance, lease, license, and other charges)</td>
<td>(2,497)</td>
<td>(2,497)</td>
<td>(2,366)</td>
<td>(2,742)</td>
</tr>
<tr>
<td>Public transportation</td>
<td>1,071</td>
<td>308</td>
<td>435</td>
<td>392</td>
</tr>
<tr>
<td>Public transportation</td>
<td>(977)</td>
<td>(381)</td>
<td>(638)</td>
<td>(404)</td>
</tr>
</tbody>
</table>

3.a. If the debtor resides in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, or Wisconsin, except for a metropolitan area listed in clause b of this subparagraph, actual annual expenditures by the debtor’s family that exceed the applicable amount for a category, based on the debtor’s available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor’s Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $69,000</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Expenditures</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Owned dwelling</td>
<td>2,065</td>
<td>909</td>
<td>1,726</td>
<td>1,967</td>
<td>2,502</td>
<td>3,456</td>
<td>4,178</td>
<td>6,269</td>
<td>10,437</td>
</tr>
<tr>
<td>Rented dwellings</td>
<td>1,590</td>
<td>1,951</td>
<td>2,104</td>
<td>2,523</td>
<td>2,052</td>
<td>2,007</td>
<td>1,931</td>
<td>1,493</td>
<td>736</td>
</tr>
<tr>
<td>Other lodging</td>
<td>556</td>
<td>122</td>
<td>156</td>
<td>169</td>
<td>214</td>
<td>268</td>
<td>308</td>
<td>506</td>
<td>1,328</td>
</tr>
<tr>
<td>Utilities, fuels and public services</td>
<td>1,499</td>
<td>1,410</td>
<td>1,860</td>
<td>2,098</td>
<td>2,425</td>
<td>2,654</td>
<td>2,821</td>
<td>3,052</td>
<td>3,808</td>
</tr>
<tr>
<td>Household operations services</td>
<td>412</td>
<td>122</td>
<td>244</td>
<td>285</td>
<td>444</td>
<td>380</td>
<td>510</td>
<td>721</td>
<td>1,170</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>301</td>
<td>247</td>
<td>276</td>
<td>377</td>
<td>421</td>
<td>465</td>
<td>557</td>
<td>1,374</td>
<td>920</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>784</td>
<td>428</td>
<td>555</td>
<td>818</td>
<td>1,086</td>
<td>1,091</td>
<td>1,583</td>
<td>1,891</td>
<td>3,384</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>1,306</td>
<td>1,505</td>
<td>2,169</td>
<td>1,942</td>
<td>2,700</td>
<td>3,886</td>
<td>4,263</td>
<td>4,622</td>
<td>6,333</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>733</td>
<td>470</td>
<td>581</td>
<td>832</td>
<td>1,044</td>
<td>1,271</td>
<td>1,419</td>
<td>1,630</td>
<td>2,120</td>
</tr>
<tr>
<td>Vehicle maintenance and repairs</td>
<td>348</td>
<td>238</td>
<td>320</td>
<td>530</td>
<td>404</td>
<td>588</td>
<td>774</td>
<td>938</td>
<td>1,125</td>
</tr>
<tr>
<td>Vehicle insurance</td>
<td>270</td>
<td>247</td>
<td>377</td>
<td>522</td>
<td>689</td>
<td>860</td>
<td>1,006</td>
<td>1,154</td>
<td>1,346</td>
</tr>
<tr>
<td>Vehicle lease, license, and other charges</td>
<td>316</td>
<td>114</td>
<td>168</td>
<td>210</td>
<td>301</td>
<td>368</td>
<td>528</td>
<td>723</td>
<td>1,371</td>
</tr>
<tr>
<td>Public transportation</td>
<td>195</td>
<td>98</td>
<td>150</td>
<td>139</td>
<td>217</td>
<td>188</td>
<td>295</td>
<td>404</td>
<td>809</td>
</tr>
</tbody>
</table>

[Debtor’s Available Resources | Less than $5,000 | $5,000 to $9,999 | $10,000 to $14,999 | $15,000 to $19,999 | $20,000 to $29,999 | $30,000 to $39,999 | $40,000 to $49,999 | $50,000 to $69,000 | $70,000 and over]
### VOLUME 31, NUMBER 1 – JULY 1, 2004

<table>
<thead>
<tr>
<th>Annual Expenditures</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned-dwelling</td>
<td>2,230</td>
<td>926</td>
<td>1,717</td>
<td>2,042</td>
<td>2,663</td>
<td>3,552</td>
<td>4,690</td>
<td>6,626</td>
<td>9,900</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rented-dwelling</td>
<td>1,431</td>
<td>1,866</td>
<td>2,014</td>
<td>2,229</td>
<td>1,924</td>
<td>2,163</td>
<td>1,707</td>
<td>1,472</td>
<td>817</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other lodging</td>
<td>477</td>
<td>98</td>
<td>166</td>
<td>196</td>
<td>265</td>
<td>260</td>
<td>351</td>
<td>607</td>
<td>1,282</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>1,474</td>
<td>1,514</td>
<td>1,903</td>
<td>2,084</td>
<td>2,403</td>
<td>2,666</td>
<td>2,786</td>
<td>2,952</td>
<td>3,887</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Household operations services</td>
<td>537</td>
<td>178</td>
<td>286</td>
<td>365</td>
<td>489</td>
<td>365</td>
<td>569</td>
<td>759</td>
<td>1,289</td>
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<td></td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>278</td>
<td>263</td>
<td>302</td>
<td>361</td>
<td>407</td>
<td>459</td>
<td>563</td>
<td>745</td>
<td>816</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>732</td>
<td>397</td>
<td>794</td>
<td>679</td>
<td>4,068</td>
<td>1,407</td>
<td>1,692</td>
<td>2,097</td>
<td>3,370</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>4,024</td>
<td>1,613</td>
<td>1,620</td>
<td>1,996</td>
<td>3,171</td>
<td>3,797</td>
<td>3,893</td>
<td>4,442</td>
<td>6,812</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>865</td>
<td>493</td>
<td>665</td>
<td>933</td>
<td>4,090</td>
<td>1,365</td>
<td>1,609</td>
<td>1,747</td>
<td>2,261</td>
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<tr>
<td>Vehicle maintenance and repairs</td>
<td>349</td>
<td>275</td>
<td>342</td>
<td>490</td>
<td>1,049</td>
<td>604</td>
<td>676</td>
<td>851</td>
<td>1,084</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vehicle insurance</td>
<td>267</td>
<td>277</td>
<td>392</td>
<td>519</td>
<td>651</td>
<td>776</td>
<td>959</td>
<td>1,070</td>
<td>1,260</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vehicle lease, license, and other charges</td>
<td>339</td>
<td>120</td>
<td>207</td>
<td>260</td>
<td>348</td>
<td>496</td>
<td>599</td>
<td>640</td>
<td>1,466</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public transportation</td>
<td>137</td>
<td>126</td>
<td>206</td>
<td>189</td>
<td>263</td>
<td>236</td>
<td>285</td>
<td>466</td>
<td>816</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Metropolitan Area</th>
<th>Chicago</th>
<th>Detroit</th>
<th>Milwaukee</th>
<th>Minneapolis</th>
<th>Cleveland</th>
<th>Cincinnati</th>
<th>St. Louis</th>
<th>Kansas City</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Expenditures</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Owned dwelling</td>
<td>7,676</td>
<td>6,520</td>
<td>5,160</td>
<td>7,070</td>
<td>5,453</td>
<td>4,768</td>
<td>4,917</td>
<td>5,506</td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>2,152</td>
<td>1,574</td>
<td>2,896</td>
<td>2,372</td>
<td>1,488</td>
<td>2,595</td>
<td>1,857</td>
<td>1,868</td>
</tr>
<tr>
<td>Other lodging</td>
<td>840</td>
<td>654</td>
<td>474</td>
<td>700</td>
<td>480</td>
<td>302</td>
<td>604</td>
<td>427</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>3,206</td>
<td>2,904</td>
<td>2,462</td>
<td>2,648</td>
<td>3,024</td>
<td>2,589</td>
<td>2,948</td>
<td>3,406</td>
</tr>
<tr>
<td>Household services</td>
<td>820</td>
<td>728</td>
<td>660</td>
<td>827</td>
<td>595</td>
<td>641</td>
<td>914</td>
<td>645</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>622</td>
<td>506</td>
<td>549</td>
<td>675</td>
<td>439</td>
<td>528</td>
<td>462</td>
<td>557</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>1,922</td>
<td>1,779</td>
<td>1,722</td>
<td>2,377</td>
<td>1,219</td>
<td>1,469</td>
<td>1,417</td>
<td>1,553</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>4,061</td>
<td>3,376</td>
<td>3,007</td>
<td>4,104</td>
<td>3,470</td>
<td>3,932</td>
<td>4,023</td>
<td>3,579</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>1,327</td>
<td>1,380</td>
<td>1,207</td>
<td>1,425</td>
<td>1,177</td>
<td>1,183</td>
<td>1,241</td>
<td>1,551</td>
</tr>
<tr>
<td>Other vehicle expenses (repairs, insurance, lease, license, and other charges)</td>
<td>2,476</td>
<td>3,649</td>
<td>2,274</td>
<td>3,082</td>
<td>2,601</td>
<td>2,638</td>
<td>2,362</td>
<td>2,635</td>
</tr>
<tr>
<td>Public transportation</td>
<td>707</td>
<td>465</td>
<td>308</td>
<td>654</td>
<td>407</td>
<td>255</td>
<td>431</td>
<td>321</td>
</tr>
</tbody>
</table>

### Chicago

<table>
<thead>
<tr>
<th>Metropolitan Area</th>
<th>Chicago</th>
<th>Detroit</th>
<th>Milwaukee</th>
<th>Minneapolis</th>
<th>Cleveland</th>
<th>Cincinnati</th>
<th>St. Louis</th>
<th>Kansas City</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Expenditures</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Owned-dwelling</td>
<td>7,291</td>
<td>5,885</td>
<td>5,188</td>
<td>6,718</td>
<td>6,360</td>
<td>6,017</td>
<td>4,775</td>
<td>5,248</td>
</tr>
<tr>
<td>Rented-dwelling</td>
<td>2,081</td>
<td>1,578</td>
<td>2,817</td>
<td>2,241</td>
<td>1,457</td>
<td>2,244</td>
<td>1,477</td>
<td>1,562</td>
</tr>
<tr>
<td>Other lodging</td>
<td>662</td>
<td>655</td>
<td>348</td>
<td>740</td>
<td>612</td>
<td>381</td>
<td>449</td>
<td>409</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>3,430</td>
<td>2,775</td>
<td>2,392</td>
<td>2,618</td>
<td>2,800</td>
<td>2,639</td>
<td>2,783</td>
<td>3,184</td>
</tr>
<tr>
<td>Household services</td>
<td>625</td>
<td>716</td>
<td>666</td>
<td>887</td>
<td>688</td>
<td>830</td>
<td>841</td>
<td>564</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>599</td>
<td>566</td>
<td>481</td>
<td>695</td>
<td>459</td>
<td>648</td>
<td>467</td>
<td>586</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>1,568</td>
<td>2,342</td>
<td>1,666</td>
<td>2,058</td>
<td>1,780</td>
<td>1,443</td>
<td>1,442</td>
<td>1,366</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>3,739</td>
<td>2,639</td>
<td>3,019</td>
<td>3,934</td>
<td>3,872</td>
<td>3,933</td>
<td>4,051</td>
<td>3,056</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>1,284</td>
<td>1,464</td>
<td>1,260</td>
<td>1,604</td>
<td>1,284</td>
<td>1,247</td>
<td>1,286</td>
<td>1,687</td>
</tr>
<tr>
<td>Other vehicle expenses (repairs, insurance, lease, license, and other charges)</td>
<td>2,346</td>
<td>3,576</td>
<td>2,105</td>
<td>3,044</td>
<td>2,674</td>
<td>2,169</td>
<td>2,627</td>
<td></td>
</tr>
<tr>
<td>Public transportation</td>
<td>820</td>
<td>416</td>
<td>359</td>
<td>697</td>
<td>434</td>
<td>265</td>
<td>568</td>
<td>276</td>
</tr>
</tbody>
</table>

4.a. If the debtor resides in Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Missis-
sippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, or West Virginia, except for a metropolitan area listed in clause b of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned dwelling</td>
<td>1,548</td>
<td>1,285</td>
<td>1,396</td>
<td>1,872</td>
<td>2,285</td>
<td>2,917</td>
<td>3,691</td>
<td>5,308</td>
<td>10,059</td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>1,909</td>
<td>1,562</td>
<td>1,738</td>
<td>1,945</td>
<td>2,225</td>
<td>2,230</td>
<td>2,107</td>
<td>1,662</td>
<td>1,215</td>
</tr>
<tr>
<td>Other lodging</td>
<td>225</td>
<td>101</td>
<td>94</td>
<td>207</td>
<td>161</td>
<td>279</td>
<td>275</td>
<td>416</td>
<td>1,060</td>
</tr>
<tr>
<td>Utilities, fuels, and other charges</td>
<td>1,734</td>
<td>1,869</td>
<td>2,098</td>
<td>2,302</td>
<td>2,530</td>
<td>2,683</td>
<td>3,000</td>
<td>3,244</td>
<td>3,939</td>
</tr>
<tr>
<td>Household services</td>
<td>190</td>
<td>336</td>
<td>334</td>
<td>343</td>
<td>476</td>
<td>678</td>
<td>750</td>
<td>755</td>
<td>1,429</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>381</td>
<td>278</td>
<td>296</td>
<td>385</td>
<td>393</td>
<td>526</td>
<td>594</td>
<td>719</td>
<td>905</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>628</td>
<td>519</td>
<td>644</td>
<td>694</td>
<td>788</td>
<td>1,063</td>
<td>1,423</td>
<td>1,767</td>
<td>3,103</td>
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<td>1,318</td>
<td>1,873</td>
<td>3,185</td>
<td>2,633</td>
<td>3,750</td>
<td>4,303</td>
<td>5,063</td>
<td>6,683</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>632</td>
<td>561</td>
<td>705</td>
<td>896</td>
<td>1,065</td>
<td>1,275</td>
<td>1,430</td>
<td>1,640</td>
<td>1,933</td>
</tr>
<tr>
<td>Vehicle maintenance and repairs</td>
<td>292</td>
<td>247</td>
<td>334</td>
<td>421</td>
<td>557</td>
<td>576</td>
<td>650</td>
<td>849</td>
<td>1,100</td>
</tr>
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<td>Vehicle insurance</td>
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<td>294</td>
<td>447</td>
<td>564</td>
<td>698</td>
<td>880</td>
<td>915</td>
<td>1,117</td>
<td>1,340</td>
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<td>89</td>
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<td>186</td>
<td>260</td>
<td>344</td>
<td>522</td>
<td>696</td>
<td></td>
</tr>
<tr>
<td>Public transportation</td>
<td>127</td>
<td>95</td>
<td>122</td>
<td>147</td>
<td>159</td>
<td>194</td>
<td>228</td>
<td>351</td>
<td>377</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned dwelling</td>
<td>1,411</td>
<td>1,413</td>
<td>1,413</td>
<td>1,486</td>
<td>2,349</td>
<td>3,040</td>
<td>3,474</td>
<td>6,146</td>
<td>9,630</td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>1,645</td>
<td>1,687</td>
<td>1,877</td>
<td>1,864</td>
<td>2,374</td>
<td>2,061</td>
<td>2,096</td>
<td>1,628</td>
<td>2,220</td>
</tr>
<tr>
<td>Other lodging</td>
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<td>63</td>
<td>74</td>
<td>239</td>
<td>198</td>
<td>263</td>
<td>278</td>
<td>446</td>
<td>1,119</td>
</tr>
<tr>
<td>Utilities, fuels, and other charges</td>
<td>1,769</td>
<td>1,791</td>
<td>2,065</td>
<td>2,314</td>
<td>2,600</td>
<td>2,693</td>
<td>2,957</td>
<td>3,133</td>
<td>3,864</td>
</tr>
<tr>
<td>Household services</td>
<td>269</td>
<td>278</td>
<td>304</td>
<td>355</td>
<td>407</td>
<td>536</td>
<td>677</td>
<td>858</td>
<td>1,688</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>250</td>
<td>222</td>
<td>277</td>
<td>333</td>
<td>410</td>
<td>478</td>
<td>574</td>
<td>692</td>
<td>930</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>626</td>
<td>465</td>
<td>735</td>
<td>681</td>
<td>906</td>
<td>1,126</td>
<td>1,434</td>
<td>1,903</td>
<td>3,179</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>1,189</td>
<td>1,330</td>
<td>2,490</td>
<td>2,643</td>
<td>2,495</td>
<td>3,809</td>
<td>4,536</td>
<td>6,093</td>
<td>7,541</td>
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<tr>
<td>Gasoline and motor oil</td>
<td>673</td>
<td>541</td>
<td>731</td>
<td>953</td>
<td>1,086</td>
<td>1,342</td>
<td>1,550</td>
<td>1,690</td>
<td>2,060</td>
</tr>
<tr>
<td>Vehicle maintenance and repairs</td>
<td>247</td>
<td>235</td>
<td>380</td>
<td>397</td>
<td>624</td>
<td>640</td>
<td>718</td>
<td>799</td>
<td>1,028</td>
</tr>
<tr>
<td>Vehicle insurance</td>
<td>336</td>
<td>263</td>
<td>406</td>
<td>566</td>
<td>688</td>
<td>852</td>
<td>977</td>
<td>1,050</td>
<td>1,262</td>
</tr>
<tr>
<td>Vehicle lease, license, and other charges</td>
<td>147</td>
<td>77</td>
<td>164</td>
<td>214</td>
<td>493</td>
<td>312</td>
<td>361</td>
<td>566</td>
<td>946</td>
</tr>
<tr>
<td>Public transportation</td>
<td>128</td>
<td>64</td>
<td>110</td>
<td>162</td>
<td>182</td>
<td>228</td>
<td>227</td>
<td>350</td>
<td>772</td>
</tr>
</tbody>
</table>

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Metropolitan Area</th>
<th>Washington, D.C.</th>
<th>Baltimore</th>
<th>Atlanta</th>
<th>Miami</th>
<th>Tampa</th>
<th>Dallas Forth Worth</th>
<th>Houston</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned dwelling</td>
<td>8,252</td>
<td>5,546</td>
<td>6,397</td>
<td>6,321</td>
<td>5,228</td>
<td>5,849</td>
<td>4,951</td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>2,537</td>
<td>2,056</td>
<td>2,175</td>
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<td>599</td>
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<tr>
<td>Utilities, fuels, and public services</td>
<td>2,954</td>
<td>2,671</td>
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<td>598</td>
<td>975</td>
<td>826</td>
<td>992</td>
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<td>626</td>
<td>378</td>
<td>547</td>
<td>374</td>
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<td>582</td>
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<td>Household furnishings and equipment</td>
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<td>1,310</td>
<td>1,138</td>
<td>1,213</td>
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<td>1,643</td>
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</tr>
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<td>1,276</td>
<td>1,316</td>
<td>1,219</td>
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<td>VOLUME 31, NUMBER 1 – JULY 1, 2004</td>
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<td>-----------------------------------</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
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<td>Public transportation</td>
<td>714</td>
<td>313</td>
<td>286</td>
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<td>227</td>
<td>352</td>
<td>494</td>
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<table>
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<tr>
<th>(Washington, D.C.)</th>
<th>Baltimore</th>
<th>Atlanta</th>
<th>Miami</th>
<th>Tampa</th>
<th>Dallas</th>
<th>Fort Worth</th>
<th>Houston</th>
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<td>4,769</td>
<td>5,352</td>
<td>4,676</td>
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<td>1,759</td>
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<td>2,629</td>
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<tr>
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<td>372</td>
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<td>2,947</td>
<td>2,759</td>
<td>3,272</td>
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<td>859</td>
<td>1,049</td>
<td>795</td>
<td>1,076</td>
<td>1,476</td>
</tr>
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<td>342</td>
<td>621</td>
<td>390</td>
<td>603</td>
<td>625</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>2,263</td>
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<td>1,178</td>
<td>1,208</td>
<td>1,156</td>
<td>1,905</td>
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<td>2,723</td>
<td>3,133</td>
<td>6,487</td>
<td>5,623</td>
<td>4,634</td>
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<td>1,268</td>
<td>1,268</td>
<td>1,286</td>
<td>1,220</td>
<td>1,576</td>
<td>1,674</td>
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<td>Other—vehicle—expenses—(repairs, insurance, lease, license, and other charges)</td>
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<td>2,316</td>
<td>2,666</td>
<td>2,305</td>
<td>2,866</td>
<td>2,981</td>
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<td>407</td>
<td>280</td>
<td>365</td>
<td>280</td>
<td>423</td>
<td>476</td>
</tr>
</tbody>
</table>

5.a. If the debtor resides in Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, or Wyoming, except for a metropolitan area listed in clause b of this paragraph, actual annual expenditures by the debtor’s family that exceed the applicable amount for a category, based on the debtor’s available resources, shall be presumed unnecessary.

<table>
<thead>
<tr>
<th>Debtor’s Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
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</thead>
<tbody>
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<td>Annual Expenditures</td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Owned-dwelling</td>
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<td>1,997</td>
<td>2,882</td>
<td>4,238</td>
<td>5,101</td>
<td>7,323</td>
<td>12,826</td>
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<tr>
<td>Rented-dwelling</td>
<td>2,541</td>
<td>2,682</td>
<td>2,957</td>
<td>3,660</td>
<td>3,410</td>
<td>3,475</td>
<td>3,565</td>
<td>3,137</td>
<td>2,684</td>
</tr>
<tr>
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<td>237</td>
<td>250</td>
<td>248</td>
<td>302</td>
<td>272</td>
<td>305</td>
<td>476</td>
<td>1,287</td>
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<tr>
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<td>1,724</td>
<td>1,775</td>
<td>2,053</td>
<td>2,302</td>
<td>2,491</td>
<td>2,933</td>
<td>3,573</td>
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<td>264</td>
<td>354</td>
<td>306</td>
<td>492</td>
<td>532</td>
<td>637</td>
<td>769</td>
<td>1,683</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
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<td>319</td>
<td>343</td>
<td>386</td>
<td>476</td>
<td>476</td>
<td>586</td>
<td>690</td>
<td>837</td>
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<td>700</td>
<td>790</td>
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<td>1,344</td>
<td>1,233</td>
<td>1,889</td>
<td>3,907</td>
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<td>2,749</td>
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<td>4,413</td>
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<td>6,422</td>
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<tr>
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<td>1,378</td>
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<td>1,711</td>
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<td>378</td>
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<td>729</td>
<td>753</td>
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<td>891</td>
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<td>Vehicle lease, license, and other charges</td>
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<td>162</td>
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<td>280</td>
<td>363</td>
<td>504</td>
<td>776</td>
<td>1,189</td>
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<tr>
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<td>208</td>
<td>266</td>
<td>252</td>
<td>356</td>
<td>315</td>
<td>572</td>
<td>922</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Debtor’s Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Expenditures</td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Owned-dwelling</td>
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<td>1,973</td>
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<td>4,172</td>
<td>4,977</td>
<td>7,273</td>
<td>12,261</td>
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<td>3,392</td>
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<td>3,548</td>
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<td>255</td>
<td>238</td>
<td>262</td>
<td>465</td>
<td>1,206</td>
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<td>1,950</td>
<td>2,346</td>
<td>2,451</td>
<td>2,776</td>
<td>3,347</td>
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<td>404</td>
<td>462</td>
<td>634</td>
<td>832</td>
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<td>332</td>
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<td>392</td>
<td>621</td>
<td>599</td>
<td>666</td>
<td>900</td>
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<tr>
<td>Household furnishings and equipment</td>
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<td>860</td>
<td>720</td>
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<td>1,273</td>
<td>1,598</td>
<td>2,440</td>
<td>4,113</td>
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<td>2,666</td>
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<td>4,661</td>
<td>4,080</td>
<td>6,692</td>
</tr>
<tr>
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<td>684</td>
<td>822</td>
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<td>1,562</td>
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VOLUME 31, NUMBER 1 – JULY 1, 2004

<table>
<thead>
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<th>Departments</th>
<th>Los Angeles</th>
<th>San Francisco</th>
<th>San Diego</th>
<th>Portland</th>
<th>Seattle</th>
<th>Honolulu</th>
<th>Anchorage</th>
<th>Phoenix</th>
<th>Denver</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vehicle maintenance and repairs</td>
<td>302</td>
<td>403</td>
<td>492</td>
<td>660</td>
<td>683</td>
<td>726</td>
<td>865</td>
<td>941</td>
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<td>550</td>
<td>731</td>
<td>859</td>
<td>936</td>
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<td>1,338</td>
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<td>228</td>
<td>203</td>
<td>241</td>
<td>319</td>
<td>403</td>
<td>689</td>
<td>865</td>
<td>1,377</td>
</tr>
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<td>265</td>
<td>292</td>
<td>255</td>
<td>323</td>
<td>328</td>
<td>565</td>
<td>1,030</td>
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</tbody>
</table>

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor’s family that exceed the applicable amount for a category shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Categories</th>
<th>Los Angeles</th>
<th>San Francisco</th>
<th>San Diego</th>
<th>Portland</th>
<th>Seattle</th>
<th>Honolulu</th>
<th>Anchorage</th>
<th>Phoenix</th>
<th>Denver</th>
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<td>6,883</td>
<td>6,180</td>
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<td>6,323</td>
<td>4,912</td>
<td>6,708</td>
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<td>4,030</td>
<td>3,699</td>
<td>2,857</td>
<td>3,410</td>
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<tr>
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<td>700</td>
<td>443</td>
<td>614</td>
<td>647</td>
<td>630</td>
<td>607</td>
<td>548</td>
<td>472</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
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<td>2,454</td>
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<td>2,753</td>
<td>2,200</td>
<td>2,656</td>
<td>2,659</td>
<td>2,626</td>
</tr>
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<td>800</td>
<td>569</td>
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<td>514</td>
<td>429</td>
<td>377</td>
<td>572</td>
<td>567</td>
<td>592</td>
<td>550</td>
<td>584</td>
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<td>1,402</td>
<td>2,472</td>
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<td>Vehicle purchases (net outlay)</td>
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<td>3,962</td>
<td>3,424</td>
<td>2,673</td>
<td>4,424</td>
<td>3,040</td>
<td>5,242</td>
<td>3,632</td>
<td>4,676</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>1,475</td>
<td>1,472</td>
<td>1,335</td>
<td>1,235</td>
<td>1,392</td>
<td>1,124</td>
<td>1,455</td>
<td>1,253</td>
<td>1,297</td>
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<td>3,337</td>
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<td>3,211</td>
<td>2,876</td>
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<tr>
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<td>828</td>
<td>404</td>
<td>570</td>
<td>528</td>
<td>873</td>
<td>953</td>
<td>436</td>
<td>503</td>
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</table>

<table>
<thead>
<tr>
<th>Categories</th>
<th>Los Angeles</th>
<th>San Francisco</th>
<th>San Diego</th>
<th>Portland</th>
<th>Seattle</th>
<th>Honolulu</th>
<th>Anchorage</th>
<th>Phoenix</th>
<th>Denver</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned dwelling</td>
<td>6,591</td>
<td>8,351</td>
<td>6,949</td>
<td>6,366</td>
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<td>5,911</td>
<td>4,887</td>
<td>6,300</td>
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<tr>
<td>Rented dwelling</td>
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<td>3,986</td>
<td>3,806</td>
<td>2,450</td>
<td>3,243</td>
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<tr>
<td>Other lodging</td>
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<td>567</td>
<td>670</td>
<td>509</td>
<td>760</td>
<td>644</td>
<td>472</td>
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<td>Utilities, fuels, and public services</td>
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<td>2,648</td>
<td>2,293</td>
<td>2,421</td>
<td>2,497</td>
<td>2,182</td>
<td>2,487</td>
<td>2,641</td>
<td>2,518</td>
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<td>775</td>
<td>761</td>
<td>647</td>
<td>888</td>
<td>631</td>
<td>675</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>468</td>
<td>575</td>
<td>415</td>
<td>420</td>
<td>644</td>
<td>539</td>
<td>644</td>
<td>529</td>
<td>550</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>2,080</td>
<td>2,494</td>
<td>1,638</td>
<td>2,138</td>
<td>1,850</td>
<td>1,076</td>
<td>2,576</td>
<td>1,681</td>
<td>2,330</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>3,062</td>
<td>4,206</td>
<td>4,836</td>
<td>2,642</td>
<td>4,104</td>
<td>2,329</td>
<td>4,115</td>
<td>4,105</td>
<td>3,270</td>
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<tr>
<td>Gasoline and motor oil</td>
<td>1,526</td>
<td>1,619</td>
<td>1,393</td>
<td>1,306</td>
<td>1,476</td>
<td>4,176</td>
<td>4,168</td>
<td>1,257</td>
<td>4,279</td>
</tr>
<tr>
<td>Other vehicle expenses (repairs, insurance, lease, license, and other charges)</td>
<td>2,988</td>
<td>2,834</td>
<td>2,438</td>
<td>2,493</td>
<td>3,232</td>
<td>2,103</td>
<td>3,137</td>
<td>2,975</td>
<td>3,278</td>
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<tr>
<td>Public transportation</td>
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<td>575</td>
<td>660</td>
<td>915</td>
<td>1,064</td>
<td>573</td>
<td>632</td>
</tr>
</tbody>
</table>

6. If the debtor is the only member of the household, actual annual expenditures by the debtor’s family that exceed the applicable amount for a category, based on the debtor’s available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food</td>
<td>2,352</td>
<td>2,185</td>
<td>2,449</td>
<td>2,633</td>
<td>2,928</td>
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<td>3,848</td>
<td>4,187</td>
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<td>590</td>
<td>796</td>
<td>847</td>
<td>1,138</td>
<td>1,409</td>
<td>1,618</td>
<td>2,354</td>
</tr>
<tr>
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<td>311</td>
<td>611</td>
<td>927</td>
<td>907</td>
<td>789</td>
<td>711</td>
<td>691</td>
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<td>938</td>
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<tr>
<td>Medical services</td>
<td>168</td>
<td>129</td>
<td>283</td>
<td>341</td>
<td>331</td>
<td>400</td>
<td>487</td>
<td>484</td>
<td>943</td>
</tr>
<tr>
<td>Prescription drugs</td>
<td>184</td>
<td>336</td>
<td>582</td>
<td>481</td>
<td>390</td>
<td>280</td>
<td>318</td>
<td>235</td>
<td>316</td>
</tr>
<tr>
<td>Medical supplies</td>
<td>32</td>
<td>45</td>
<td>104</td>
<td>65</td>
<td>71</td>
<td>102</td>
<td>67</td>
<td>104</td>
<td>98</td>
</tr>
<tr>
<td>Personal care products and services</td>
<td>231</td>
<td>203</td>
<td>278</td>
<td>302</td>
<td>314</td>
<td>454</td>
<td>483</td>
<td>443</td>
<td>467</td>
</tr>
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### VOLUME 31, NUMBER 1 – JULY 1, 2004

<table>
<thead>
<tr>
<th>Education</th>
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<th>322</th>
<th>404</th>
<th>266</th>
<th>338</th>
<th>426</th>
<th>360</th>
<th>692</th>
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<tbody>
<tr>
<td>Life and other personal insurance</td>
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<td>120</td>
<td>145</td>
<td>295</td>
<td>180</td>
<td>199</td>
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<table>
<thead>
<tr>
<th>(Debtor's Available Resources)</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
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</thead>
<tbody>
<tr>
<td>Food</td>
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<td>2,377</td>
<td>2,544</td>
<td>2,862</td>
<td>3,544</td>
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<td>568</td>
<td>820</td>
<td>834</td>
<td>1,394</td>
<td>1,469</td>
<td>1,669</td>
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<td>774</td>
<td>733</td>
<td>661</td>
<td>635</td>
<td>662</td>
<td>876</td>
</tr>
<tr>
<td>Medical services</td>
<td>184</td>
<td>195</td>
<td>421</td>
<td>407</td>
<td>397</td>
<td>408</td>
<td>469</td>
<td>638</td>
<td>865</td>
</tr>
<tr>
<td>Prescription drugs</td>
<td>143</td>
<td>395</td>
<td>602</td>
<td>410</td>
<td>360</td>
<td>260</td>
<td>301</td>
<td>227</td>
<td>314</td>
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<tr>
<td>Medical supplies</td>
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<td>65</td>
<td>92</td>
<td>444</td>
</tr>
<tr>
<td>Personal care products &amp; services</td>
<td>223</td>
<td>224</td>
<td>274</td>
<td>308</td>
<td>360</td>
<td>494</td>
<td>458</td>
<td>465</td>
<td>612</td>
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<td>498</td>
<td>262</td>
<td>299</td>
<td>233</td>
<td>266</td>
<td>296</td>
<td>394</td>
<td>730</td>
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<tr>
<td>Life and other personal insurance</td>
<td>68</td>
<td>99</td>
<td>93</td>
<td>312</td>
<td>166</td>
<td>185</td>
<td>181</td>
<td>229</td>
<td>663</td>
</tr>
</tbody>
</table>

7. If the debtor's household consists of two (2) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Expenditures</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Food</td>
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<td>3,554</td>
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<td>4,816</td>
<td>4,991</td>
<td>5,528</td>
<td>6,347</td>
<td>7,847</td>
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<td>1,624</td>
<td>1,588</td>
<td>1,498</td>
<td>1,410</td>
<td>1,410</td>
</tr>
<tr>
<td>Medical services</td>
<td>900</td>
<td>474</td>
<td>431</td>
<td>588</td>
<td>611</td>
<td>708</td>
<td>777</td>
<td>801</td>
<td>982</td>
</tr>
<tr>
<td>Prescription drugs</td>
<td>421</td>
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<td>710</td>
<td>932</td>
<td>875</td>
<td>731</td>
<td>970</td>
<td>597</td>
<td>555</td>
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<td>142</td>
<td>136</td>
<td>192</td>
<td>134</td>
<td>162</td>
</tr>
<tr>
<td>Personal care products &amp; services</td>
<td>413</td>
<td>341</td>
<td>315</td>
<td>385</td>
<td>469</td>
<td>509</td>
<td>580</td>
<td>630</td>
<td>801</td>
</tr>
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<td>Education</td>
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<td>362</td>
<td>324</td>
<td>293</td>
<td>387</td>
<td>503</td>
<td>928</td>
</tr>
<tr>
<td>Life and other personal insurance</td>
<td>387</td>
<td>191</td>
<td>444</td>
<td>249</td>
<td>325</td>
<td>434</td>
<td>481</td>
<td>593</td>
<td>827</td>
</tr>
</tbody>
</table>

8. If the debtor's household consists of three (3) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Expenditures</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Food</td>
<td>3,468</td>
<td>3,662</td>
<td>3,390</td>
<td>3,891</td>
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<td>5,089</td>
<td>5,792</td>
<td>6,556</td>
<td>7,760</td>
</tr>
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<td>883</td>
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<td>1,033</td>
<td>1,375</td>
<td>1,757</td>
<td>1,983</td>
<td>3,478</td>
</tr>
<tr>
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<td>903</td>
<td>1,156</td>
<td>1,620</td>
<td>1,479</td>
<td>1,445</td>
<td>1,323</td>
<td>1,300</td>
<td>1,264</td>
</tr>
<tr>
<td>Medical services</td>
<td>764</td>
<td>560</td>
<td>350</td>
<td>620</td>
<td>543</td>
<td>689</td>
<td>705</td>
<td>749</td>
<td>994</td>
</tr>
<tr>
<td>Prescription drugs</td>
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<td>360</td>
<td>704</td>
<td>976</td>
<td>766</td>
<td>640</td>
<td>582</td>
<td>534</td>
<td>622</td>
</tr>
<tr>
<td>Medical supplies</td>
<td>138</td>
<td>60</td>
<td>90</td>
<td>136</td>
<td>126</td>
<td>129</td>
<td>182</td>
<td>145</td>
<td>173</td>
</tr>
<tr>
<td>Personal care products &amp; services</td>
<td>432</td>
<td>333</td>
<td>326</td>
<td>411</td>
<td>484</td>
<td>641</td>
<td>620</td>
<td>664</td>
<td>819</td>
</tr>
<tr>
<td>Education</td>
<td>419</td>
<td>284</td>
<td>332</td>
<td>363</td>
<td>260</td>
<td>346</td>
<td>383</td>
<td>802</td>
<td>683</td>
</tr>
<tr>
<td>Life and other personal insurance</td>
<td>423</td>
<td>180</td>
<td>459</td>
<td>272</td>
<td>412</td>
<td>469</td>
<td>470</td>
<td>590</td>
<td>802</td>
</tr>
</tbody>
</table>

- 125 -
9. If the debtor's household consists of four (4) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debitor's Available Resources</th>
<th>Less than $10,000</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food</td>
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<td>4,815</td>
<td>5,076</td>
<td>5,355</td>
<td>5,622</td>
<td>5,898</td>
<td>6,174</td>
<td>6,450</td>
</tr>
<tr>
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<td>3,520</td>
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<td>668</td>
<td>752</td>
<td>836</td>
<td>920</td>
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<td>Medical services</td>
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<td>218</td>
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<td>265</td>
<td>289</td>
<td>313</td>
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<td>361</td>
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<tr>
<td>Prescription drugs</td>
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<td>224</td>
<td>238</td>
<td>252</td>
<td>266</td>
<td>280</td>
<td>294</td>
</tr>
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<td>Medical supplies</td>
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<td>37</td>
<td>37</td>
<td>37</td>
<td>37</td>
<td>37</td>
<td>37</td>
</tr>
<tr>
<td>Personal care products and services</td>
<td>152</td>
<td>182</td>
<td>212</td>
<td>242</td>
<td>272</td>
<td>302</td>
<td>332</td>
<td>362</td>
</tr>
<tr>
<td>Education</td>
<td>192</td>
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<td>95</td>
<td>45</td>
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<td>5</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Life and other personal insurance</td>
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<td>266</td>
<td>284</td>
<td>304</td>
<td>324</td>
<td>344</td>
<td>364</td>
<td>384</td>
</tr>
</tbody>
</table>

10. If the debtor's household consists of five (5) or more persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debitor's Available Resources</th>
<th>Less than $10,000</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food</td>
<td>6,000</td>
<td>6,773</td>
<td>4,667</td>
<td>6,590</td>
<td>6,888</td>
<td>7,952</td>
<td>7,648</td>
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<tr>
<td>Apparel</td>
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<td>1,992</td>
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<td>2,664</td>
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<td>407</td>
<td>683</td>
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<td>1,165</td>
<td>1,202</td>
<td>1,319</td>
</tr>
<tr>
<td>Medical services</td>
<td>240</td>
<td>263</td>
<td>221</td>
<td>414</td>
<td>448</td>
<td>669</td>
<td>712</td>
<td>928</td>
</tr>
<tr>
<td>Prescription drugs</td>
<td>165</td>
<td>279</td>
<td>268</td>
<td>384</td>
<td>389</td>
<td>402</td>
<td>351</td>
<td>440</td>
</tr>
<tr>
<td>Medical supplies</td>
<td>26</td>
<td>31</td>
<td>31</td>
<td>60</td>
<td>87</td>
<td>86</td>
<td>108</td>
<td>161</td>
</tr>
<tr>
<td>Personal care products and services</td>
<td>568</td>
<td>453</td>
<td>460</td>
<td>521</td>
<td>487</td>
<td>674</td>
<td>714</td>
<td>933</td>
</tr>
<tr>
<td>Education</td>
<td>470</td>
<td>364</td>
<td>482</td>
<td>350</td>
<td>467</td>
<td>504</td>
<td>536</td>
<td>1,069</td>
</tr>
<tr>
<td>Life and other personal insurance</td>
<td>260</td>
<td>314</td>
<td>176</td>
<td>320</td>
<td>365</td>
<td>370</td>
<td>497</td>
<td>961</td>
</tr>
</tbody>
</table>
Section 5. (1) An administrative order issued by the authority to withhold disposable pay shall be served upon the debtor's employer personally or by mail. A notice of the issuance of the order shall be provided to the debtor by regular first class mail. The order shall require the withholding and delivery to the authority of not more than ten (10) percent of the debtor's disposable pay, except that a greater percentage may be deducted upon the written consent of the debtor.

(2) The order shall state the amount or percentage to be withheld and the amount of the debt, the statutory and regulatory basis therefore, and the time withholding is to begin.

(3) The order shall continue to operate until the debt is paid in full with interest accrued and accruing thereon at the prescribed rate in the promissory note or applicable law and collection costs that may be charged to the borrower under the promissory note or applicable law. The order shall have the same priority as provided to a judicially ordered garnishment prescribed in KRS 425.508.

(4) An employer who has been served with an administrative order for withholding of earnings shall answer the order within twenty (20) days, and shall provide a copy to the debtor the first time that withholding occurs and each time thereafter that a different amount is withheld. The employer shall be liable to the authority for a lawfully due amount which the employer fails to withhold from disposable pay due the debtor following receipt of the order, plus attorneys' fees, costs, and, in the discretion of a court of competent jurisdiction, punitive damages.

(5) A withholding under this section shall not be grounds for discharge from employment, refusal to employ or disciplinary action against an employee subject to withholding under this section.

(6) The employer shall have no liability or further responsibility after properly, completely, and timely fulfilling the duties under this section.

Section 6. (1) Whenever this administrative regulation requires delivery of a notice, subpoena, or other communication by personal service, the service shall be made by:

(a) An officer authorized under KRS 454.140 to serve process; or

(b) A person over the age of eighteen (18) years of age, who shall prove service by affidavit or by the signature of the person being served.

(2) Receipt of a notice or other communication by the debtor shall be rebuttably presumed if the person to be served or another adult with apparent authority at the place of residence or employment last known to the authority signs a receipt or refuses to accept the notice or communication after identification and offer of delivery to the person so refusing.

(3) For an administrative order to withhold disposable pay served upon an employer, receipt shall be rebuttably presumed if:

(a) The person to whom the order is directed signs or refuses to sign a receipt; or

(b) His employee or agent with apparent authority signs or refuses to sign a receipt.

MARCIA CARPENTER, Chair
APPROVED BY AGENCY: May 25, 2004
FILED WITH LRC: June 15, 2004 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, July 22, 2004 at 10 a.m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Thursday, July 15, 2004, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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. Written comments shall be accepted until Monday, August 2, 2004. 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: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 566-7290, fax (502) 566-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Richard F. Casey, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the procedures to be followed by the authority in garnishing a defaulted student loan borrower's wages for payment of the borrower's student loan debt as well as the procedures for a borrower to request a hearing on a garnishment and procedures for contesting that hearing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the requirements of the Higher Education Act of 1965, as amended, and its accompanying regulations regarding the collection of defaulted student loan debts.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes permit the authority to collect defaulted student loan debts through administrative wage garnishment and to conduct administrative hearings relating to the wage garnishment.

(d) How this administrative regulation currently assists or will assist in the effective administration of the regulations: This administrative regulation assists in the effective administration of the statutes by setting forth the procedures to be followed during the administrative wage garnishment process as well as the hearing process.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will reflect the current poverty level and consumer expenditure figures published by the federal government.

(b) The necessity of the amendment to this administrative regulation: Current poverty level and consumer expenditure figures are necessary to assure a current and accurate standard for determining the validity of a claim of extreme financial hardship.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms with the requirements of federal and state law that the
authority promulgate regulations establishing the procedures for the conduct of hearings regarding administrative wage garnishment by the authority. (d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by establishing an objective standard for extreme financial hardship that will be based on current economic data as established by the federal government. (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Student loan borrowers that have defaulted on their repayment obligations, whose wages are otherwise eligible for administrative wage garnishment and who are claiming that such garnishment will cause them extreme financial hardship. During FY 2002-2003 approximately 1,186 notices of wage garnishment were sent and received by student loan borrowers. During the same period, 24 of those student loan borrowers requested a hearing regarding the wage garnishment. Of the 24 hearing requests, 17 hearings were requested on the grounds of extreme financial hardship. (4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Upon notice of the Authority's intent to issue an administrative wage garnishment, a student loan borrower contesting the garnishment and asserting a claim of extreme financial hardship will submit financial data to be evaluated in comparison to the data contained in the administrative regulation. Expenditures reported by the borrower which exceed the amounts specified in the administrative regulation will be presumed to be unnecessary. Thus, the most recent figures relating to consumer expenditures must be utilized in the administrative regulation. (5) Provide an estimate of how much it will cost to implement this administrative regulation: (a) Initially: There are no costs to student loan borrowers associated with the implementation of the amendment to this administrative regulation. Forms for requesting a hearing and for providing extreme financial hardship are provided to the borrowers at no cost to the borrower. The authority bears any costs associated with the request for hearing. (b) On a continuing basis: Same as (5)(a) above. (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The authority maintains a federally-restricted trust fund pursuant to 20 U.S.C.S. Section 1072b for operation of the insured student loan program. (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees is necessary for the implementation of the amendment to this administrative regulation. The amendment to this administrative regulation merely adopts the most recent economic standards, as determined by the federal government, for evaluating a student loan borrower's assertion that administrative wage garnishment will create an extreme financial hardship. (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The administrative regulation neither establishes any fees nor directly or indirectly increases any fees. (9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Section 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Cite the federal statute or regulation constituting the federal mandate. 34 C.F.R. 862.410(b)(10), 20 U.S.C.S. 1095a
2. State in sufficient detail the state compliance standards. This regulation provides for the garnishment of the disposable pay of a borrower who has defaulted in making payments on a loan guaranteed pursuant to Title IV, Part E, of the federal act and procedures for requesting and conducting a hearing related to the garnishment of the disposable pay. At least 30 days before the initiation of garnishment proceedings, the authority shall mail to the borrower's last known address, a written notice of the nature and amount of the debt, the intention of the authority to initiate proceedings to collect the debt through deductions from the borrower's pay, and an explanation of the borrower's rights. In the absence of evidence to the contrary, a borrower shall be considered to have received the notice 5 days after it was mailed by the authority. The authority shall offer the borrower an opportunity to inspect and copy authority records related to the debt and an opportunity to enter into a written repayment agreement with the authority under terms agreeable to the authority. The authority shall offer the borrower an opportunity for a hearing concerning the existence or the amount of the debt and the terms of the repayment schedule under the garnishment order. The authority shall provide a hearing, which, at the borrower's option, may be oral or written, if the borrower submits a written request for such a hearing. The time and location of the hearing shall be established by the authority. An oral hearing may, at the borrower's option, be conducted either in person or by telephone conference. The authority shall provide a hearing to the borrower in a reasonable time to permit a decision, in accordance with the procedures prescribed in the administrative regulation, to be rendered within 60 days after the authority's receipt of the borrower's hearing request. The hearing official appointed by the authority to conduct the hearing may not be under the supervision or control of the head of the authority. The hearing official shall issue a final written decision. If the borrower's written request is received by the authority on or before the 15th day following the borrower's receipt of the notice of the nature and amount of the debt, the intention of the authority to initiate proceedings, and an explanation of the borrower's rights, the authority may not issue a withholding order until the borrower has been provided the requested hearing. If the borrower's written request is received by the authority after the 15th day following the borrower's receipt of the notice, the authority shall provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures prescribed in the administrative regulation, may be rendered within 60 days, but shall not delay issuance of a withholding order. This administrative regulation further provides that if the debtor does not submit a completed income tax return within a reasonable time, he has not met his burden of substantiating his case. Additionally, if a defense has previously been raised and refuted by the authority, then the hearing officer must give deference to a prior decision of the authority. Also, if the debtor is raising for the first time in the administrative wage garnishment hearing a defense that should have been raised at the point of default or some prior action, then the debtor shall be deemed to have not exhausted his available remedies, and the hearing officer may stay the hearing pending consideration of the dispute through the appropriate remedy. Finally, the administrative regulation provides the hearing officer with guidelines to follow which allow him to consistently construe and apply the concept of "extreme financial hardship." In order to prove "extreme financial hardship," a debtor must show, if his income is above the poverty level, that his expenses are necessary to the health, safety, or continued employment of the debtor. If the expenses of the debtor exceed the standards derived from data published by the Bureau of Labor Statistics, then the excess expenses are presumed unnecessary and are not considered in the determination unless the debtor can demonstrate that the expenses are necessitated as the result of extraordinary circumstances beyond his control, such as the cost of unreimbursed medical care.

The final decision of the hearing officer may be appealed to and reviewed by the authority board on request of either party. An appeal from the hearing officer's decision shall follow the standard that the board shall uphold the hearing officer's decision unless it is clearly unsupported by the evidence. The authority may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been reemployed continuously for at least 12 months.
Unless the authority receives information that the authority believes justifies a delay or cancellation of the withholding order, it shall send a withholding order to the employer within 20 days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within 20 days after a final decision is made by the authority to proceed with garnishment.

The employer shall deduct and pay to the authority from a borrower’s wages an amount that does not exceed the lesser of 10 percent of the borrower’s disposable pay for each pay period or the amount permitted by 15 U.S.C. 1673, unless the borrower provides the authority with written consent to deduct a greater amount.

3. State in sufficient detail the minimum or uniform standards contained in the federal mandate. The federal statute and regulation require the authority, as the designated state guarantee authority, to ensure by adoption of standards, policies and procedures that a borrower has an opportunity for a hearing, which, to the borrower’s existence, may be oral or written, of the debt and that the regulations and procedures for such a hearing meet the requirements of the applicable federal statute (20 U.S.C.S. 1095a) and the applicable federal regulation (34 C.F.R. 682.410(b)(10)).

Specifically, the statute and regulation require that in order to issue an administrative order of wage garnishment under the authority of the federal statute:

At least 30 days before the initiation of garnishment proceedings, the authority shall mail to the borrower’s last known address, a written notice of the nature and amount of the debt, the intention of the authority to initiate proceedings to collect the debt through deductions from the borrower’s pay, and an explanation of the borrower’s rights. In the absence of evidence to the contrary, a borrower shall be considered to have received the notice 5 days after it was mailed by the authority. The authority shall offer the borrower an opportunity to inspect and copy authority records related to the debt and an opportunity to enter into a written repayment agreement with the authority under terms agreeable to the authority.

The authority shall offer the borrower an opportunity for a hearing concerning the existence or the amount of the debt and the terms of the repayment schedule under the garnishment order. The authority shall provide a hearing, which, to the borrower’s option, may be oral or written, if the borrower submits a written request for such a hearing. The time and location of the hearing shall be established by the authority. An oral hearing may, at the borrower’s option, be conducted either in person or by telephone conference. The authority shall provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures that the authority may prescribe, to be rendered within 60 days after the authority’s receipt of the borrower’s hearing request. The hearing official appointed by the authority to conduct the hearing may not be under the supervision or control of the head of the authority. The hearing official shall issue a final written decision.

If the borrower’s written request is received by the authority on or before the 15th day following the borrower’s receipt of the notice of the nature and amount of the debt and an explanation of the borrower’s rights, the authority may not issue a withholding order until the borrower has been provided the requested hearing. If the borrower’s written request is received by the authority after the 15th day following the borrower’s receipt of the notice, the authority shall provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures that the authority may prescribe, may be rendered within 60 days, but shall not delay issuance of a withholding order.

The authority may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been re-employed continuously for at least 12 months. Unless the authority receives information that the authority believes justifies a delay or cancellation of the withholding order, it shall send a withholding order to the employer within 20 days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within 20 days after a final decision is made by the authority to proceed with garnishment.

The employer shall deduct and pay to the authority from a borrower’s wages an amount that does not exceed the lesser of 10 percent of the borrower’s disposable pay for each pay period or the amount permitted by 15 U.S.C. 1673, unless the borrower provides the authority with written consent to deduct a greater amount.

The final decision of the hearing officer may be appealed to and reviewed by the authority board on request of either party. An appeal from the hearing officer’s decision shall follow the standard that the board shall uphold the hearing officer’s decision unless it is clearly unsupported by the evidence.

For each state requirement that is stricter than the federal mandate, the authority shall certify the justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no requirements in this administrative regulation that are stricter than the federal mandate.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 4:020. Disapproval, assessment of liabilities, limitation, suspension or termination of eligibility to participate in authority programs.

RELATES TO: KRS 164.746(6), 164.748(13), (14), 34 C.F.R. 682.401(b)(10)(1)(C), 20 U.S.C. 1078(b)(1)(T), (U), 1082(b)(2).
VOLUME 31, NUMBER 1 – JULY 1, 2004

STATUTORY AUTHORITY: KRS 164.748(4), 34 C.F.R. 682.401(b)(10)(i)(C), 20 U.S.C. 1078(b)(1)(T), (U),

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) and (6) authorize the authority [The Kentucky Higher Education Authority, an agency of the state of Kentucky], and the authority [The authority] directs the board to administer programs to provide financial assistance to students to attend postsecondary institutions.

The authority is empowered to enter into contracts with eligible educational institutions and lenders to provide for administration of student financial assistance programs [for participation in these programs] and KRS 164.748(13) authorizes the authority to take actions to approve, disapprove, limit, suspend, or terminate participation. KRS 164.748(6) requires the authority to adopt administrative regulations in connection with administration of the authority's programs [businesses and to appoint officers and employees and prescribing their duties. This administrative regulation prescribes the ministerial functions of authority officers and sets forth the conditions and procedures under which the authority or its delegated officers may initiate action to assess liabilities, withhold funds under emergency, or disapprove, limit, suspend, or terminate participation of eligible educational institutions or eligible lenders in any or essential financial assistance programs administered by the authority. Federal statutes, 20 U.S.C. 1078(b)(1)(T) and (U), and regulations, 34 C.F.R. 682.401(b)(10)(i)(C), governing the authority's insured student loan program, require the authority to establish, disseminate, and enforce criteria, rules, or administrative regulations which are substantially the same as substantive regulations with respect to emergency action, limitation, suspension, or termination issued by the secretary. This administrative regulation establishes the ministerial functions of authority officers and the conditions and procedures under which the authority or its delegated officers may initiate action to assess liabilities, withhold funds under emergency, or disapprove, limit, suspend, or terminate the participation of eligible educational institutions or eligible lenders in any of the student financial assistance programs administered by the authority [businesses and to appoint officers and employees and prescribing their duties. This amendment applies uniform standards and procedures to all of the authority's programs].

Section 1. Definitions. (1) "Authority" is defined [The definition of the term "authority" is governed by KRS 164.740(1)].

(2) "Authority programs" means a program of student financial assistance administered or funded by the authority pursuant to KRS 164.740 through 164.785 or the federal act.

(3) "Board" is defined [The definition of the term "board" is governed by KRS 164.740(2)].

(4) "Delegated officer" means the executive director, general counsel, chief operating officer [directors of the divisions of program administration and fiscal affairs], or any other individual the board may designate to whom the board has delegated ministerial responsibilities set forth in this administrative regulation.

(5) "Eligible institution" is defined [The definition of the term "eligible institution" is governed by KRS 164.740(5)].

(6) "Eligible lender" is defined [The definition of the term "eligible lender" is governed by KRS 164.740(6)].

(7) "Federal act" is defined [The definition of the term "federal act" is governed by KRS 164.740(9)].

(8) "The term "Funds" means any money, commitments to provide money, and commitments of insurance under any [or all authority program programs].

(9) "Insured student loan" is defined [The definition of "insured student loan" is governed by KRS 164.740(12)].

(10) "The term "Limitation" means:

(a) A limit on the number or percentage of students enrolled or planning to enroll in a participating institution who may receive funds through an authority program;

(b) A limit, for a stated period of time, on the percentage of a participating institution's total receipts from tuition and fees derived from authority program funds;

(c) A requirement that an institution that is already participating obtain a bond, in a specified amount, to assure its ability to meet its financial obligations to students, lenders and the authority funds;

(d) A limit on the number or amount of insured loans that may be made or held by a participating lender or that may be received by students at a participating institution; or

(e) Any special conditions or procedures required in the administration of authority programs.

(11) "Participating institution" is defined [The definition of "participating institution" is governed by KRS 164.740(15)].

(12) "Participating lender" is defined [The definition of "participating lender" is governed by KRS 164.740(16)].

(13) "Secretary" is defined [The definition of "secretary" is governed by KRS 164.740(20)].

Section 2. Standard of Conduct. (A) A participating institution shall establish and consistently implement policies and procedures to ensure that:

(a) The institution fully and continuously complies with all statutory, regulatory, and contractual requirements related to the administration of authority programs and performs all duties and responsibilities to:

1. Students; [___]

2. Participating lenders; [___]

3. The authority; [___] and [___]

4. If applicable to participation in an authority program, the secretary;

(b) The institution makes full and accurate representations of facts required to be reported or disclosed or voluntarily disclosed to:

1. Students; [___]

2. Participating lenders; [___]

3. The authority; [___] and [___]

4. If applicable to participation in an authority program, the secretary;

(c) The institution disburses holds, and accounts for funds administered through any authority program with the standard of care and diligence of a fiduciary;

(d) The institution makes [does not fail to make] timely refunds to students as required by administrative regulations issued by the secretary or satisfies, [fail to satisfy] within thirty (30) days of issuance, a final judgment attained by a student seeking [seek] a refund;

(e) Neither the institution owner, director, or officer of the institution is found guilty in any criminal, civil, or administrative proceeding or liable in any civil or administrative proceeding regarding the obtaining, maintenance, or disbursement of state or federal grant, loan or work assistance funds; and

(f) Neither the institution or an owner, director, or officer of the institution has unpaid financial liabilities involving the improper acquisition, expenditure, or refund of state or federal financial assistance funds.

(2) A participating lender in the authority's insured student loan program shall establish and consistently implement policies and procedures to ensure that it:

(a) Fully and continuously complies with all statutory, regulatory, and contractual requirements related to the administration of authority programs and performs all duties and responsibilities to:

1. Students; [___]

2. The authority; [___] and [___]

3. The secretary;

(b) Performs directly, or by contract with a third party servicer, due diligence in the approval, making, servicing and collection of authority insured student loans and in the timely and accurate filing of insurance claims on those loans;

(c) Makes full and accurate representations of facts required to be reported or disclosed or voluntarily disclosed to:

1. Students; [___]

2. The authority; [___] and [___]

3. The secretary;

(3) A participating institution and a participating lender shall establish, maintain, and make accessible to the authority, and if applicable to participation in an authority program, to the secretary a system of complete and accurate records sufficient to demonstrate:

(a) Compliance with all statutory, regulatory, and contractual requirements related to the administration of authority programs and the performance of all duties and responsibilities to:

1. Students; [___]

2. The authority; [___] and [___]

3. If applicable to participation in an authority program, the secretary;

(b) Full and accurate disclosure of facts required to be reported
or disclosed or voluntarily disclosed to:
1. Students;
2. The authority; and
3. If applicable to participation in an authority program, the secretary; and
(c) Proper and timely disposition of funds and administration of authority programs.

(4) Noncompliance with the standard of conduct in this section by an eligible institution or an eligible lender shall be grounds for disapproval or limitation of participation and noncompliance with the standard of conduct by a participating institution or a participating lender shall be grounds for [disapproval] assessment of liabilities, limitation, suspension, or termination. The delegated officer may, upon receipt of a complaint or other reliable information indicating that a participant may be in violation of applicable laws, administrative regulations, special arrangements, agreements, or limitations, without restricting the availability of other remedies provided in this administrative regulation, give the participant an opportunity to respond to the complaint or information and show that the violation has been corrected or submit an acceptable plan for correcting the violation and preventing its recurrence. The delegated officer shall not delay the procedures for assessment of liabilities, limitation, suspension, or termination. During the informal compliance process, if the delay would result in harm to the authority, students, or the secretary, the informal compliance procedure will not result in correction of the alleged violation.

Section 3. Disapproval. The board or any of its delegated officers may, upon verification of misstatements of fact, financial instability, lack of administrative capability, or failure to meet eligibility requirements under applicable law or administrative regulations, related to an application to participate in an authority administered program, notify the applicant of the authority’s intent to disapprove such application. For purposes of reviewing request of a limitation on participation (including a requirement of a surety bond or other collateral) imposed as a precondition of initial approval or reappointment, such limitation shall be regarded as a disapproval.

Section 4. Assessment of Liabilities. (1)(a) The board or any of its delegated officers may, initiate action to assess liabilities against a participating institution or a participating lender for payment or reimbursement of student financial assistance funds, upon evidence [documentation] that a participant has, [failed] through acts of commission or omission, improperly expended or diverted to an improper purpose student financial assistance funds, improperly certified eligibility of a student or insured student loan borrower, or overcharged a student, a participating lender, the authority or the secretary.
(b) Conditions for which liabilities may be assessed include:
[including but not limited to improper]
1. Disbursement of funds:
   a. In excessive amounts;
   b. To ineligible students or insured student loan borrowers;
   c. In a manner not authorized by applicable laws or administrative regulations;
   d. Without documentation;
   e. To students or insured student loan borrowers, after the academic year or period of enrollment for which the funds were authorized or awarded;
2. Retention of funds or [retention of funds] failure to remit funds due on a timely basis; [ ]
3. Certification of [an application for] an ineligible student;
4. Misappropriation or diversion of student financial assistance funds to a purpose other than the purpose for which the funds were awarded and sent to the participating institution;
5. Overcharging of fees, interest, or special allowance by a participating lender; [ ]
6. Failure to account for funds received or expended [ ] to properly administer any program for which the participant has previously been approved.
(c) A demand by the authority to a participating institution for return of undischarged student financial assistance funds remaining in the possession of the institution shall not be deemed an assessment of liability subject to appeal under this administrative regulation.

(2) The board or its delegated officer may notify a participating institution or a participating lender that the authority requires the participant to take reasonable and appropriate corrective action to remedy a violation of applicable laws, administrative regulations, special arrangements, agreements or limitations. The corrective action may include payment of any funds to the authority, or to designated recipients, which the participant improperly received, withheld, disbursed or caused to be awarded or disbursed. Corrective action may, for example, relate to:
(a) With respect to the insured student loan program:
   1. Ineligible interest benefits, special allowance, or claims paid by the authority; and
   2. Discounts, premiums or excess interest paid in violations of rules of the secretary; and
(b) With respect to all authority programs:
   1. Refunds due to students under program administrative regulations;
   2. Any grants, work-study assistance, scholarships or loans caused to be awarded or disbursed to ineligible students, in excess of legal maximums, or otherwise in violation of applicable administrative regulations.

Section 5. Limitation. The board or any of its delegated officers may, upon evidence [documentation] that a participating institution or a participating lender has failed through acts of commission or omission to fully adhere to the standard of conduct set forth in Section 2 of this administrative regulation pertaining to any authority administered program for which the participant has previously been approved, notify the participant of the authority’s intent to place limits on the participant’s eligibility to participate in authority administered programs.

Section 6. Suspension. The board or any of its delegated officers may, upon evidence [documentation] that a participating institution or a participating lender has substantially or repeatedly failed through acts of commission or omission to adhere to the standard of conduct set forth in Section 2 of this administrative regulation pertaining to any authority administered program for which the participant has previously been approved, notify the participant of the authority’s intent to suspend the participant’s eligibility to participate in authority administered programs for a period not to exceed sixty (60) days, unless the authority and participant agree otherwise or the delegated officer initiates a limitation or termination during the sixty (60) days.

Section 7. Termination. (1) The board or any of its delegated officers may, following any period of limitation or suspension, in the absence of correction of deficiencies which resulted in the adverse action, notify the participant of the authority’s intent to terminate a participant’s eligibility to participate in all or any of the authority administered programs.
(2) The board or any of its delegated officers may, with or without prior limitation or suspension, notify the participant of the authority’s intent to terminate the participation of a participating institution or a participating lender upon evidence [documentation] of:
   (a) An intentional violation of applicable laws and administrative regulations including the standard of conduct set forth in Section 2 of this administrative regulation; or
   (b) A substantial pattern or practice indicating failure or inability to adhere to the standard of conduct set forth in Section 2 of this administrative regulation, including but not limited to a repetition of previously cited deficiencies; [ ]
   (3) A termination prohibits a participant or the authority from making or increasing awards under authority programs, making any other new obligations against authority funds, and prohibits further guarantee commitments by the authority under the insured student loan programs.
   (4) The participation of an educational institution or lender shall be deemed automatically terminated without prior action or notice by the authority upon cessation of operation as an ongoing business, loss of state licensure, or termination of its eligibility by the secretary.

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Section 8. Emergency Action. (1) Under an emergency action, the board acting through its delegated officer may immediately withhold program funds from the students attending a participating institution or from a participating lender, withdraw the right of the participant to certify or approve applications, and preclude the participant from obligating or disbursing funds under any authority program. The delegated officer may initiate an emergency action against a participant only if that officer:
(a) Receives information, determined by the delegated official to be reliable:
1. That the participant is substantially failing to adhere to the standard of conduct set forth in Section 2 of this administrative regulation or is violating any provision of statute, administrative regulation, or any applicable special arrangement, agreement, or limitation; or
2. That the participant has misreported any material facts to students, the authority, or, as applicable to participation in an authority program, the secretory; or
3. That the participant ceases to meet the requirements for approval of participation by the authority;
(b) Determines that immediate action is necessary to prevent loss or misuse of funds; and
(c) Determines that the risk of loss or misuse outweighs the importance of delaying the effective date of action through the procedural limitations, suspension, or termination contained in this administrative regulation.
(2) The emergency action takes effect on the date a notice, personally delivered or mailed to the participant by the delegated officer by certified mail, return receipt requested, is received by the participant. The notice shall state the basis on which the emergency action is based, the consequences of the emergency action to the institution or lender, and that the participant may request an opportunity to show cause why the emergency action is unwarranted. An emergency action may not exceed thirty (30) days unless the board or a delegated officer initiates a limitation, suspension, or termination proceeding under this subpart against the participant within those thirty (30) days, in which case the delegated officer may extend the emergency action until the completion of those proceedings, including any appeal. The continuation, modification, or cessation of the emergency action during the period described in this paragraph is at the sole discretion of the delegated officer.

Section 9. Notices. (1) If [in the event that] the delegated officer finds that the authority should assess any liabilities or that participation of any applicant or participant should be disapproved, limited, suspended, or terminated by act of the authority, the participant shall be provided with notice of such action which shall be issued on behalf of the board and signed by the officer and shall contain a concise statement of the consequences and reason for the disapproval, assessment of liabilities, limitation, suspension or termination of participation [eligibility] and sufficient information to reasonably apprise the applicant or participant of the right to request reconsideration of disapproval or submit to the authority a request for a hearing on all issues contained therein or written material indicating why the action should not take place. The proposed date for payment of any assessed liabilities or the proposed effective date of any limitation, suspension or termination, which shall be more than twenty [20] days after the date of mailing of the notice of intent, shall be specified in the notice. The assessment of liabilities shall be based upon payment by the specified due date, and any extension of that date due to a request for a hearing or further appeal may result in the accrual of additional amounts due if interest accrual is applicable.
(2) All requests for hearings shall be made to the authority at its office located in Frankfort, Kentucky 40601, within twenty [20] days of receipt of the notice. All notices to or from the authority shall be personally delivered by an individual at least eighteen [18] years old, or [older] who shall prove service by his affidavit or signature of the recipient, or by [the officer] forwarding the notice [same to the applicant or participant, or by the applicant or participant forwarding same to the authority] by U.S. certified mail, return receipt requested, to the address of the applicant or participant (as reflected by the records of the authority) or to the authority at [Frankfort, Kentucky 40601]. If a party refuses to accept a notice served under this section, the notice shall be deemed received on the date that the party refuses to accept the notice.

Section 10. Request for Review. (1) An eligible institution or an eligible lender seeking reconsideration of a final determination of disapproval shall file a written request together with any relevant records or materials for review with the delegated officer issuing the determination no later than forty-five [45] days from the date it receives the determination. The applicant shall identify the issues and facts in dispute and the applicant's position together with the pertinent facts and reasons supporting that position.
(2) An applicant requesting review of the determination of disapproval issued by the delegated officer shall have the burden of proving that the applicant complied with requirements for approval. An applicant may submit as additional evidence to the delegated officer only materials within one (1) or more of the following categories:
(a) Complete audit reports and audit work papers for audits performed by the United States Education Department or independent audit work records, reports, and other materials;
(b) Complete program review reports and reports of resolution of disputed program reviews;
(c) Complete accreditation or licensure review reports and reports of resolution of disputed accreditation or licensure findings;
(d) Internal records and other materials if the records or materials are not:
1. Related to a period of time other than the period of time under consideration;
2. Related to an audit or program review of an institution or lender other than the applicant (unless the determination involves a change of ownership); or
3. Related to policies and procedures that have not yet been implemented.

Section 11. Stay of Proceedings. A limitation, suspension or termination will not be effective on the date specified in the notice if the delegated officer receives a timely request for a hearing, and the proposed effective date shall continue to be stayed pending the outcome of a hearing.

Section 12. Hearings. (1) In the event assessment of liabilities, limitation, suspension or termination of eligibility results from the action of a delegated officer of the authority, the participant may request a hearing to determine the facts in the case or submit written material indicating why the action should not take place. If the participant does not request a hearing, but submits written material, the delegated officer shall consider that material and notify the participant that either the proposed action is dismissed or the proposed action shall take effect on a specified date. Nothing in this section shall preclude the delegated officer, at his sole discretion, from engaging in informal discussions with representatives of the participant for the purpose of settling the dispute.
(2) Notification of hearing. Upon receipt of a participant's request for a hearing, the delegated officer shall arrange for a hearing on the record before a hearing officer and within thirty [30] days of the delegated officer's receipt of an institution's request for review, the hearing officer shall establish a schedule for any discovery, prehearing conferences, and the time and place of the hearing, which shall be scheduled to occur no later than 120 days from the date upon which the delegated officer receives the request for a hearing.
(3) At a hearing the officer or officers of the participant may be accompanied by counsel of their own choosing and at their own expense. The hearing may be conducted by a hearing officer or a hearing committee appointed by the board. The participant proceeded against shall be entitled to be represented at the hearing in person or by counsel or both and shall be entitled to introduce testimony by witnesses or, if the hearing officer so permits, by deposition.
(4) A prehearing conference may be convened by the hearing officer if he or she thinks that such a conference would be useful, or if requested by the authority or the participant to allow the parties to settle or narrow the dispute. If agreed to by the hearing officer and the parties, a prehearing conference may consist of a conference telephone call, an informal meeting, or the submission and ex-
change of written material.
(5) The hearing process may be expedited as agreed by the hearing officer and the parties. Procedures to expedite may include, but need not limit to:
(a) Scheduling of conferences;
(b) Setting time limits for hearings, submission of written documents, and discovery;
(c) Restricting the number or length of submissions;
(d) Shortening any time limits prescribed in this administrative regulation;
(e) Limiting the hearing to written documentation; or
(f) Stipulation by the parties to facts and legal authorities not in dispute.
(6) The formal rules of evidence and procedures applicable to proceedings in a court of law are not applicable. However, only evidence that is relevant and material to the proceeding and is not unduly repetitious shall be admitted by the hearing officer. All testimony shall be made under oath. Evidentiary objections may be made at any time during the prehearing or hearing process and shall be noted in the record of the hearing. The burden of proof in any hearing under this section will be determined in accordance with the provisions of KRS 13B.090. The hearing officer shall admit evidence that is excludable on constitutional or statutory grounds or privileged as recognized in the courts of the Commonwealth. Hearsay evidence shall be admissible, but shall not be sufficient in itself to support the hearing officer’s decision. All testimony shall be made under oath. Evidentiary objections may be made at any time during the prehearing or hearing process and shall be noted in the record of the hearing. The burden of proof in any hearing under this section will be determined in accordance with the provisions of KRS 13B.090. The hearing officer shall admit evidence that is excludable on constitutional or statutory grounds or privileged as recognized in the courts of the Commonwealth. Hearsay evidence shall be admissible, but shall not be sufficient in itself to support the hearing officer’s decision. All testimony shall be made under oath. Evidentiary objections may be made at any time during the prehearing or hearing process and shall be noted in the record of the hearing. The burden of proof in any hearing under this section will be determined in accordance with the provisions of KRS 13B.090. The hearing officer shall admit evidence that is excludable on constitutional or statutory grounds or privileged as recognized in the courts of the Commonwealth. Hearsay evidence shall be admissible, but shall not be sufficient in itself to support the hearing officer’s decision. All testimony shall be made under oath. Evidentiary objections may be made at any time during the prehearing or hearing process and shall be noted in the record of the hearing. The burden of proof in any hearing under this section will be determined in accordance with the provisions of KRS 13B.090. The hearing officer shall admit evidence that is excludable on constitutional or statutory grounds or privileged as recognized in the courts of the Commonwealth. Hearsay evidence shall be admissible, but shall not be sufficient in itself to support the hearing officer’s decision. All testimony shall be made under oath. Evidentiary objections may be made at any time during the prehearing or hearing process and shall be noted in the record of the hearing.
(7) The hearing officer may not issue subpoenas. Nothing in this section shall be construed as allowing access to the personal notes, observations, or conclusions of authority staff or to the work product of counsel.
(8) The hearing officer shall provide for recording the proceeding and shall make the record available to the participant upon its request and upon its payment of any fee required by the individual providing a transcript.
(9) The hearing officer shall conduct the hearing and conduct of the parties during the hearing and take all steps necessary to conduct a fair and impartial proceeding. The hearing officer shall take whatever measures are appropriate to expedite the proceeding, and may terminate the hearing and issue a decision against a party failing to comply with any orders or procedure.
(10) The hearing officer shall regulate the course of the proceeding and guide the parties during the hearing and will take all steps necessary to conduct a fair and impartial proceeding. The parties shall provide available personnel who have knowledge about the matter under review for oral or written examination. The hearing officer shall take whatever measures are appropriate to expedite the proceeding, and may terminate the hearing and issue a decision against a party failing to comply with any orders or procedure.
(11) The hearing officer shall provide for recording the proceeding and shall make the record available to the participant upon its request and upon its payment of any fee required by the individual providing a transcript.
(12) The hearing officer shall conduct the hearing and conduct of the parties during the hearing and take all steps necessary to conduct a fair and impartial proceeding. The hearing officer shall take whatever measures are appropriate to expedite the proceeding, and may terminate the hearing and issue a decision against a party failing to comply with any orders or procedure.
(13) The hearing officer’s decision shall state whether the imposition of the liabilities, limitation, suspension or termination sought by the hearing officer is warranted, in whole or in part.
(14) If the action brought against a participant involves its failure to provide a surety bond, letter of credit, or other collateral in the amount specified by the hearing officer, the hearing officer shall find that the amount of the bond, letter of credit or other collateral specified by the hearing officer was appropriate unless the participant can demonstrate that the amount was unreasonable.

Section 13. Decisions and Appeals. (1) All initial assessing liabilities, disapproving, limiting, suspending or terminating participation may be made by a delegated officer of the authority and shall be binding upon the authority and the applicant or participant as the decision of the board in the absence of a request for review of disapproval in accordance with Section 10 of this administrative regulation or an appeal of other actions in accordance with Section 12 of this administrative regulation by the applicant or participant to the authority.
(2) In the event the applicant, participant, or a delegated officer of the authority does not petition the board for a review of an officer’s decision, the decision resulting from a hearing conducted by the authority shall become final and conclusive as the decision of the board twenty (20) days after notice thereof is given as provided.
(3)(a) An appeal to the board of a hearing officer’s initial decision is made by sending a written notice of appeal to the executive director of the authority. This notice must be postmarked not later than twenty (20) days after the issuance of the hearing officer’s initial decision, and the appealing party shall send a copy of its appeal notice to the other party.
(b) Within ten (10) days after submitting the notice of appeal, the party that appeals shall submit a brief to the board explaining why the initial decision of the hearing officer should be overturned or modified. The appealing party may submit proposed findings of fact or conclusions of law. However, the proposed findings of fact shall be supported by the evidence introduced into the record at the hearing, stipulations of the parties, documentary evidence submitted to the hearing officer (if the hearing consisted of written submissions), or matters that may be officially noticed. The opposing party shall respond within ten (10) days after receipt of a brief and proposed findings of fact or conclusions of law from the appealing party. Neither party may introduce new evidence on appeal to the board. Each party shall provide a copy of its brief to the other party when it submits its brief to the board.
(c) The initial decision of the hearing officer assessing liabilities or limiting, suspending, or terminating participation does not take effect pending the appeal.
(d) The board reviews the hearing officer’s initial decision and issues a final decision. The board shall adopt the initial decision unless it is clearly unsupported by the evidence presented at the hearing. The board considers only evidence introduced into the record at the hearing, facts agreed to by the parties, documents submitted to the hearing officer (if the hearing consisted of only written submissions), and matters that may be officially noticed. The board’s final decision may affirm, modify or reverse the hearing officer’s initial decision and shall include a statement of the reasons for the decision.
(e) An assessment of liabilities becomes binding and a limitation, suspension or termination takes effect upon the date on which notice of the final decision of the board is mailed to the participant.

Section 14. Removal of Limitation. (1) A participating institution or a participating lender whose participation in any or all authority programs has been limited after participation may not apply for removal of the limitation before the expiration of twelve (12) months from the effective date of the limitation.
(2) After the minimum limitation period, the participant may request removal of the limitation in writing and show that the deficiency on which the limitation was based has been corrected.
(3) No later than sixty (60) days after the receipt of the request, the delegated officer shall respond to the participant by granting its request, denying its request, or granting the request subject to other limitations.
(4) If the delegated officer denies the request or establishes other limitations, the participant may request a review in accordance with Section 10 of this administrative regulation and be given an opportunity to show cause why its participation should be fully reinstated.
(5) The participant’s request for a review shall not waive its right to participate in any or all authority programs if it complies with the continuing limitation(s) pending the outcome of the review.

Section 15. Reinstatement: After Termination. (1) An eligible institution or an eligible lender whose participation in any or all of the authority programs has been terminated may file a request for reinstatement as a participating institution or a participating lender.
(2) Except for an institution or lender whose participation has been terminated for engaging in substantial misrepresentation, a request for reinstatement may not be made before the expiration of eighteen (18) months after the effective date of the termination.

(3) An institution or lender whose participation was terminated because the institution or lender engaged in substantial misrepresentation may not request reinstatement before the expiration of three (3) months after the effective date of the termination.

(4) An institution or lender seeking reinstatement shall:

(a) Demonstrate to the authority's satisfaction that it has corrected the deficiencies on which its termination was based, including payment in full to the authority or to other designated recipients of funds that the institution or lender has improperly received, withheld, disbursed or caused to be disbursed;

(b) Meet all the requirements for initial approval of participation; and

(c) Enter into a new administrative agreement or contract of insurance with the authority.

(5) The board or its designated officer, within sixty (60) days of receiving the reinstatement request, shall grant the request, deny the request, or grant the request subject to limitations. A denial of the request under this section shall be deemed to be a determination of disapproval under Section 3 of this administrative regulation.

Section 16. Report to Secretary. When a decision to limit, suspend or terminate the participation of a participating institution or a participating lender becomes final in accordance with Section 13 of this administrative regulation, and the decision effects participation in the authority's insured student loan program, the delegated officer initiating the action shall report the action to the secretary for review pursuant to Section 432(n)(2) and (3) of the federal act.

Section 17. If any period of time prescribed by this administrative regulation differs from the corresponding period of time prescribed in 11 KAR 3:060, the shorter period of time shall be controlling.

MARcia CARPENTER, Chair
APPROVED BY AGENCY: May 25, 2004
FILED WITH LRC: June 15, 2004 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, July 22, 2004 at 10 a.m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Thursday, July 15, 2004, five workdays prior to the date the hearing is scheduled to begin. 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. Written comments shall be accepted until August 2, 2004. 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: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7290, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Rick Casey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the ministerial functions of authority officers and the conditions and procedures under which the authority or its delegated officers may initiate action to assess liabilities, withhold funds under emergency action, or disapprove, limit, suspend or terminate the participation of eligible educational institutions or eligible lenders in any of the student financial assistance programs administered by the authority.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to authorize KHEAA to enter into contracts with eligible educational institutions and lenders to provide for administration of student financial assistance programs and to authorize the authority to take emergency action, or to disapprove, limit, suspend or terminate participation.

(c) This administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute by requiring the board to adopt administrative regulations in connection with administration of KHEAA's programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes by providing KHEAA the authority to enter into contracts with eligible educational institutions and lenders to provide for administration of student financial assistance programs.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by clarifying the provisions pertaining to assessment of liabilities and provide that demand for return of undisbursed funds held by participating institutions will not be construed as an assessment of liability subject to appeal because the institution has no ownership or property right in those funds; clarifying provisions related to burden of proof and order of presentation at the hearing; clarifying the handling of the hearing officer's decision as a recommended order subject to final decision by the board in accordance with KRS Chapter 13B and by making drafting revisions to update the style of the regulations to conform to Legislative Research Commission drafting criteria.

(b) The necessity of the amendment to the administrative regulation: The amendment is necessary to clarify that the authority has the right to request that institutions return undisbursed public funds if the authority deems it in the interest of the commonwealth to do so, without allowing the institution the right to appeal such a request, which if allowed would merely serve to delay the return of such funds.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 164.748(4) authorizes KHEAA to promulgate administrative regulations pertaining to student loans, grants and scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires KHEAA to promulgate regulations pertaining to grants. KRS 164.7535 authorizes KHEAA to provide grants to assist financially needy part-time and full-time undergraduate students to attend educational institutions in Kentucky. As part of KHEAA's administration of the CAP grant program, this amendment clarifies KHEAA's authority to demand the return of undisbursed public funds.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies KHEAA's role and authority in administering the various grant, scholarship and loan programs as provided in KRS 164.740 to 164.785.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Participating educational institutions may be affected if requested to return undisbursed public funds. Approximately 89 educational institutions participate in KHEAA-administered student aid programs.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Participating educational institutions may be required to return public funds that are in the control of the institutions, but the students for whom the funds were originally intended are no longer eligible for the funds.

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

(a) Initially: None

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: Not
applicable.
(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regu-
lation, if new, or by the change if it is an amendment: No increase in
fees or funding will be necessary to implement this amendment.
(8) State whether or not this administrative regulation estab-
lishes any fees directly or indirectly increases any fees. This ad-
ministrative regulation does not establish or increase fees.
(9) TIERING: Is tiering applied? Tiering was not applied. It is not
applicable to this amendment. This administrative regulation is in-
tended to provide equal opportunity to participate, and consequently
does not inherently result in disproportionate impacts on certain
classes of regulated entities. The "equal protection" and "due pro-
cess" clauses of the Fourteenth Amendment of the U.S. Constitution
may be implicated as well as Section 2 and 3 of the Kentucky Con-
stitution.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Amendment)

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

RELATES TO: KRS 44.060, 45.101
STATUTORY AUTHORITY: KRS 44.060, 45.101
NECESSITY, FUNCTION, AND CONFORMITY: KRS 45.101
authorizes the Finance and Administration Cabinet to promulgate an
administrative regulation that establishes requirements and reim-
bursement rates for the travel expenses of state employees. This
administrative regulation establishes the eligibility requirements
relating to rates and forms for reimbursement of travel expense and
other official expenses out of the State Treasury.

Section 1. Definitions. (1) "Agency" means a budget unit.
(2) "Agency head" means the elected or appointed head of a
budget unit.
(3) "Approval" means approval granted in either written or elec-
tronic format.
(4) "Cabinet" means the Finance and Administration Cabinet.
(5) "Division" means the Division of Statewide Accounting Serv-
ces, Office of the Controller, Finance and Administration Cabinet.
(6) "High rate area" means a city, state, or metropolitan area in
which it has been recognized that higher meal costs and lodging
rates have historically prevailed, and that has been designated by
the Secretary of the Finance and Administration Cabinet as a high
rate area and included in the cabinet's policies and procedures
(7) "Incidental expense" means unexpected minor expenses
arising from travel situations, or minor expenses authorized by an
agency head to be reimbursed to an employee as a matter of effi-
ciency or convenience.
(8) " Lodging receipt" means any preprinted invoice, from a hotel
or motel or type of lodging, showing the date of service, the amount
charged for the service, the location where the service was per-
formed and a description of the expenditure.
(9) "Others in the official service of the commonwealth" means
individuals who are not state employees as defined in KRS Chapter
18A, but who are traveling on official business for the common-
wealth, or who officially represent a state agency, at the direction or
request of a state official authorized to give the direction or make the
request and does not include contractors who shall be entitled to
reimbursement for travel and related expenses only as provided in
their contracts with the commonwealth.
(10) "Receipt" means any preprinted invoice, from a hotel,
motel, restaurant or other establishment, showing the date of serv-
ice, the amount charged for the service, the location where the
service was performed and a description of the expenditure.
(11) [69] "Residence" means address of the employee design-
nated in the official records of the Department of Personnel [Cabi-
net].
(12) [40] "Secretary" means the Secretary of the Finance and
Administration Cabinet.
(13) [44] "Subistence" means amounts deemed to have been
expended by a state officer, agent, employee, or other person
authorized to receive reimbursement of the State Treasury for
meals, including tax and tips, while traveling on official state busi-
ness, but shall not include any meals which may be included in
charges for lodging or in registration fees paid by or on behalf of a
state officer or employee.
(14) "Subsistence or incidental receipt" means an itemized re-
ciept for meals or incidental expenses showing the date of service,
amount charged, and the name of the establishment.
(15) [41] "Travel software" means the software used by the
commonwealth to process travel authorizations and travel reim-
bursement documents.

Section 2. General. (1) Affected agencies. Except as otherwise
provided by law, this administrative regulation shall apply to all de-
partments, agencies, boards, and commissions, and institutions of
the executive branch of state government, except state-supported
universities. It shall not apply to the legislative and judicial branches
and their employees.
(2) Enforcement. (a) Each agency head shall be responsible for ensuring that
teach reimbursement conforms to the provisions of this administra-
tive regulation and that all travel expense from that agency is as
economical as feasible.
(b) A person or employees on official state business shall:
1. Identify if [a travel policy which establishes whether] reim-
bursement is being requested based on Section 7 or 8 of this ad-
misnistrative regulation;
2. Prior to trip, create a Travel Authorization (TE, TTEL, TEO, or
TEC), if required;
3. After travel, create a Travel Payment Voucher (TP or TTI)
document for reimbursement of business related expenses;
4. Maintain records and receipts to support the [his] claim; and
5. Take [Provide himself with] sufficient personal funds to defray
the [his] travel expenses.
(c) The secretary or [his] designee may:
1. Disallow[,] or reduce the amount of a claim that violates the
provisions of this administrative regulation; or
2. Require written justification for amounts claimed by an agency
for its employee.
(d) The secretary or [his] designee may authorize reimbursement
for an employee's actual and necessary expenses for authorized
travel if the head of the agency, or [his] designee, submits a written
determination that establishes the reimbursement is:
1. Required to avoid an undue economic hardship on the em-
ployee; or
2. Economically advantageous for the commonwealth.
(2) Eligibility. Except as provided by state law or by this adminis-
trative regulation, reimbursement shall not be claimed for ex-
enses of any person other than state officers, members of boards
and commissions, employees, bona fide wards, or other persons in
the official service of the commonwealth. Only necessary expenses
of official travel authorized by an agency head or designee shall be
reimbursed.
(4) Interpretation. All final interpretations of this administrative
regulation shall be made by the secretary. These determinations
[determination] shall be final and conclusive.

Section 3. Work Station. (1) The official work station of an em-
ployee assigned to an office shall be the street address where the
office is located.
(2) The official work station of field employees shall be estab-
lished by the agency head, based solely on the best interests of the
commonwealth.
(3) If an employee is permanently reassigned[,] or is stationed at
a new location two (2) months, the new location shall become that
employee's official work station.

Section 4. Authorizations. (1) For travel in Kentucky, or outside
Kentucky, but within the United States or its possessions, or Can-
da, the person requesting reimbursement shall obtain authorization
from the agency head or a designated representative as authorized
by Secretary's Order S97-451.
(2) Travel to a bordering state that does not require airfare or an
overnight stay shall be authorized in the same manner as travel in Kentucky.

(3) Travel expenses shall be reimbursed if travel was authorized in advance as provided by subsections (4), (5), and (6) [(3), (4), and (5) of this section.

(4) [(3)] If direct billing is to be utilized for state park and motor pool expenses, authorization shall be requested on a Travel Authorization (TE or TEI) document.

(5) [(4)] For travel outside of Kentucky, authorization shall be requested on Travel Authorization (TEO) document.

(6) [(5)] For travel outside the United States, its possessions or Canada the person requesting reimbursement shall have obtained authorization from:
(a) The agency head or a designated representative;
(b) The secretary or a designated representative; and
(c) The governor or a designated representative.

(7) [(6)] A travel request for travel specified in subsections (4) and (5) of this section shall be received by the agency or cabinet at least five (5) working days before the start of travel.

Section 5. Transportation. (1) Economy shall be required.

(a) State officers, agents, employees, and others in the official service of the commonwealth shall use the most economical, standard road transportation available and the most direct and usually-traveled routes. Expenses added by use of other transportation or routes shall be assumed by the individual.

(b)1. Round-trip, excursion or other negotiated reduced-rate rail or plane fares shall be obtained if practical.

2.a. Tickets prepaid by the commonwealth shall be purchased through agency business travel accounts provided by a major credit card company or commercial travel agencies.

b. Tickets purchased through the Internet shall be paid by the traveler and reimbursed on a [his] Travel Payment Voucher (TP or TPI).

3. Exceptions may be made with the approval of the agency head if other arrangements will be in the best interest of the commonwealth.

4. Agencies shall be billed monthly by the charge card company.

5. Related payments shall be processed on Vendor Payment Voucher (P1) document.

(2) State vehicles. State-owned vehicles with their credit cards shall be used for state business travel when available and feasible. Mileage payment shall not be claimed if state-owned vehicles are used.

(3) Privately-owned vehicles. Mileage claims for use of privately-owned vehicles shall be allowed if a state vehicle was not available or feasible.

(4) Buses, subways. For city travel, employees shall be encouraged to use buses and subways. Taxi fare shall be allowed when more economical transportation is not feasible.

(5) Airline travel. Commercial airline travel shall be the lowest negotiated coach or tourist class. Additional expense for first-class travel shall not be reimbursed by the state. Payment shall be made in accordance with subsection (1)(b) of this section.

(6) Special transportation.

(a) The cost of hiring cabs or other special conveyances in lieu of ordinary transportation shall be allowed if written justification from the employee is submitted and approved by the agency head or his designated representative.

(b) Privately-owned aircraft may be used if it is determined to be to the advantage of the state, measured both by travel costs and travel time.

Section 6. Accommodations. (1) Lodging shall be the most economical, as determined by considering location of the lodging.

(2) Facilities providing special government rates or commercial rates shall be used if feasible.

(3) State-owned facilities shall be used for meetings and lodging if available, practicable and economical.

(4) Location. Cost for lodging within forty (40) miles of the claimant's official work station or home shall be reimbursed if approved in advance by the agency head, or a designated representative.

(5) Group lodging, by contract.

(a) State agencies and institutions may contract with hotels, motels and other establishments for four (4) or more employees to use a room or rooms on official business. Group rates shall be requested.

(b) The contract may also apply to meals and gratuities. The contract rates and the costs of rooms and meals per person shall not exceed limits set in Section 7 of this administrative regulation.

(c) The traveler shall not claim reimbursement or subsistence for room and meals paid direct to an establishment providing these services.

(d) Payment shall be made on a Vendor Payment Voucher (P1) document and shall not include personal charges of employees or others in the official service of the commonwealth.

(e) Payment shall be made to the hotel, motel or other establishment.

(f) Contracted group meeting rooms and lodging and meal charges shall be exempt from Kentucky sales tax and the agency sales-use tax number assigned by the Department of Revenue [Cabinet] shall be specified on the payment document.

(g) Tax exempt numbers shall not be used by individual employees to avoid point of sale payment of Kentucky sales tax connected with lodging costs. Sales tax payments shall be reimbursed on Travel Payment Voucher (TP or TPI) document.

(3) State parks. A state agency or institution using state park facilities may pay for rooms and meals by an Internal Travel Voucher (ITV) document to transfer funds, within the limits of this administrative regulation.

Section 7. Reimbursement Rates. (1) The following persons shall be exempted from the provisions of this section:

(a) Governor;

(b) Governor's staff;

(c) Lieutenant governor;

(d) State employees traveling on assignment with the governor, lieutenant governor, elected constitutional officers, or cabinet secretaries;

(e) Elected constitutional officers;

(f) Cabinet secretaries;

(g) State officers and employees authorized to travel outside the United States, its possessions or Canada;

(h) Members of statutory boards and commissions; and

(i) Others in the official service of the Commonwealth.

(2) Lodging.

(a) Except as provided in paragraph (b) of this subsection, a state officer[,] or employee shall be reimbursed for the actual cost of lodging if the:

1. Lodging is determined to be the most economical; and

2. State officer[,] or employee has provided the hotel, motel, or other establishment's receipt to be reimbursed for the [his] travel expenses.

(b) Reimbursement for lodging shall not exceed the cost of a single room rate, except that if employees share lodging, each employee shall be reimbursed the lesser of single rate or one-half (1/2) the double rate.

(3) Subsistence and incidentals.

(a) Breakfast and lunch. A state officer[,] or employee shall be eligible for reimbursement for subsistence for breakfast and [lunch], or dinner] expenses while traveling in Kentucky, if [his] authorized work requires an overnight stay and absence during the mealtime hours established by paragraph (d) or (e) of this subsection. An employee shall be in travel status during the entire mealtime. For example, to be eligible for breakfast reimbursement, an employee shall leave at or before 6:30 a.m. and return at or after 9 a.m. This requirement shall apply to all meals.

(b) Dinner expenses. A state officer, or employee shall be eligible for reimbursement for dinner expenses while traveling in Kentucky, if [his] authorized work requires an absence:

1. At a destination more than forty (40) miles from the individual's [his] work station and home; and

2. During the mealtime hours established by paragraph (d) or (e) of this subsection.

(c) A state officer or employee shall be eligible for reimbursement for meals while on authorized travel outside Kentucky, but within the United States, its possessions or Canada, at the reimbursement rates established in paragraphs (d) and (e) of this sub-
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Section. An employee shall be in travel status during the entire mealtime. For example, to be eligible for breakfast reimbursement, an employee shall leave at or before 6:30 a.m. and return at or after 9 a.m. This requirement shall apply to all meals.

(d) Reimbursement for non-high rate areas:
1. Breakfast: authorized travel 6:30 a.m. through 9 a.m. - with receipt, not to exceed seven (7) dollars;[i]
2. Lunch: authorized travel 11 a.m. through 2 p.m. - with receipt, not to exceed eight (8) dollars;[j]
3. Dinner: authorized travel 5 p.m. through 9 p.m. - with receipt, not to exceed fifteen (15) dollars.

(e) Reimbursement for high rate areas:
1. Breakfast: authorized travel 6:30 a.m. through 9 a.m. - with receipt, not to exceed eight (8) dollars;[j]
2. Lunch: authorized travel 11 a.m. through 2 p.m. - with receipt, not to exceed nine (9) dollars;[j]
3. Dinner: authorized travel 5 p.m. through 9 p.m. - with receipt, not to exceed nineteen (19) dollars.

(f) A state officer or employee authorized to travel outside the United States, its possessions, or Canada shall be reimbursed for their actual and necessary expenses for subsistence.

(g) A state officer or an employee may, with prior approval of the agency head or designee, be reimbursed for the actual cost charged for meals, if the individual [he] is assigned to attend meetings and training sessions.

(h) Gratuities may be reimbursed if:
1. The total payment of the meal and gratuity do not exceed the limits established in paragraphs (g) or (h) of this subsection; and
2. The gratuity does not exceed twenty (20) percent of the cost of the meal.

(i) Lodging receipts, or other credible evidence, shall be attached to the Travel Payment Voucher (TP or TPI).

(4) Transportation expenses.

(a) Reimbursement for authorized use of a privately-owned vehicle shall:
1. Be adjusted based on the American Automobile Association (AAA) Daily Fuel Gauge Report for Kentucky for regular grade gasoline cost reported on June 1, 2004, and adjusted thereafter on January 1, April 1, July 1, and October 1 each calendar year based on the average retail price of regular grade gasoline for the week beginning on the second Sunday of the prior month as follows:
   a. If the fuel cost is between one (1) cent and one dollar forty-nine and nine-tenths cents ($1.499), the employee shall be reimbursed thirty-two (32) cents per mile.
   b. If the fuel cost is between one dollar fifty cents ($1.50) and one dollar sixty-nine and nine-tenths cents ($1.699), the employee shall be reimbursed thirty-three (33) cents per mile.
   c. If the fuel cost is between one dollar seventy cents ($1.70) and one dollar eighty-nine and nine-tenths cents ($1.899), the employee shall be reimbursed thirty-four (34) cents per mile.
   d. If the fuel cost is between one dollar ninety cents ($1.90) and two dollars nine and nine-tenths cents ($2.099), the employee shall be reimbursed thirty-five (35) cents per mile.
   e. If the fuel cost is between two dollars ten cents ($2.10) and two dollars twenty-nine and nine-tenths cents ($2.299), the employee shall be reimbursed thirty-six (36) cents per mile.
   f. If the fuel cost is greater than two dollars twenty-nine and nine-tenths cents ($2.299), the amount the employee is reimbursed shall increase one (1) cent for every twenty (20) cents increase in the rate. [made at the rate of thirty-two (32) cents per mile; and]
2. Not exceed the cost of commercial coach round-trip airfare.

(b) Mileage for in-state [in-state] travel shall be based on the "Kentucky Official Highway Map", mileage software or MapQuest website. Out-of-state mileage shall be based on the most recent edition of the "Rand McNally Road Atlas", mileage software or MapQuest website.

(c) Reimbursement for the actual cost of commercial transportation shall be made upon submission of receipts with the Travel Payment Voucher (TP or TPI).

(d) Reimbursement for use of privately-owned aircraft shall be made if, prior to use, written justification was submitted to and approved by the agency head, or a designated representative.

(e) A maximum of twenty (20) [twelve (12)] dollars per night for parking or camping charges for camping vehicles shall be reimbursed.

(f) Actual parking, bridge and highway toll charges shall be reimbursed.

(g) A toll receipt for authorized in-state travel by two (2) axle vehicles shall not be required.

(h) Reimbursement shall be made for reasonable incidental expenses [charges] for:
   1. Baggage handling;
   2. Delivery of baggage to or from a common carrier, lodging or storage; and
   3. Overweight baggage charges, if the charges relate to official business.

(i) Registration fees required for admittance to meetings shall be reimbursed.

(j) If a registration fee entitles the registrant to meals, claims for those meals shall be reduced accordingly.

(k) Telephone and telegraph costs for necessary official business shall be reimbursed.

(l) Telephone calls to agency central offices shall be made through:
   1. Agency 800 and 888 numbers, if available;
   2. A state government telephone credit card; or
   3. Lowest available service.

(7) Other incidental expenses may be allowed by the agency head or [his] designee if they are determined to be necessary expenses of official travel.

Section 8. Actual and Necessary Expenses. (1) The following persons shall be eligible for actual and necessary expenses:

(a) Governor;

(b) Governor's staff;

(c) Lieutenant governor;

(d) Elected constitutional officers;

(e) Cabinet secretaries;

(f) State employees traveling on assignment with the governor, lieutenant governor, elected constitutional officers, or cabinet secretaries;

(g) State officers and employees authorized to travel outside the United States, its possessions or Canada;

(h) Members of statutory boards and commissions; and

(i) Others in the official service of the Commonwealth.

(2) Actual and necessary expenses of official business travel shall be reimbursed only upon submission of receipts. Items of expense not documented with a receipt shall not be reimbursed [for items over ten (10) dollars].

(b) Actual and necessary expenses for official business travel shall include:

1. Lodging;

2. Meals;

3. Commercial transportation;

4. Taxes related to actual and necessary expenses; and

5. Reasonable gratuities.

(c) A credit card receipt shall be accepted for a meal if the receipt prepared by the establishment clearly shows that it is a receipt for a meal.

(d) Reimbursement for official use of a privately-owned vehicle shall:

1. Be adjusted based on the American Automobile Association (AAA) Daily Fuel Gauge Report for Kentucky for regular grade gasoline cost reported on June 1, 2004, and adjusted thereafter on January 1, April 1, July 1, and October 1 each calendar year based on the average retail price of regular grade gasoline for the week beginning on the second Sunday of the prior month as follows:

2. Not exceed the cost of commercial coach round-trip airfare.

3. Mileage for in-state [in-state] travel shall be based on the "Kentucky Official Highway Map", mileage software or MapQuest website. Out-of-state mileage shall be based on the most recent edition of the "Rand McNally Road Atlas", mileage software or MapQuest website.

4. Reimbursement for the actual cost of commercial transportation shall be made upon submission of receipts with the Travel Payment Voucher (TP or TPI).

5. Reimbursement for use of privately-owned aircraft shall be made if, prior to use, written justification was submitted to and approved by the agency head, or a designated representative.

6. A maximum of twenty (20) [twelve (12)] dollars per night for parking or camping charges for camping vehicles shall be reimbursed.

7. Actual parking, bridge and highway toll charges shall be reimbursed.

8. A toll receipt for authorized in-state travel by two (2) axle vehicles shall not be required.

9. Reimbursement shall be made for reasonable incidental expenses [charges] for:

10. Baggage handling;

11. Delivery of baggage to or from a common carrier, lodging or storage; and

12. Overweight baggage charges, if the charges relate to official business.

13. Registration fees required for admittance to meetings shall be reimbursed.

14. If a registration fee entitles the registrant to meals, claims for those meals shall be reduced accordingly.

15. Telephone and telegraph costs for necessary official business shall be reimbursed.

16. Telephone calls to agency central offices shall be made through:

17. Agency 800 and 888 numbers, if available;

18. A state government telephone credit card; or

19. Lowest available service.

20. Other incidental expenses may be allowed by the agency head or [his] designee if they are determined to be necessary expenses of official travel.
two dollars nine and nine-tenths cents ($2.099), the employee shall be reimbursed thirty-five (35) cents per mile.

e. If the fuel cost is between two dollars ten cents ($2.10) and two dollars twenty-nine and nine-tenths cents ($2.299), the employee shall be reimbursed thirty-six (36) cents per mile.

f. If the fuel cost is greater than two dollars twenty-nine and nine-tenths cents ($2.299), the amount the employee is reimbursed shall increase one (1) cent for every twenty (20) cent increase in the rate, thirty-two (32) cents per mile, and

g. Not exceed the cost of commercial coach round-trip airfare [fare].

(e) The governor and cabinet secretaries may be reimbursed for actual and necessary costs of entertaining official business guests, upon certification of these expenses to the secretary or [he] designee.

2. The secretary or the secretary's [he] designee may:

   a. Question a claim for reimbursement; and

   b. Reduce the amount to be reimbursed, if the secretary [he] determines that it is excessive.

(f) An employee of the Economic Development Cabinet or the Commerce [Tourism] Cabinet shall be reimbursed for actual and necessary costs of entertaining official business guests of the Commonwealth if the costs were:

1. Related to the promotion of industry, travel, or economic development;

2. Substantiated by receipts; and

3. Certified by the head of the cabinet.

Section 9. Mileage. (1) Mileage commuting between home and work stations shall not be paid.

(2) If an employee's point of origin for travel is the employee's residence, mileage shall be paid for the shorter of mileage between:

   a. Residence and travel destination;

   b. Work station and travel destination.

(3) Vicinity travel, and authorized travel within a claimant's work station shall be listed on separate lines on the Travel Payment Voucher (TP or TPI) document.

Section 10. Travel Documents. (1) Travel software shall have three (3) types of authorizations:

(a) TE or TEl for in-state travel;

(b) TEO for out-of-state travel;

(c) TEC for out-of-country travel.

(2) A traveler shall create:

   a. A Travel Authorization (TE or TEl) document if a state park facility or a motor pool vehicle will be used or if a registration fee is to be paid in advance.

   b. Travel Authorization (TEO) document for an out-of-state trip.

   c. Travel Authorization (TEC) document for an out-of-country trip.

(3) A contract for group accommodations shall be made on the standard form used by the establishment providing the services.

(4) Authorization for reimbursement of others in the official service of the Commonwealth shall be requested on:

   a. A Vendor Payment Voucher (P1) document;

   b. A Travel Payment Voucher (TP or TPI) document.

(5) A Travel Payment Voucher (TP or TPI) document shall be used to claim reimbursement for travel expenses.

(6) The Travel Payment Voucher (TP or TPI) document shall be limited to the expenses made by one (1) person for the:

   a. Traveler [Himself]; and

   b. If applicable, another person:

      1. Who is a ward of the commonwealth; or

      2. For whom the traveler [he] is officially responsible.

(7) A Travel Payment Voucher (TP or TPI) document for expenses made for a person specified in subsection (6)(b) of this section shall include the person's:

   a. Name; and

   b. Status or official relationship to the claimant's agency.

(8) A Travel Payment Voucher (TP or TPI) document shall be submitted:

   1. For one (1) major trip; or

   2. Every two (2) weeks for employees that are in travel status for an extended period.

(b) A Travel Payment Voucher (TP or TPI) document shall include:

1. Social Security number of the claimant; and

2. Purpose of each trip.

(c) A Travel Payment Voucher (TP or TPI) document shall be signed and dated, or entered electronically and approved by the:

1. Claimant; and

2. Agency head or authorized representative.

(d) If monthly expenses total less than ten (10) dollars, a Travel Payment Voucher (TP or TPI) may include expenses for six (6) months of a fiscal year.

(e) (9)(a) A Travel Payment Voucher (TP or TPI) document shall be:

1. Legibly printed in ink or typed; or

2. Processed electronically through travel software.

(f) (ib) A receipt shall provide the following information for each expense:

1. Amount;

2. Date;

3. Location; and

4. Type.

(g) (ii) Receipts shall be maintained at the agency if documents are processed electronically.

(h) (ii) If leave interrupts official travel, the dates of leave shall be stated on the Travel Payment Voucher (TP or TPI).

(i) (i) Lodging receipts, or other credible evidence, shall be attached to the Travel Payment Voucher (TP or TPI).

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Travel Payment Voucher (TP or TPI) document (1999);

(b) Travel Authorization (TE or TEl) document for in-state travel (1999);

(c) Travel Authorization (TEO) document for out-of-state travel (1999);

(d) Travel Authorization (TEC) document for out-of-country travel (1999);

(e) Internal Travel Voucher (ITV) document (1999);

(f) Kentucky Official Highway Map (2004 [1998]);

(g) Rand McNally Road Atlas (2001 [1998]); and

(h) Secretary's Order S97-451, November 1, 1996.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Statewide Accounting Services, Office of the Controller, Finance and Administration Cabinet, Capitol Annex Building, Room 394, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

R. B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: June 15, 2004
FILED WITH LRC: June 15, 2004 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on July 26, 2004, at 10 a.m. in Room 386 Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) weekdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by July 19, 2004, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 2, 2004. 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: Ed Ross, Controller, Finance and Administration Cabinet, Room 393 Capitol Annex; Frankfort, Kentucky 40601, phone (502) 564-2210, fax (502) 564-6597.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Ed Ross, 502-564-2210, 502-564-6597 fax
(1) Provide a brief summary of:
(a) What this administrative regulation does: Reimburses state employees' travel expenses.
(b) The necessity of this administrative regulation: KRS 45.101 authorizes the Finance and Administration Cabinet to promulgate administrative regulations relating to eligibility, requirements, rates and forms for reimbursement of travel expenses and other expenses incidental to official activities out of the State Treasury.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifies eligibility, requirements, rates and forms for reimbursement of travel and other official expenses out of the State Treasury.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies eligibility, requirements, rates and forms for reimbursement of travel and other official expenses out of the State Treasury.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment will correct and clarify existing language and necessary document references, amend the mileage reimbursement for personal vehicles, increase camp vehicles reimbursement, and change the authorization and reimbursement process for travel to a bordering state that does not include an overnight stay or airfare.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to correct and clarify existing language and document references. The amended reimbursement rates are needed to adjust for increased prices, including gasoline. The mileage reimbursement rate will be flexible to permit the rate to fluctuate as gasoline prices change. The addition of classifying travel to bordering states that does not require an overnight stay as in-state travel for authorization and reimbursement purposes is necessary to save the man-hours required to approve out of state travel. In addition, requiring actual receipts for per diem requests will save the Commonwealth money while reimbursing travelers for actual expenses.
(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation specifies eligibility, requirements, rates and forms for reimbursement of travel expenses and other official expenses out of the State Treasury.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will correct and clarify existing language and necessary document references.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:
(a) type: legislative and judicial branches and their employees.
(b) number: N/A
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Employees will be required to submit "actual and necessary" expense receipts for items, a decrease from the previous requirement of receipts for items over $10. Employees' reimbursement for overnight camping will be increased by $5. Employees' reimbursement for the use of their personal vehicles will be based on a mileage rate determined quarterly based on the American Automobile Association Daily Fuel Gauge Report for Kentucky. Travelers will no longer be required to receive out-of-state approval for travel to a neighboring state, unless traveling by commercial aircraft or staying overnight. For example, one may travel from Covington to Cincinnati for a meeting and following the policy and procedures for in-state travel.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Administrative costs should be minimal. The increase in the mileage rate reimbursed for the use of personal vehicles is expected to cost between $300,000 and $500,000. The offsetting cost savings from requiring receipts for per diem reimbursements is estimated to be between $300,000 and $500,000.
(b) On a continuing basis: Administrative costs should be minimal. The increase in the mileage rate reimbursed for the use of personal vehicles is expected to cost between $250,000 and $300,000 for each $0.01 increase in the reimbursement rate. This cost may decrease as gasoline costs decrease.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Various governmental sources.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.
(9) TIERING: Is tiering applied? No. This regulation applies equally to all regulated entities.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Emergency Amendment)


RELATED TO: KRS Chapter 45A
STATUTORY AUTHORITY: KRS 45A.045(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.045(2) requires the Finance and Administration Cabinet to publish a manual of policies and procedures, which is to be incorporated by reference as an administrative regulation pursuant to KRS Chapter 13A. This administrative regulation incorporates the Finance and Administration Cabinet Manual of Policies and Procedures.

Section 1. Incorporation by Reference. (1) "Finance and Administration Cabinet of Policies and Procedures [Revised 5/19/2004 [7/19/04]]" is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Finance and Administration Cabinet's website, or at the Finance and Administration Cabinet, Division of Administrative Policy and Audit, Administrative Policy Branch, Room 395, Capitol Annex, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT B. RUDOLPH, Jr., Secretary
APPROVED BY AGENCY: June 15, 2004
FILED WITH LRC: June 15, 2004 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on July 26, 2004, at 11 a.m. in Room 366 Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by July 19, 2004, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Marisa Neal, Finance and Administration Cabinet, Room 395, Capitol Annex, Frankfort, Kentucky 40601, phone (602) 564-0983, fax (502) 564-2813.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Marisa Neal
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative

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(b) The necessity of this administrative regulation: KRS 45A.045(2) requires the Finance and Administration Cabinet to publish a manual of policies and procedures, which is to be incorporated by reference as an administrative regulation pursuant to KRS Chapter 13A. This administrative regulation incorporates the Finance and Administration Cabinet Manual of Policies and Procedures.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Finance and Administration Cabinet is required by KRS 45A.045 to promulgate administrative regulations governing purchases by state agencies and to publish a manual of policies and procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs all parties regulated by the Finance and Administration Cabinet of the policies and procedures for awarding contracts and selling to the commonwealth, and it informs state agencies of procurement, accounting and other procedural requirements.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment revises the Finance and Administration Cabinet Manual of Policies and Procedures. It revises the policies and procedures that support the commonwealth’s procurement card program. The proposed amendment requires state agencies to award each contract for a competitively solicited commodity or personal service that was posted on the commonwealth’s EProcurement website from a bid evaluation in procurement desktop. This procedure will result in notification of awards being automatically posted on the commonwealth’s EProcurement website for 14 days. The proposed amendment repeals the policy for moving services that requires state agencies to contact the Finance and Administration Cabinet when procuring moving services. The proposed amendment promulgates a new policy governing the usage of cellular telephones.

(b) The necessity of the amendment to this administrative regulation: The amendment is needed to update policies and procedures to provide guidance for procurement card program participants and parties regulated by the Finance and Administration Cabinet. The amendment is needed to ensure that bidders know when contracts are awarded and to establish the date that they should have known about an award pursuant to KRS 45A.285. The Finance and Administration Cabinet no longer offers moving services. The acquisition, assignment and use of cellular telephone equipment and services must be controlled by the Finance and Administration Cabinet because of the cost and potential for abuse.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to all state agencies, and all individuals, firms, organizations, and political subdivisions doing business with the commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment will assist state agencies implement internal controls for the procurement card program and cellular telephones. The amendment will have limited impact on agencies that have not used the electronic bid evaluation document, and no impact on those agencies that do use the document. It will ensure that all parties have an opportunity to know when contracts from solicitations and requests for proposals that are posted on the EProcurement website are awarded. Agencies shall procure moving services in accordance with KRS 111-55-00 in the same manner as other nonprofessional services.

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

(a) Initially: $0

(b) On a continuing basis: $0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding necessary.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? Yes, several policies differentiate among state agencies based on small purchase limits.

GENERAL GOVERNMENT CABINET
Board of Veterinary Examiners
(Amendment)

201 KAR 16:015. Fees.

RELATES TO: KRS 321.193, 321.195, 321.201, 321.207, 321.211, 321.221

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.193(2) and 321.211 require the Board of Veterinary Examiners to establish the application, examination, and renewal fees for veterinarians. This administrative regulation establishes the application, examination, and renewal fees.

Section 1. Application Fees. (1) The application fee for a licensed veterinarian shall be $100 [fifty-(fifty)-dollars].

(2) The application fee for a veterinary technician or a veterinary technologist shall be twenty-five (25) dollars.

Section 2. Examination Fees. (1) The fee for the North American Veterinary Licensing Examination shall be paid directly to the National Board of Veterinary Medical Examiners.

(2) The fee for the state examination shall be $100.

(3) The fee for the veterinary technician or technologist examination shall be $100.

Section 3. Renewal Fees and Penalties for a Veterinarian, Veterinary Technician, and Veterinary Technologist. The following fees and penalties shall be paid in connection with licensure renewals and penalties:

(1) The biennial renewal fee for licensure as a veterinarian shall be $100 if paid by September 30 [fifty-(fifty)-dollars].

(2) The late renewal fee, including penalty, for the grace period extending from October 1 to November 30 for licensure as a veterinarian shall be $200 [one hundred] dollars.

(3) The renewal fee for reinstatement of licensure as a veterinarian after November 30 shall be $300.

(4) The renewal fee for renewal of licensure as a veterinary technologist or technician shall be thirty (30) dollars.

(5) The late renewal fee, including penalty, for the grace period extending from October 1 to November 30 for renewal of licensure as a veterinary technologist or technician shall be forty (40) dollars.

(6) The renewal fee for reinstatement of licensure as a veterinary technologist or technologist after November 30 shall be fifty (50) dollars.

Section 4. Special Permit Fee. The fee for a special permit shall be fifty (50) dollars.

Section 5. Fee for Issuance of Certification for a Certified Animal Control Agency and a Certified Animal Euthanasia Specialist. (1) The fee for issuance of a certificate to an animal control agency shall be fifty (50) dollars.

(2) The fee for issuance of a certificate to a certified animal euthanasia specialist shall be fifty (50) dollars.

Section 6. Renewal of Certification for a Certified Animal Control Agency and a Certified Animal Euthanasia Specialist. (1) Each certified animal control agency and certified animal euthanasia specialist
shall annually, on or before March 1, pay to the board a renewal fee of fifty (50) dollars for the renewal of the certificate. A certificate not renewed by March 1 of each year shall expire based on the failure to renew in a timely manner.

(2) A sixty (60) day grace period shall be allowed after March 1, during which time the animal control agency or certified animal euthanasia specialist may continue to function. If they renew the certificate upon payment of a late fee of sixty (60) dollars.

(3) A certificate not renewed before May 1 shall terminate based on the failure to renew in a timely manner. Upon termination, the certificate is no longer valid in the Commonwealth.

(4) After the sixty (60) day grace period, a certificate that has been terminated may be reinstated upon payment of a reinstatement fee of seventy-five (75) dollars.

(5) The renewal fee for the first renewal shall be waived for a certificate received within 120 days prior to the renewal date.

HOWARD RENNECKER, DVM, Chairman
APPROVED BY AGENCY: May 20, 2004
FILED WITH LRC: June 4, 2004 at 4 p.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Friday, July 23, 2004 at 10 a.m. at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 2004. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kristen Webb, Executive Director, Kentucky Board of Veterinary Examiners, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-4233, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristen M. Webb, Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the fees for licensees of the Kentucky Board of Veterinarian Examiners.
(b) The necessity of this administrative regulation: KRS 321.193(2) and 321.211 authorize the Board of Veterinary Examiners to establish the application, examination, and renewal fees for veterinarians. This administrative regulation establishes the application, examination, and renewal fees.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.193(2) and 321.211 authorize the Board of Veterinary Examiners to establish the application, examination, and renewal fees for veterinarians.
(d) How this administrative regulation will assist in the effective administration of the statutes: The regulation specifies the fees that are used to operate the board.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation: The amendment to this administrative regulation puts the renewal fees in line with the renewal period. The renewal period was recently changed to every even-numbered year. As a result, the renewal fee needed to be changed to reflect the new renewal period. Instead of $50 every year the fee will be $100 every even-numbered year.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to prevent confusion about what amount the fee is. The amount of the fee is not changed but is instead paid every even-numbered year.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 321.193(2) and 321.211 authorize the Board of Veterinary Examiners to establish the application, examination, and renewal fees for veterinarians.
(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will prevent confusion in the future.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation and the number of affected individuals.
(4) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: It will not have an impact on the veterinarians because they will only have to renew their license every even-numbered year instead of every year.
(5) Estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No costs are associated with the amendment.
(b) On a continuing basis: There are no continuing costs associated with implementation of this regulation.
(6) The source of funding for the implementation and enforcement of this administrative regulation: Licensure fees paid by licensees fund implementing and enforcing this amendment.
(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees collected by the board will be necessary to implement this administrative regulation.
(8) This administrative regulation establishes fees in accordance with KRS Chapter 321.
(9) TIERING: Is tiering applied? Tiering is not required, as all veterinarian licensees will pay the same renewal fee.

GENERAL GOVERNMENT CABINET
Board of Licensed Veterinarians
(Amendment)

201 KAR 16:030. License, annual renewal notice.
RELATES TO: KRS 321.193, 321.211, 321.221, 321.441
STATUTORY AUTHORITY: KRS 321.235, 321.240
NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.193, 321.211, and 321.441 require the board to issue a license or registration to all persons successfully passing the examination and being qualified to engage in the practice of veterinary medicine or as a veterinary technician or veterinary technologist in this state. KRS 321.211 and 321.441 provide for the renewal of the license or registration. This administrative regulation requires the mailing of an annual renewal notice to all licensed veterinarians, veterinary technicians, and veterinary technologists and requires all licensed veterinarians, veterinary technicians, and veterinary technologists to complete the annual renewal notice and return it, along with the annual renewal fee to the board. It further requires all licensed veterinarians, veterinary technicians, and veterinary technologists to keep the board apprised of the current address of the licensee.

Section 1. (1) The Kentucky Board of Veterinary Examiners shall on or about August of each even-numbered year mail to each licensed veterinarian a renewal notice.
(2) The Kentucky Board of Veterinary Examiners shall on or about August of each year mail to each licensed veterinary technician, and veterinary technologist an annual renewal notice.
(3) This annual renewal notice shall be completed and received by the board on or before September 30 of the appropriate (each) year.
(4) Renewals bearing a postmark of September 30 or earlier shall be considered received in a timely manner.
(5) The renewal notice shall be attached to the completed renewal notice when it is returned to the board.
(6) The renewal fee shall be paid by personal check, certified check, cashier’s check or post office money order, payable to the Kentucky State Treasurer.
(7) All information requested on the renewal notice shall be furnished to the board when the completed renewal notice is returned to the board.

Section 2. Every licensed veterinarian, veterinary technician, or
veterinary technologist shall file his proper and current mailing address with the board at its principal office and shall immediately notify the board of any and all changes of his mailing address.

Section 3. (1) Every licensed veterinarian shall list their continuing education hours received pursuant to 201 KAR 16:050 with the renewal form and furnish the [said] information to the board.

(2)(a) The board shall not renew the license of any person who fails to receive or appropriately document the required hours of continuing education.

(b) The [said] license shall expire and subsequently be terminated as prescribed by KRS 321.211.

HOWARD RENNECKER, DVM, Chairman
APPROVED BY AGENCY: May 20, 2004
FILED WITH LRC: June 4, 2004 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Friday, July 23, 2004 at 10 a.m., at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing 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. Written comments shall be accepted until August 2, 2004. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kristen Webb, Director, Kentucky Board of Veterinary Examiners, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-4233, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristen M. Webb, Director
(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure for renewing a license.

(b) The necessity of this administrative regulation: KRS 321.193, 321.221, 321.441 and 321.211 require the Board of Veterinary Examiners to issue a license or registration to all persons who pass the examination and satisfy the other licensing requirements. The statutes also provide for a biennial renewal period for veterinarians and an annual renewal period for veterinary technicians and veterinary technologists.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.193 and 321.211 authorizes the Board of Veterinary Examiners to establish the application, examination, and renewal fees for veterinarians. KRS 321.211 has been amended to require veterinarians to be licensed every even numbered year.

(d) How this administrative regulation will assist in the effective administration of the statutes: The regulation specifies that veterinarians are to renew every even numbered year.

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

(a) How the amendment will change the existing administrative regulation: The amendment to this administrative regulation makes clear that the renewal period for veterinarians is every even numbered year and the renewal period for all other licensees under this statute is every year.

(b) The necessity of the amendment to this administrative regulation: The renewal law has been altered and the regulations need to reflect that change

(c) How the amendment conforms to the content of the authorizing statutes: KRS 321.211 authorize the Board of Veterinary Examiners to establish the application, examination, and renewal fees for veterinarians. It also establishes that veterinarians are to renew their license every even numbered year.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation informs applicants of the change in renewal period.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board licenses 1,850 veterinarians in the Commonwealth.

(4) Provide an assessment of how the above groups will be impacted by the implementation of this administrative regulation: All veterinarians will be required to renew their license every even numbered year. The regulation specifies that requirement in regulatory form.

(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No costs are associated with the amendment.

(b) On a continuing basis: There are no continuing costs associated with implementation of this regulation.

(6) What is the source of funding for the implementation and enforcement of this administrative regulation: Licensure fees paid by licensees provide the funds for implementing and enforcing this amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees collected by the board will be necessary to implement this administration.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. No fees are increased or established. The fees will remain the same but will be paid at a different time.

(9) TIERING: Is tiering applied? Tiering is not required as all veterinarian licensees pay the same renewal fee.

GENERAL GOVERNMENT CABINET
Board of Licensed Veterinary Examiners
(Amendment)

201 KAR 16:050, Continuing education.

RELATES TO: KRS 321.211(7), 321.235(6), 321.441(2)
STATUTORY AUTHORITY: KRS 321.211(7), 321.235(1), (3), (5), (6), (7), 321.441(2)
NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 321.211(7) the board may require that a person applying for renewal or reinstatement to show evidence of completion of continuing education. This administrative regulation establishes the requirements for continuing education hours relating to the practice of veterinary medicine.

Section 1. (1)(a) A veterinarian shall be required to biennially [annually] complete thirty (30) [fifteen (15)] hours of continuing education to be eligible for renewal of his or her license.

(b) Of the required hours, at least twenty (20) [ten (10)] hours shall be directly related to the practice of veterinary medicine and no more than ten (10) [five (5)] hours may be in related areas such as practice management.

(c) A veterinarian may acquire no more than four (4) [two (2)] hours of continuing education in each renewal period by the completion of audio or video recordings, electronic, computer or interactive materials or programs on scientific subjects prepared or approved by any of the organizations identified in Section 2(1) and (2) of this administrative regulation.

(2) A veterinary technician and veterinary technologist shall annually complete six (6) hours of continuing education to be eligible for renewal of his or her registration.

(3) Continuing education shall be earned from October 1 of each renewal period [year] until September 30 at the end of the period [of the following year].

Section 2. Approved Courses. (1) The following programs shall be approved:

(a) All scientific programs of all organizations of the American Veterinary Medical Association, its constituent organizations and its recognized specialty groups and accredited veterinary medical institutions whose meetings impart educational material directly relating to veterinary medicine;
(b) Programs which are approved by the Registry of Approved Continuing Education (RACE) of the American Association of Veterinary State Boards (AAVSB); and
(c) All programs approved by the board, not associated with RACE or the American Veterinary Medical Association and its sub-organizations.

(2) Those programs shall impart knowledge directly relating to the practice of veterinary medicine to the end that the utilization and application of new techniques, scientific and clinical advances, and the achievement of research may assure expansive and comprehensive care to the public.

Section 3. (1) A licensee and a registrant shall:
(a) Secure documentation of attendance at a course; and
(b) Annually, list on "Licensed Veterinarian Annual Renewal Form" or "Veterinary Technician Annual Renewal Form", as appropriate, each course he or she attended.

(2) The board may require documentation of attendance at continuing education courses to be submitted to it.

Section 4. (1) The board may, in individual cases involving medical disability or illness, grant waivers of the continuing education requirements or extensions of time within which to fulfill the same or make the required reports.
(a) A written request for medical disability or illness waiver or extension of time shall be:  
1. Submitted by the licensee and registrant; and
2. Accompanied by a verifying document signed by a licensed physician.
(b) A waiver of the minimum continuing education requirements or an extension of time within which to fulfill the same may be granted by the board for a period of time not to exceed one (1) calendar year.
(c) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the licensee or registrant shall reapply for another extension.

(2) The board may grant a waiver to a licensee who is unable to meet the continuing education requirements of this administrative regulation because of obligations arising from military duty.
(a) A licensee engaged in active military duty and deployed outside the United States for more than eight (8) months shall not be required to have completed the continuing education requirement for license periods during which that status exists.
(b) A licensee who is called to active duty in the armed forces, shall not be required to have completed the continuing education requirement for license periods during which that status exists.
(c) The licensee requesting an extension or waiver under this provision shall submit the appropriate military assignment form, deployment orders, or a statement from the licensee's unit commander confirming the call-up or deployment.

Section 5. (1)(a) A license or registration that has been terminated shall be reinstated if the licensee or registrant submits proof that he has completed the required number of continuing education hours within the twelve (12) month period immediately preceding the date on which the application is submitted.
(b) The board may permit the immediate reinstatement of a terminated license or registration if the licensee or registrant agrees to complete the required number of continuing education hours within six (6) months of the date of reinstatement.
(c) Prior to renewal of a license or registration for the license period following the license period during which the license or registration was reinstated, a reinstated licensee or registrant shall have completed the number of continuing education hours required for renewal of a license or registration by Section 1 of this administrative regulation.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Licensed Veterinarian Biennial [Annual] Renewal Form (95)"; and
(b) "Veterinary Technician Annual Renewal Form (95)".
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Board of Veterinary Examiners, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or by sending a request to the board at P.O. Box 1360, Frankfort, Kentucky 40602.

HOWARD RENNECKER, DVM, Chairman
APPROVED BY AGENCY: May 25, 2004
FILED WITH LRC: June 4, 2004, at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Friday, July 23, 2004 at 10 a.m., at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 2004. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kristen Webb, Executive Director, Kentucky Board of Veterinary Examiners, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-4233, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Kristen M. Webb, Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes continuing education requirements for licensees.
(b) The necessity of this administrative regulation: KRS 321.211(7) the board may require that a person applying for renewal or reinstatement to show evidence of completion of continuing education. This administrative regulation establishes the requirements for continuing education hours relating to the practice of veterinary medicine.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.21(7) gives the board the authority to require continuing education.
(d) How this administrative regulation will assist in the effective administration of the statutes: The regulation specifies the continuing education requirements for renewal, which is the responsibility of the board. The board has determined that continuing education helps promote good veterinary medical practices, and thus furthers the board mandate of protecting the public.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation: The amendment to this administrative regulation does not change the number of continuing education hours that are required for renewal. It merely reflects the fact that veterinarians are to renew their licenses on every even-numbered year as opposed to annually.
(b) The necessity of the amendment to this administrative regulation: The board details the requirements for continuing education in accordance with the statutes. This amendment will prevent confusion as to the number of continuing education hours required for renewal.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 321.211(7) gives the board the authority to require continuing education.
(d) How the amendment will assist in the effective administration of the statutes: The board has determined that continuing education helps promote good veterinary medical practices, and thus furthers the board mandate of protecting the public.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board licenses 1,850 veterinarians in the commonwealth and 300 veterinary technologists and technicians.
(4) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: The amendment to the administrative regulation will make the acquisition of continuing education easier for licensees.

(5) Estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: No costs are associated with the amendment.
   (b) On a continuing basis: There are no continuing costs associated with implementation of this regulation.

(6) The source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing and enforcing this amendment are funded by licensure fees paid by licensees.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees collected by the board will be necessary to implement this administrative regulation.

(8) This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was applied to require that veterinary technicians and technologist, who work only under the supervision of licensed veterinarians, obtain a lower number of continuing education credits.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(Amendment)

201 KAR 30:040. Standards of practice.


STATUTORY AUTHORITY: KRS 324A.035(3)(d)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(3)(d) requires the board to establish by administrative regulation standards of professional appraisal practice. 12 U.S.C. 3331, 3336, and 3339 and 12 C.F.R. 225.64 and 225.65 require that real estate appraisals in connection with federally-related transactions be performed in accordance with appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation. This administrative regulation establishes the standards of professional practice.

Section 1. A licensed nonfederal real property appraiser shall not be required to comply with the Uniform Standards of Professional Appraisal Practice.

Section 2. The following certificate holders or licensees shall comply with the Uniform Standards of Professional Appraisal Practice under the time the services were performed:
   (1) A certified general real property appraiser;
   (2) A certified residential real property appraiser;
   (3) A licensed real property appraiser; and
   (4) An associate real property appraiser.

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


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 2480 Fortune Drive, Suite 120, Lexington, Kentucky 40509, (859) 543-8943. Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Avenue, N.W., Suite 900, Washington, D.C. 20005-3517, (202) 347-7722.

C.W. WILSON, Chair
APPROVED BY AGENCY: June 14, 2004
FILED WITH LRC: June 14, 2004 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 2004 at 1 p.m., at 2480 Fortune Drive, Suite 120, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 14, 2004, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will 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. Written comments shall be accepted until August 2, 2004. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 2480 Fortune Drive, Suite 120, Lexington, Kentucky 40517, phone (859) 543-8943, fax (859) 543-0028.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Larry Disney

(1) Provide a brief summary of
   (a) What this administrative regulation does: This administrative regulation establishes the standards of practice for certified and licensed appraisers.
   (b) The necessity of this administrative regulation: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and to identify the standards of practice required of certified and licensed appraisers.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the standards of practice.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by identifying the standard of practice required for certificate holders.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: The amendment eliminates the reference to the prior edition of the Uniform Standards of Professional Appraisal Practice.
   (b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to specify the standards of practice for certificate holders.
   (c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations necessary to administer the law.
   (d) How the amendment will assist in the effective administration of the statutes: The standards of practice will assist by clearly identifying the practice required of certificate holders.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 1058 persons certified by the board.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: No impact will be felt by this amendment as the certificate holders because the standards identified by this amendment have previously existed.

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(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No new costs will be incurred by the changes.
(b) On a continuing basis: No new costs will be incurred by the changes.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board’s operations are funded by fees paid by certificate holders.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required to implement the changes made by this regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase, or any fees.
(9) TIERING: is tiering applied? Tiering was not applied as the regulation is applicable to all certificate holders in the class.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 12 U.S.C. 3331, 3336, and 3339 and 12 C.F.R. 225.64 and 225.65.
(2) State compliance standards. This administrative regulation requires compliance with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation.
(3) Minimum or uniform standards contained in the federal mandate. The federal mandate requires compliance with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation.
(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 imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements imposed.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board (Amendment)

201 KAR 30:060. Fees administrative regulation.

RELATES TO: KRS 324A.035, 324A.040, 324A.045, 324A.065, 12 U.S.C. 3331-3351

STATUTORY AUTHORITY: KRS 324A.020, 324A.035, 324A.045(2), 324A.065

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 through 12 U.S.C. 3351). KRS 324A.065 requires the board to establish by administrative regulation and collect fees for certification or licensure as an appraiser. This administrative regulation establishes fees for initial application, annual renewal, roster, and examination, for both federally and nonfederally related transactions.

Section 1. A fee required by KRS 324A.065(1) and (2) shall be submitted with the application or request.

Section 2. (1) The renewal date for a certificate or license shall be July 1 of each calendar year.
(2) The fee required for annual renewal of a certificate or license shall be submitted by each certificate or license on or before July 1 of each calendar year.

Section 3. The roster fee shall be paid with the application or renewal fee.

Section 4. Examination fees shall be paid prior to an examination.

Section 5. Fees: (1) Federally-related transactions:
(a) Initial application fee: $212;
(b) Examination fee: $200;
(c) Annual certificate or licensure fee: $212;
(d) Duplicate certificate fee: ten ($10) dollars;
(e) Certificate correction fee: ten ($10) dollars;
(f) Roster fee not to exceed fifty ($50) dollars;
(g) Initial inactive certificate or licensure fee: fifty ($50) dollars.
(h) An annual inactive certificate or licensure fee: fifty ($50) dollars.

(2) Nonfederally-related transactions:
(a) Initial application fee: $100;
(b) Examination fee: $100;
(c) An annual certificate or licensure renewal fee: $100;
(d) Duplicate certificate fee: five ($5) dollars;
(e) Certificate correction fee: five ($5) dollars;
(f) Roster fee: twenty-five ($25) dollars.

C.W. WILSON, Chair
APPROVED BY AGENCY: June 14, 2004
FILED WITH LRC: June 14, 2004 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 2004, at 1 p.m., at the office of the Kentucky Real Estate Appraisers Board, 2480 Fortune Drive, Suite 120, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 14, 2004, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 2004. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Real Estate Appraisers Board, 2480 Fortune Drive, Suite 120, Lexington, Kentucky 40517, phone (859) 543-8943, fax (859) 543-0028.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Larry Disney

(1) Provide a brief summary of
(a) What this administrative regulation does: This administrative regulation establishes the fees for certification by the board.
(b) The necessity of this administrative regulation: This regulation is necessary to administer the program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the authority to set administrative fees within a certain amount, and the amount set herein within that amount.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The fees collected by the board are used for the sole purpose to directly administer the laws governing the program.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment institutes the fees for inactive licenses.
(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to offset the cost of providing for the administration of inactive licenses.
(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate fees regulations within a certain amount, and the fee will be within that specified amount.
(d) How the amendment will assist in the effective administration
of the statutes: The amendment will set out the fees for inactive licenses which will provide an alternative to those licensees who are not presently practicing and who do not wish to pay the full fee.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 1,700 persons certified by the board.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment will set out the fees for inactive licenses which will provide an alternative to those licensees who are not presently practicing and who do not wish to pay the full fee.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: The costs of administering the inactive program are substantially the same as administering the program for other licensees. Generally, the costs included in administering a licensure board are personnel, printing, copying, mailing, reviewing applications, issuing licensees, and enforcing the laws.
   (b) On a continuing basis: Same as above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board may operate the program by means of fee paid by certificate holders.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The increase in fees required to implement this regulation are set forth therein.

(8) This administrative regulation establishes fees in accordance with KRS Chapter 324.

(9) Tiering: Is tiering applied? Tiering was applied as inactive licensees require less administrator oversight than active ones.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate: 12 U.S.C. 3331, 3336, and 3338 and 12 C.F.R. 225.64 and 225.65.

(2) State compliance standards. This administrative regulation institutes the fees necessary to administer the program in accordance with the federally mandated requirements.

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate requires that the board administer the program in a manner consistent with the federal criteria. These minimum requirements require the board to review applicants to determine if their qualifications meet the standards, and if the appraisals meet the federal standards.

(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 imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements imposed.

GENERAL GOVERNMENT CABINET
Board of Licensure of Marriage and Family Therapists
(Amendment)

201 KAR 32:025. Marriage and family therapist associate.

RELATES TO: KRS 335.332
STATUTORY AUTHORITY: KRS 335.320, 335.332(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.332(3) requires the board to promulgate administrative regulations establishing the fees and other requirements for a marriage and family therapist associate permit. This administrative regulation establishes the requirements for marriage and family therapist associates.

Section 1. Marriage and Family Therapist Associate Application and Renewal. (1) A person desiring to be a marriage and family therapist associate shall apply for and submit to the board an "Appli-
cation for Licensure as a Marriage and Family Therapist or Marriage and Family Therapist Associate" with a fee of fifty (50) dollars for the first year. The initial application shall include a copy of a supervisory contract with the designated supervisor for approval by the board.

(2) An annual renewal fee of twenty-five (25) dollars for each subsequent year shall be submitted to the board. Contract renewal and extension shall be granted in accordance with Section 4 of this administrative regulation.

Section 2. Supervisory Contract. (1) Prior to beginning a course of supervision for the purpose of meeting licensure requirements, a marriage and family therapist associate shall contract with an approved supervisor in writing.

(2) The approved supervisor shall enter into a "Plan of Supervision for Clinical Marriage and Family Therapy Experience" with a person who meets the criteria for becoming a marriage and family therapist associate.

(3) The approved supervisor shall be responsible for the marriage and family therapist associate's development and the welfare of the clients served by the marriage and family therapist associate.

(4) If a new supervisory contract is entered into with a different supervisor, approval shall be obtained from the board.

Section 3. Contract Information. The supervisory contract between the marriage and family therapist associate and the approved supervisor shall contain the following information:

(1) The name of the marriage and family therapist associate;

(2) The name and license number of the approved supervisor of record;

(3) The name and license number of other approved supervisors;

(4) The agency, institution, or organization where the experience will be received;

(5) A detailed description of the nature of the practice including the type of:
   (a) Clients to be seen;
   (b) Therapies and treatment modalities which shall be used including the prospective length of treatment; and
   (c) Problems or conditions which shall be treated;

(6) The nature, duration, and frequency of the supervision, including the:
   (a) Number of hours of supervision per week;
   (b) Amount of group and individual supervision; and
   (c) Methodology for transmission of case information;

(7) The conditions or procedures for termination of the supervision; and

(8) A statement that:
   (a) The approved supervisor of record understands that he shall be held accountable to the board for the care given to the marriage and family therapist associate's clients; and
   (b) The approved supervisor of record and other supervisors meet the criteria established in existing administrative regulations.

Section 4. Contract Renewal and Extension. (1) Upon approval of the board, a supervisory contract shall be issued for a term of three (3) years.

(2) At the conclusion of the original three (3) year term, the marriage and family therapist associate may request that a supervisory contract be renewed for a period of one (1) year.

(3) If a marriage and family therapist associate is unable to complete the requirements of the contract and wishes to retain his permit, he shall request a one (1) year extension.

(4) There shall not be a limit on the number of extensions that may be granted a marriage and family therapist associate.

Section 5. Clinical Supervision. (1) Clinical supervision shall:
   (a) Be equally distributed throughout the qualifying period;
   (b) Be clearly distinguishable from psychotherapy, didactic enrichment or training activities;
   (c) Focus on raw data from the supervisee's current clinical work made available to the supervisor and
   (d) Be direct, face-to-face contact between the supervisor and supervisee.

(2) The supervision process shall focus on:
(a) Accurate diagnosis of client problems leading to proficiency in applying professionally recognized nomenclature and developing a plan for treatment as set forth in the Diagnostic and Statistical Manual of Mental Disorders;
(b) Development of treatment skills appropriate to the therapeutic process;
(c) Development of sensitivity to context and issues relating specifically to the family or individual being counseled;
(d) Acknowledgment of an awareness of the use of the professional self of the therapist in the process of therapy;
(e) Increased theoretical and applied knowledge for the therapist;
(f) Acquisition of a greater depth of knowledge and range of techniques in the provision of marriage and family therapy and
(g) Awareness of ethical issues in practice, in order to safeguard and enhance the quality of care available to marriage and family therapy clients.

(3) Oral and written reports shall not constitute more than fifty (50) percent of raw data used for direct, face-to-face clinical supervision.

(4) Interactive video shall not exceed fifty (50) hours raw data used for direct, face-to-face.

(5) Any alternative format of direct, face-to-face clinical supervision shall receive prior approval of the board.

(6) Groups of up to six (6) persons, behind a one (1) way mirror, may receive credit for group supervision if an approved supervisor is present and students are actively participating in the session. Up to two (2) students seeing a client on the other side of a one (1) way mirror may concurrently receive client contact and individual supervision hours if the approved supervisor is actively supervising the session.

(7) In a therapy session involving a supervisor and supervisee:
(a) The role of the approved supervisor as a supervisor or co-therapist shall be clearly defined prior to beginning a therapy session.
(b) The supervisees may receive credit for client contact hours and supervision hours.
(c) An individual supervisee may present a videocassette in group supervision with an approved supervisor. The individual supervisee may receive group supervision hours if not more than five (5) additional students are present. The additional students may also receive group supervision credit if they are actively involved in the process.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Application for Licensure as a Marriage and Family Therapist or Marriage and Family Therapist Associate", (6/1/79 Edition);
(b) "Plan of Supervision for Clinical Marriage and Family Therapy Experience", Revised 5/1/79 (6/1/79 Edition).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive [700 Louisville Road], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

EILEEN D. DURBIN Chairperson
APPROVED BY AGENCY: May 20, 2004
FILED WITH LRC: June 4, 2004 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2004 at 2 p.m. at the Division of Occupations and Professions, Kentucky Board of licensure of Marriage and Family Therapists, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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. Written comments shall be accepted until August 2, 2004. 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: Kristen M. Webb, Executive Director, Kentucky Board of Licensure of Marriage and Family Therapists, P.O. Box 1360, Frankfort, Kentucky 40602-1360, phone (502) 564-3290, fax (502) 564-4916.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Kristen M. Webb, Executive Director

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation establishes the requirements for marriage and family therapist associate permits.
(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to meet the requirements of KRS 335.332(3) which requires the board to promulgate administrative regulations establishing the fees and other requirements for a marriage and family therapist associate permit.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.320 and 335.332(3) authorize the board to set the requirements for marriage and family therapist associates. This administrative regulation establishes requirements for marriage and family therapist associates.
(d) How this administrative regulation currently assists or will assist in the effective administration of the regulations: This regulation specifies the fees and requirements for a marriage and family therapist associate, thus ensuring that the applicants know what is expected by the board to obtain licensure.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation changes the application for plan of supervision for clinical marriage and family therapy experience to reflect the correct type of approval for which the applicant may seek when applying for licensure.
(b) The necessity of the amendment to this administrative regulation: KRS 335.332(3) requires the board to promulgate an administrative regulation establishing the fees and other requirements for a marriage and family therapist associate permit. This regulation sets forth those requirements.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 335.320 and 335.332(30) authorize the board to set the requirements for marriage and family associates. This regulation sets forth those requirements.
(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation reflects the correct type of approval for which the applicant may seek that is allowed by the administrative regulation.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board currently licenses 81 associates in the commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: Applicants will be able to select a type of approval for which they are seeking that is allowed by the administrative regulation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Costs associated with the initial implementation of this regulation will involve the cost of making copies of the revised application. The cost will be absorbed into the presently existing expenses by the board.
(b) On a continuing basis: There are no continuing costs associated with the implementation of this regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Costs for implementing this amendment will be funded by the application fees paid by applicants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amended administrative regulation does not establish fees nor directly or indirectly increases any fees.

(9) Tiering: Is tiering applied? No. Tiering does not apply to this amendment because all entities are treated the same.

DEPARTMENT OF AGRICULTURE
Division of Animal Health
(Amendment)


RELATES TO: KRS 257.030
STATUTORY AUTHORITY: KRS 257.030
NECESSITY, FUNCTION, AND CONFORMITY: Sets forth the requirements for entry into Kentucky livestock that has been exposed to vesicular stomatitis.

Section 1. General Provisions. (1) Prohibited entry into Kentucky.

(a) Livestock, wild or exotic animals shall not be permitted entry into Kentucky from any designated area or region [state] in which vesicular stomatitis has been diagnosed. Any designated area or region shall be defined by the Kentucky State Veterinarian.

(b) Livestock, wild or exotic animals which have been in a vesicular stomatitis designated area or region shall not be permitted entry into Kentucky until they have been out of the designated area or region a minimum of thirty (30) days or the vesicular stomatitis designated area or region is released from restriction [livestock, wild or exotic animals shall not be permitted entry into Kentucky which have been in any state, during the thirty (30) days prior to the animals entry into Kentucky, which has had vesicular stomatitis diagnosed in the state].

(c) Livestock, wild or exotic animals shall not be permitted entry into Kentucky from any state which does not have in place adequate requirements, as determined by the chief livestock health official in Kentucky, governing the entry of such animals from states which have had vesicular stomatitis diagnosed.

(2) Vaccination.

(a) Livestock, wild or exotic animals in Kentucky shall not be vaccinated with an autogenous vesicular stomatitis virus vaccine and issued a conditional license by the United States Department of Agriculture’s Animal and Plant Health Inspection Service.

(b) Livestock, wild or exotic animals which have been vaccinated with an autogenous vesicular stomatitis virus vaccine and issued a conditional license by the USDA’s Animal and Plant Health Inspection Service shall not be permitted entry into Kentucky.

(3) Testing. All equidae, including suckling foals, originating from a state which has a common border with a state in which vesicular stomatitis has been diagnosed, shall be negative to either a serum neutralization test, a complement fixation test, or a C-ELISA test for a vesicular stomatitis as directed by the Office of the Kentucky State Veterinarian within ten (10) days or a complement fixation test for the New Jersey strain of vesicular stomatitis within thirty (30) days prior to the animal’s entry into Kentucky. [The testing must be completed in a laboratory approved by the USDA’s National Veterinary Services Laboratory.] The certificate of veterinary inspection shall include the following:

(a) Testing laboratory;

(b) Test date;

(c) Accession number;

(d) Type of test and test results; and

(e) Complete name, address, city and state of both the consignor and consignee.

(4) Other requirements. All other entry requirements as found in 302 KAR 20:040 and other requirements as deemed appropriate and necessary by the Kentucky State Veterinarian shall be met in full.

RICHIE FARMER, Commissioner
APPROVED BY AGENCY: May 27, 2004
FILED WITH LRC: May 27, 2004 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2004, at 9 a.m. in Room 188, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 14, 2004, 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. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 2004. 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: Mark Farrow, Chief of Staff, Kentucky Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-5126, fax (502) 564-5016.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dr. Robert Stout, State Veterinarian

(1) Provide a brief summary of:

(a) What this administrative regulation does: Changes requirement for entry into Kentucky for animals which have been diagnosed with vesicular stomatitis.

(b) The necessity of this administrative regulation: To prevent entry of vesicular stomatitis diagnosed animals into Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Controls movement of diseased animals into Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Controls and prevents entry of diseased animals into Kentucky.

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

(a) How the amendment will change this existing administrative regulation: Allows designation of areas or regions, reduces time period for animals originating from a state bordering a state in which vesicular stomatitis has been diagnosed.

(b) The necessity of the amendment to this administrative regulation: See (1)(a)(b)(c) and (d).

(c) How the amendment conforms to the content of the authorizing statutes: Same as (1)(c).

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons and groups wishing to move animals into Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: They will be required to comply with changes in the administrative regulation.

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

(a) Initially: None

(b) On a continuing basis: None

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased.

(9) TIERING: Is tiering applied? Tiering was not used. The administrative regulation will apply to all parties equally.
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Amendment)

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

RELATES TO: KRS 223.160-223.220, 224.10-100, 224.10-110, 224.10-120, 40 C.F.R. 141.2, 141.25(c), 141.43, 141.131-141.153

STATUTORY AUTHORITY: KRS 223.160-223.220, 224.10-100(30), 224.10-110, 40 C.F.R. 141.2 [Part 141], 141.25(c), 141.43, 141.131, 141.153, 42 U.S.C. 300f, 300g, 300a-6(e), 300h, 300j

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(30) and 224.10-110 authorize the cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use. This administrative regulation is necessary to define terms used by the cabinet in 401 KAR Chapter 8.

Section 1. Definitions. (1) "Action level" means:
(a) The concentration of lead or copper in water specified in 401 KAR 8:300, Section 2 [3], which determines, in some cases, the treatment requirements contained in 401 KAR 8:300 that a water system shall complete.
(b) For the purpose of 401 KAR 8:075: the concentration of a contaminant, which if exceeded, triggers treatment or other requirements that a water system shall follow.

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

(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 "PbS level" means the concentration of lead in the blood as measured in micrograms of lead per deciliter of blood, or mg/dl.

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

(7) "Boll water advisory" or "consumer advisory" means a type of consumer advisory that provides notice to the consuming public through radio, television, direct mail, posting, newspaper or other media and that conveys [to-convey to the-consuming-public] in the quickest manner possible:
(a) Information that water provided by a system may cause adverse human health effects due to possible biological contamination if consumed, unless it is first boiled for three (3) minutes at a rolling boil; and
(b) What action the public is advised to take.

(8) "Boll water notice" means a notice to the consuming public through radio, television, direct mail, posting, newspaper or other media and that conveys [to-convey to the-consuming-public] in the quickest manner possible information that water provided by a system is unfit for human consumption unless first boiled for three (3) minutes at a rolling boil.

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

(10) [141] "Bottled water system" means a public water system that [which] provides bottled drinking water and includes the sources of water, and treatment, storage, bottling, manufacturing, or distribution facilities. The term excludes:
(a) A public water system that [which] provides only a source of water supply for a bottled water system; and
(b) [excluded] An entity providing only transportation, distribution or sale of bottled water in sealed bottles or other sealed containers.

(11) [142] "Bottled water treatment plant" means a facility which provides the product water used for bottled water by processing water from an approved source.

(12) [143] "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) [144] "Cabinet" means the [Natural Resources- and Environmental and Public Protection Cabinet, Department for Environmental Protection, Division of Water, or its successor.

(14) [145] "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 and is certified for one (1) or more types of contaminants listed or for one (1) or more of the specific constituents or combinations of constituents listed in 401 KAR Chapter 8.

(15) [146] "Check samples" means monitoring [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.

(16) [147] "Coagulation" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into floccs.

(17) [148] "Commercial facility" means a building or other place at which commerce or trade takes place.


(19) [200] "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 ran [ran] from January 1, 1993 to December 31, 1995; the second from January 1, 1996 to December 31, 1998; the third from January 1, 1999 to December 31, 2001.

(20) [243] "Comprehensive performance evaluation" or "CPE" means a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation, and maintenance practices.

(21) "Consumer advisory" means a notice to the consuming public through radio, television, direct mail, posting, newspaper, or other media to convey in the quickest manner possible:
(a) Information that water provided by a system may cause adverse human health effects if consumed and what action the public is advised to take; or
(b) Other information that the public needs to know about its water.

(22) "Continent growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion of the filter, in which bacterial colonies are not discrete.

(23) "Consecutive public water systems" means two (2) or more public water systems with interconnected distribution systems, the effect of which is to distribute water from one (1) system to the next.

(24) "Consumer confidence report" means the annual report prepared by a community water system pursuant to 401 KAR 8:075 that informs consumers of the quality of the water distributed by the system and characterizes the risks of exposure to contaminants found in drinking water.

(25) "Contaminant" means a physical, chemical, biological, or radiological substance or other matter found in water.

(26) "Contaminant group" means all of the constituent members that collectively comprise the individual bacteriological, inorganic chemical, organic chemical, radiological, volatile organic chemical, synthetic organic chemical, and secondary contaminant groups regulated by 401 KAR Chapter 3.

(27) "Conventional filtration treatment" means a series of proc-
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esses including coagulation, flocculation, sedimentation, and filtration resulting in substantial particulate removal.

(28) "Corrosion" means the dissolution or erosion of pipe or other plumbing material by water.

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

(30) "Corrosivity" means the tendency of water to form or dissolve calcium carbonate as a film or scale.

(31) "CPE" means a comprehensive performance evaluation.

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

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

\[
\frac{CT_{99.9}}{CT_{calc}}
\]

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

\[
\sum (\frac{CT_{calc}}{CT_{99.9}})
\]

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

(34) "Customer" means, for the purpose of 401 KAR 8:075, a billing unit or service connection to which water is delivered by a community water system.

(35) "Department" means the Kentucky Department for Environmental Protection.

(36) "Detected" means, for the purpose of 401 KAR 8:075, at or above the level prescribed by:

(a) 401 KAR 8:250, Section 1(4), for an inorganic contaminant;
(b) 401 KAR 8:400, Section 1(18), or 401 KAR 8:420, Section 1(7), for an organic contaminant; or
(c) 40 C.F.R. 141.25(c) for a radioactive contaminant, as adopted without change in Section 2 of this administrative regulation.

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

(38) "Direct filtration" means a series of processes including coagulation and filtration but excluding sedimentation resulting in substantial particulate removal.

(39) "Direct responsible charge" means personal, first hand responsibility, control or supervision of the operation of a public water system.

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

(41) "Disinfection" means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

(42) "Disinfection profile" means a summary of daily Giardia lamblia inactivation through the treatment plant, developed according to the procedure in 401 KAR 8:160, Section 3.

(43) "Distributed water" means water leaving the water treatment facility and entering the distribution system.

(44) "Division" means the Division of Water.

(45) "DOC" means dissolved organic carbon, measured by milligrams per liter, or mg/l.

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

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

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

(49) "Enhanced coagulation" means the addition of coagulation sufficient for improved removal of disinfection byproduct precursors by conventional filtration treatment.

(50) "Enhanced softening" means the improved removal of disinfection byproduct precursors by precipititative softening.

(51) "Fee" means a monetary charge to be assessed by the cabinet.

(52) "Filter profile" means a graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from startup to backwash inclusively. It includes an assessment of filter performance while another filter is being backwashed.

(53) "Filtration" means a process for removing particulate matter from water by passage through porous media.

(54) "First draw sample" means a one (1) liter sample of tap water, collected in accordance with 401 KAR 8:300, Section 9(2)(b)(9)(2)(b), that has been standing in plumbing pipes at least six (6) hours and is collected without flushing the tap.

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

(56) "Free flowing tap or outlet" means a tap or outlet that when turned on is flowing freely. It does not mean a continuously operating tap.

(57) "GAC" means granular activated carbon filter beds with an empty-bed contact time of ten (10) minutes based on average daily flow and a carbon reactivation frequency of every 180 days.

(58) "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

(59) "Groundwater source" means a source of water for a public or semipublic water supply that does not have a free water surface exposed to the atmosphere or a turbidity content which exceeds acceptable levels for potable water as specified in 401 KAR Chapter 8, and is not under the direct influence of surface water.

(60) "Groundwater under the direct influence of surface water"
means water beneath the surface of the ground with significant occurrence of insects or other microorganisms, algae, large-diameter pathogens such as Giardia lamblia, or Cryptosporidium, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH, which closely correlate to climatological or surface water conditions. Direct influence shall be determined for individual sources in accordance with the cabinet's "Guidance for Determination of Groundwater under the Direct Influence of Surface Water," September 1983, incorporated by reference in Section 3 of this administrative regulation. The cabinet's determination of direct influence may be based on site-specific measurements of water quality as well as documentation of well construction characteristics and geology with field evaluation.

(61) "HAA5" means haloacetic acid five (5).

(62) "Halocetic acid compounds" means monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromochloroacetic acid, and bromoacetic acid.

(63) "Halocetic acid five (5)" or "HAA5" means the sum of the concentrations, in milligrams per liter, of the haloacetic acid compounds, rounded to two (2) significant digits after addition.

(64) "Initial compliance period" means the first full three (3) year compliance period: January 1993 to December 1995 for systems serving more than 150 service connections. For the contaminant 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 serving fewer than 150 service connections.

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

(66) "Lead-free", for the purpose of 401 KAR 8:300, means:
(a) If used with respect to solder and flux, "lead-free" shall mean not more than two-tenths (0.2 percent) lead;
(b) If used with respect to pipes and pipe fittings: pipes and pipe fittings containing no more than eight and zero-tenths (8.0 percent) lead; and
(c) If used with respect to plumbing fittings and fixtures intended by the manufacturer to dispense water for human ingestion: fittings and fixtures that are in compliance with standards established in accordance with 42 U.S.C. Section 300g-6(e).

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

(68) "Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires' Disease.


(70) "Maximum contaminant level" or "MCL" means:
(a) The maximum permissible level of a contaminant in water which is delivered to a user of a public water system as measured at points specified in 401 KAR Chapter 8.
(b) For the purpose of 401 KAR 8:075: the highest level of a contaminant that is allowed in drinking water. MCLs are set as close as possible to the MCLGs as feasible using the best available treatment technology.

(71) "MCLG" means the level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.

(72) "MCLR" means:
(a) A level of a disinfectant added for water treatment that shall not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects; or
(b) For the purpose of 401 KAR 8:075: the highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.

(73) "MRLD" means:
(a) The maximum level of a disinfectant added for water treatment at which no known or anticipated adverse effect on the health of persons would occur, and which allows an adequate margin of safety. MRLDs are nonenforceable health goals and do not reflect the benefits of the addition of the chemical for control of waterborne microbial contaminants; or
(b) For the purpose of 401 KAR 8:075: the level of a drinking water disinfectant below which there is no known or expected risk to health. MRLDs do not reflect the benefits of use of disinfectants to control microbial contaminants.

(74) "MTR" means total trihalomethane potential [or "THMP"] means the maximum concentration of total trihalomethanes, or TTHMs, produced in a given water containing excess free chlorine residuals after seven (7) days reaction at a temperature of twenty-five (25) degrees Celsius, or seventy-seven (77) degrees Fahrenheit, or above.

(75) "MC" means maximum contaminant level.

(76) "MCLG" means maximum contaminant level goal.

(77) "Medium-size water system", for the purpose of 401 KAR 8:300 only, means a water system that serves greater than 1,000 but less than or equal to 50,000 persons.

(78) "Mineral water" means bottled water that contains no less than 250 parts per million total dissolved solids.

(79) "MRDL" means maximum residual disinfectant level.

(80) "MRDLG" means maximum residual disinfectant level goal.

(81) "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.

(82) "NTU" means nephelometric turbidity unit.

(83) "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."

(84) "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.

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

(86) "Picoicure" or "PCI" means that number of radioactive material producing 2.22 nuclear transformations per minute.

(87) "Point of disinfection application" means the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water runoff.

(88) "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 distribution throughout the house or building.

(89) "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.

(90) "Potable water" means water which meets the provisions of 401 KAR Chapter 8, the quality of which is approved by the cabinet for human consumption.

(91) "Private water supply" means a residential water supply located on private property for the use of one (1) to three (3) residential households.

(92) "Product water" means the water processed by a bottled water treatment plant that is used for bottled drinking water.

(93) "Professional engineer" means an engineer who is licensed as a professional engineer in Kentucky, pursuant to KRS Chapter 322.

(94) "Public water system" means a water system for the provision to the public of water for human consumption through a
pipe or other constructed conveyance, if the system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days of the year. The term includes collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in connection with the system, and collection and pretreatment storage facilities not under control of the operator of the water system which are used primarily in connection with the water system.

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

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

1. "Transient noncommunity water system" means a noncommunity water system that does not regularly serve at least twenty-five (25) of the same persons over six (6) months per year.

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

95) "PWSID number" means the seven (7) digit identification number assigned to a public water system by the cabinet. The first three (3) digits shall identify the county in which the public water system is primarily located.

96) "Rem" means the unit of dose equivalent from ionizing radiation to the total body or an internal organ or organ system.

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

98) "Residual disinfectant concentration" means the concentration of disinfectant measured in mg/L in a representative sample of water. It is the "C" in a CT calculation.

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

100) "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.

101) "Secondary standard" means the maximum contaminant levels for secondary contaminants.

102) "Secretary" means the secretary for the [Natural Resources and Environmental Protection Cabinet].

103) "Sedimentation" means a process for removal of solids before filtration by gravity or separation.

104) "Semipublic water system" means a water system made available for drinking or domestic use that does not qualify as a private or public water system.

105) "Service line sample" means a one (1) liter sample of water, collected in accordance with 401 KAR 8:300, Section 8(2)(c)(92)(2), that has been standing for at least six (6) hours in a service line.

106) "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.

107) "Slow sand filtration" means a process involving passage of raw water through a bed of sand at low velocity, generally less than one-fourth (0.25) m/h, resulting in substantial particulate removal by physical and biological mechanisms.

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

109) "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 by 401 KAR Chapter 8.

110) "Standard Methods" means the 18th Edition of "Standard Methods for the Examination of Water and Wastewater."
supply system from which potable water is purchased. (132) [4(300)] "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. (133) [4(313)] "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 supply. (134) [4(320)] "Water treatment plant" or "purification plant" means that portion of the water supply system which is designed to alter either the physical, chemical, or bacteriological quality of the water prior to entry to the water distribution system.

Section 2. Federal Regulation Adopted Without Change. (1) 40 C.F.R. 141.25(c) and 141.131, July 2003 [2000]. (2) The subject matter of this administrative regulation relating to the definitions of "detected" and "SUVA" is governed by those federal regulations.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference: (a) "Guidance for Determination of Groundwater Under the Direct Influence of Surface Water, September 1993"; and (b) "Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure, U.S. Department of Commerce, National Bureau of Standards, Handbook 69, June 5, 1959, and Addendum 1, August 1963" [incorporated by reference]. (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Water, Drinking Water Branch, 14 Reilly Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LAUUANA S. WILCHER, Secretary APPROVED BY AGENCY: May 14, 2004
FILED WITH JRC: June 4, 2004 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2004 at 1:30 p.m. (Eastern time) in Conference Room D-16 at the Department of Surface Mining, #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 14, 2004, five (5) working days prior to the hearing. Of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. PARKING NOTE: Persons interested in attending the public hearing, other than those with handicap parking passes or placards, are asked to park in the "upper" parking lot on Hudson Hollow, next to the Little Lamb Preschool behind the hedge, and not in the visitor parking lot or main parking lot.

CONTACT PERSON: Jeffrey W. Pratt, Director, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey W. Pratt, Director (1) Provide a brief summary of: (a) What this administrative regulation does: This administrative regulation contains the definitions of terms that are used in 401 KAR Chapter 8 and terms for the certification of public water system operators. 401 KAR Chapter 8 provides the administrative regulations for public and semipublic water systems that treat or distribute drinking water to their customers.
(b) The necessity of this administrative regulation: KRS 224.10-100(30) and 224.10-110 authorize the cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use. This administrative regulation is necessary to define terms used by the cabinet in 401 KAR Chapter 8.
(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides definitions to enable the cabinet to implement its program for the regulation and control of the purification of water for public and semipublic use and for the regulation of the certification of public water system operators pursuant to KRS Chapter 223.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation provides definitions for terms used in the chapter, so that the cabinet, regulated entities, and the public will understand the terms used in 401 KAR Chapter 8.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of: (a) How the amendment will change this existing administrative regulation: Two amendments to this administrative regulation will change definitions consistent with those required by the U.S. Environmental Protection Agency in 40 C.F.R. Part 141. Specifically, the definitions for maximum contaminant level goals and variances and exemptions are being amended to correct typographical errors. Also, the definition of "lead-free" is being moved to this administrative regulation from the lead and copper rule, 401 KAR 8:300, to comply with KRS Chapter 13A. Other definitions are being amended or deleted to clarify the cabinet's intent regarding boil water notices, boil water notices, consumer advisories, and check samples. The administrative regulations that use those terms are also being amended in this package, 401 KAR 8:020 and 8:150. The term "standard methods" is being deleted, since individual regulations incorporate by reference the specific edition of the "standard methods" and a definition is not necessary. The definition of "bottled water system" is being amended to clarify that a bottled water system is a public water system. Finally, a definition of PWISID number is being added, since that term is used in these administrative regulations.
(b) The necessity of the amendment to this administrative regulation: The changes relating to the federal requirements are necessary to allow the cabinet to maintain "primacy" for the enforcement and implementation of the federal program. The Safe Drinking Water Act was amended extensively in August 1996, necessitating extensive changes to the federal regulations in 40 C.F.R. Parts 141 and 142. Although many of the definition changes were made in 2001, the U.S. Environmental Protection Agency identified corrections that needed to be made to two definitions. These changes and other changes relating to boil water and consumer advisories changes will also allow the cabinet to maintain its program for the purification of water for public and semipublic use.
(c) How the amendment conforms to the content of the authorizing statute: These amendments will allow the cabinet to maintain "primacy" for the implementation and enforcement of the federal drinking water program, thus allowing the cabinet to maintain its program for the purification of water for public and semipublic use. Other changes will allow the cabinet to continue to implement its comprehensive program for the purification of water for public and semipublic use.
(d) How the amendment will assist in the effective administration of the statute: The amended definitions will be a part of the cabinet's program for the purification of water for public or semipublic use.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to all public and semipublic water suppliers of drinking water in Kentucky. There are currently about 560 public water systems and 70 semipublic water systems, serving about 3,700,000 Kentuckians. There is no impact as a result of merely defining terms used in the chapter. Any impact would occur in the administrative regulation where the term is used.
(f) Provide an assessment of how the above group or groups
will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: There will be no direct impact as a result of implementing this administrative regulation that adds or amends existing definitions. Any impact would occur in the administrative regulation where the term is used.

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

(a) Initially: There are no initial costs as a result of adding or amending definitions. Any impact would occur in the administrative regulation where the term is used.

(b) On a continuing basis: There are no continuing costs as a result of adding or amending definitions. Any impact would occur in the administrative regulation where the term is used.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Monies allocated by the Kentucky General Assembly in its biennial budget will be used to implement and enforce the administrative regulations throughout 401 KAR Chapter 8, including this administrative regulation. In addition, the Cabinet receives grants from the U.S. EPA to implement the provisions of the federal Safe Drinking Water Act, as amended, if the cabinet's program is no less stringent than the federal program, and the cabinet maintains "primacy" for the enforcement and implementation of the federal program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation on definitions. However, the cabinet has received an increase in funding from the U.S. EPA to implement the new provisions of the Safe Drinking Water Act, as is outlined in other administrative regulations of this chapter.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering is not applicable because this administrative regulation merely defines terms that are used throughout 401 KAR Chapter 8. The amendments to this administrative regulation also just define terms that are used throughout the chapter. Tiering is used in other regulations where the terms are used.

**FEDERAL MANDATE ANALYSIS COMPARISON**

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 141.2, 141.43, and 141.153
2. State compliance standards, 401 KAR 8:010, Section 1.
3. Minimum or uniform standards contained in the federal mandate. The federal regulations define certain terms and if the same term is used in 401 KAR Chapter 8, that term is defined in this administrative regulation, with the same federal definition.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No; if the terms are defined in the federal regulations, then the definitions are effectively the same.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no stricter standard or additional or different responsibilities or requirements.

**FISCAL NOTE ON LOCAL GOVERNMENT**

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will indirectly affect public water systems, many of which are owned or controlled by local governments. However, since this administrative regulation only defines terms, there is no direct impact.
3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation. This administrative regulation relates to public water systems that provide drinking water to their customers, and prescribes the definitions of terms that those water systems will use in providing safe drinking water to their customers. Federal regulations 40 C.F.R. 141.2, 141.43, and 141.153 provide the definitions of many terms for this administrative regulation.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined provide a brief narrative to explain the fiscal impact of the administrative regulation.

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**

Department for Environmental Protection
Division of Water

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

**RELATES TO:** KRS 223.160-223.220, 224.10-100, 224.10-110, 40 C.F.R. 141.3, 141.31, 141.70, 141.72(b), 141.74, 141.75, 142.14, 142.15

**STATUTORY AUTHORITY:** KRS 223.200, 224.10-100(30), 224.10-110, 40 C.F.R. 141.3, 141.31, 141.70, 141.72(b), 141.74, 141.75, 142.14, 142.15, 42 U.S.C. 300f, 300g, 300h, 300j

**NECESSITY, FUNCTION, AND CONFORMITY:** KRS 224.10-100(30) and 224.10-110 authorize the cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use. This administrative regulation establishes the general provisions for regulating public and semipublic water supplies.

Section 1. Applicability. (1) Inclusions. All public and semipublic water systems are subject to the requirements of 401 KAR Chapter 8, except those noted in subsection (2) of this section. A semipublic water system which is a commercial facility which uses water from its own premises to prepare food to be served to the public is subject to the requirements of 401 KAR 8:020, 401 KAR 8:150, and 401 KAR 8:200 unless bottled water is used exclusively for food preparation and dish washing, and the facility has demonstrated to the cabinet's satisfaction that contaminated water shall not reach the public.

(2) Exclusions. [Except as stated above] This chapter shall not apply to water systems in the following two (2) categories:

(a) Water systems that:
1. Consist of only distribution facilities and storage facilities;
2. Do not have collection or treatment facilities;
3. Obtain all water from, but are not owned or operated by, public water systems subject to 401 KAR Chapter 8; and
4. Do not sell water to any person; or
(b) Water systems which are carriers which convey passengers in interstate commerce.

Section 2. Operation, Maintenance, and Safety Requirements. (1) Public and semipublic water systems. A person shall not operate or commence operation of a public or semipublic water system except in compliance with the provisions of 401 KAR Chapter 8. Water supply systems constructed prior to November 11, 1990 may be continued in use, if the operation, maintenance, bacteriological, chemical, physical, and radiological standards comply with 401 KAR Chapter 8, or the system obtains a variance or exemption as set forth in 401 KAR 8:050 from those standards with which they do not
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...bution system in conjunction with total coliform monitoring pursuant to 401 KAR 8:150, Sections 1 and 3(2)(c):
(i) Number of instances where the residual disinfectant concentration is measured;
(ii) Number of instances where the residual disinfectant concentration is not measured but heterotrophic bacteria plate count, or HPC is measured;
(iii) Number of instances where the residual disinfectant 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;
(iv) Number of instances where residual disinfectant concentration is less than two-tenths (0.2) milligrams per liter and where HPC is greater than 500cfu/ml;
(v) Number of instances where the residual disinfectant concentration is not measured and HPC is greater than 500cfu/ml;
(vi) For the current and previous month the system serves water to the public the value of "V" in the following formula:

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

where

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

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

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

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

(b) Reports of failure to comply. Public water systems shall report to the cabinet, within forty-eight (48) hours, by phone or in writing, the failure to comply with any provision of 401 KAR Chapter 8 (8040 through 401 KAR 8:700, inclusive), including the failure to comply with monitoring requirements.

(c) Emergency reports. When a public water system experiences a [line-break-as-decreed in 401 KAR 8:150, Section (4)(3), loss of pressure,] loss of disinfection [1] or other event that [which] may result in contamination of the water, the public water system shall immediately report to the cabinet by calling the Drinking Water Branch of the Division of Water in Frankfort at (502) 564-3410 or the appropriate regional field office of the Division of Water. If a report required by this paragraph [c] of this subsection is made during other than normal business hours, it shall be made through the twenty-four (24) hour environmental emergency telephone number, (502) 564-2380.

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

(a) Data summaries. Either actual laboratory reports shall be kept or data shall be transferred to tabular summaries. The following
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information shall be included:
1. The date, place and time of sampling, and the name of the person who collected the sample;
2. Whether the sample was a routine distribution system sample, check sample, raw or processed water sample or other special purpose sample;
3. The date of analysis;
4. The laboratory and person responsible for performing analysis;
5. The analytical technique or method used; and
6. The results of the analysis.
(b) Bacteriological analysis records shall be kept at least five (5) years.
(c) Chemical analysis records shall be kept at least ten (10) years.
(d) Turbidity analysis records shall be kept at least one (1) year and individual filter turbidity data shall be kept at least three (3) years pursuant to 401 KAR 8:160.
(e) Records of violations and the actions taken by the system to correct violation of primary drinking water regulations shall be kept no less than ten (10) years after the last action taken with respect to the particular violation involved.
(f) Records of sanitary surveys, copies of written reports, summaries of communications relating to sanitary surveys of the system, conducted by the system, a private consultant, or a local, state or federal agency, shall be kept no less than ten (10) years after completion of the sanitary survey involved. They may be then transferred to the cabinet.
(g) Records concerning a variance or exemption granted to the system shall be kept no less than five (5) years following the expiration of the variance or exemption.
(h) Boil water [notice(s)] and consumer advisories.
   (a) Boil water [notice(s)] and advisories.
   1. Public water systems and semipublic water systems may issue boil water [notice(s) or boil-water] advisories if the system believes an [a-notice-or] advisory is warranted.
   2. The cabinet may direct that a boil water [notice-or boil-water] advisory be issued; and:
      a. Confirmed positive bacteriological results are received, including E. coli or fecal coliform in at least one (1) sample [For a boil water notice, positive bacteriological sample results have been confirmed by an analysis or analyses made in a certified laboratory]; or
      b. Other circumstances exist that warrant an advisory for the protection of public health [For a boil-water advisory, conditions within a public-water system indicate a possible adverse health effect from microbiological contamination, may result from consumption of the water distributed by a system].
   3. The cabinet may, when it determines circumstances warrant the protection of public health, issue a boil water [notice-or boil-water] advisory directly, rather than rely on a public or semipublic water system to issue the advisory [notice].
   4. Boil water [notice(s)-or] advisories shall remain in effect until the cabinet [determines-or] approves the lifting of the [notice-or] advisory [may be lifted].
   (b) Consumer advisory.
      1. The cabinet may issue a consumer advisory if:
         a. Conditions within a public water system or semipublic water system indicate a possible adverse health effect from consumption of the water distributed by the system; or
         b. Other information of interest to the consumer exists.
      2. The advisory shall notify affected persons of a required or recommended action that should be taken.
   (c) A public or semipublic water system shall:
      1. Immediately notify the local health department that serves the area affected when a boil water [notice-or boil-water] advisory [is] or consumer advisory is issued. The notification [notice(s)] may be made by telephone or fax machine for an occurrence during normal business hours. For an occurrence after normal business hours, the public or semipublic water system shall notify the affected local health department in a manner agreed upon by the system and affected health department; or
      2. Develop a protocol with a local health department that describes when and how the system shall notify the affected health department when the system issues a boil water [notice-or boil-water]
advisory [is] or consumer advisory. The protocol shall address for which types of advisories [notice(s)] the system shall notify the affected health department; what procedures shall be used to notify; and under what circumstances, how soon after the occurrence, and to whom the notification shall be made, during and after business hours. This public or semipublic water system shall comply with the agreed-upon protocol.
      10. How to issue [notice-of] advisory. Boil water [notice(s)-or boil-water] advisories [is] and consumer advisories shall be issued through newspapers, radio, television, or other media having an immediate public impact. As a health and safety measure, the water system shall repeat the notification during the period of imminent danger at intervals that [which] maintain public awareness. The [notice-of] advisory shall be readily understandable and shall include instructions for the public, as well as an explanation of the steps being taken to correct the problem. Boiling instructions shall caution to only boil drinking water for short range use by boiling water for at least three (3) minutes at a rolling boil.
      11. Other notices. Other public notifications shall be issued by public water systems as required by 401 KAR Chapter 8.
      12. Maps. (a) [Within twelve (12) months of November 15, 1990] Public and semipublic water systems shall have on the premises, or conveniently located to the premises, an up-to-date map of the distribution system. The map shall, at a minimum, show:
         1. Line size;
         2. Cutoff valves;
         3. Fire hydrants;
         4. Flush hydrants;
         5. Tanks;
         6. Booster pumps;
         7. Chlorination stations;
         8. Connection to emergency or alternative sources;
         9. Wholesale customer master meters; and
         10. Type of piping material in the distribution system and its location.
      (b) If a public water system, due to age, improper documentation, lost documentation or other valid reason is not able to comply with this requirement, the system may petition the cabinet to modify this requirement to the extent that compliance is not feasible. The petition for modification shall state specifically which portion of this requirement is not practical and why.
      (a) Each public water system shall develop and keep on the premises, for operators and employees of the system, an operation and maintenance manual that includes:
         1. A detailed design of the plant;
         2. Daily operating procedures;
         3. A schedule of testing requirements designating which is responsible for the tests; and
         4. Safety procedures for operation of the facility, including storage and inventory requirements for materials and supplies used by the facility.
      (b) The operation and maintenance manual shall be updated as necessary, [and] no less than annually, and shall be available for inspection by the cabinet [by November 16, 1991].
      (c) Public water systems serving fewer than 100 people or thirty (30) service connections may request that the cabinet waive this requirement. The request shall be in writing and any waiver granted by the cabinet shall be in writing and be retained by the public water system for examination by cabinet personnel.
      (14) Flushing recommended.
      (a) It is recommended that all distribution systems be thoroughly flushed at least twice a year, usually in the spring and fall. The purpose of systematic flushing is to reduce turbidity created from the scouring of accumulated sediment within the water lines. Flushing should start at the hydrants nearest the source of supply and proceed in an outward direction to the end of each main. Flushing should continue at each hydrant until all traces of turbidity and color are gone. Hydrants should be opened and shut slowly to prevent damage from water hammer.
      (b) In addition to the regularly scheduled flushing, the following conditions indicate a need to flush the entire system:
         1. Turbidity within the distribution system greater than five (5) or
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one (1) nephelometric turbidity units, or NTU, as applicable to the system;
2. An inability to maintain an adequate residual of a disinfection agent in any part of the system; or a heterotrophic plate count; or
3. HPC, In excess of 500.
(c) Other indicators that flushing may be called for are taste and odor complaints, color of water, contaminated water samples, or line repairs.
(15) No person shall introduce a substance which may have a deleterious physiological effect, or for which physiological effects may not be known, to the water supply system.
(16) Certified lab analysis required. For the purpose of determining compliance with the sampling requirements of 401 KAR Chapter 8, samples shall be analyzed by a laboratory certified by the cabinet as prescribed in 401 KAR 8.040, except that measurements for turbidity, [and] disinfectant residuals, [and] other parameters specified by 401 KAR 8.910, Section 5 may be performed by a person on the cabinet.
(17) Right of entry. The cabinet may enter an establishment, facility, or other property of public and semipublic water supplies in order to determine whether the supplies have acted or are acting in compliance with applicable laws or regulations which the cabinet has the authority to enforce. Entry may include collection of water samples for laboratory analyses, inspection of records, files, paper files, processes, computer facilities required to be kept, installed, or used under the provisions of 401 KAR Chapter 8. The cabinet or its authorized agent may cause to be tested a feature of a public water system, including its raw water source, to determine compliance with applicable legal requirements.
(18) Recommended practices for water supply reservoirs to be used for drinking water. The following practices are recommended to be employed by water systems which have a lake primarily used as a source of raw drinking water:
(a) Prohibition of swimming, water skiing, and other contact sports;
(b) Prohibition of large motor-driven craft or any craft with toilets;
(c) An area at least 100 feet wide from the upper pool elevation shall be kept clear of all sources of potential contamination such as septic tanks, drain fields, livestock, and barns.
(d) Effluent from sewage treatment plants shall not be discharged into the lake;
(e) Picnicking may be permitted around the lake if plans for the development of any picnic area meet regulatory requirements of the cabinet; and
(f) A nonpoint source pollution control plan shall be implemented.
(19) Water treatment chemicals and system components. Chemical additives and protective materials, such as paints and linings, used by a water system shall be acceptable to the cabinet for use in contact with potable water.
(20) Disposal of chlorinated water. Chlorinated water resulting from disinfection of treatment facilities and new, repaired or extended distribution systems shall be disposed in a manner which will not violate 401 KAR 5:031.
(21) Water loading stations. Public water systems which provide water loading stations for the purpose of providing water to water hauling trucks or other bulk water devices shall construct the stations to conform to the standards in the Great Lakes Upper Mississippi River Board of State Public Health & Environmental Managers' "Recommended Standards for Water Works," incorporated by reference in Section 5(1) of this administrative regulation.

Section 3. Records and Reports Maintained by the Cabinet. The cabinet shall maintain and report records and reports as governed by 40 C.F.R. 142.14 and 142.15, adopted without change in Section 4 of this administrative regulation.

(2) The subject matter of this administrative regulation relating to the records and reports required to be maintained by the cabinet shall be governed by those federal regulations.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:
(b) "General Design Criteria for Surface and Groundwater Supplies", 1984, published by the Kentucky Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601.
(c) "Guidelines for Conducting Stream Studies for Wastewater Discharges Proposed Within Five Miles Upstream from Public Water Supply Sources or From the Location of Public Water Supply Intakes Within Five Miles Downstream from Wastewater Discharges, 1983", published by the Kentucky Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Water, Drinking Water Branch, 14 Reilly Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LAJUANA S. WILCHER, Secretary
APPROVED BY AGENCY: May 14, 2004
FILED WITH LRC: June 4, 2004 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2004 at 1 p.m. (Eastern time) in Conference Room D-16 at the Department of Surface Mining, #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 14, 2004, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. PARKING NOTE: Persons interested in attending the public hearing, other than those with handicap parking plates or placards, are asked to park in the "upper" parking lot on Hudson Hollow, next to the Little Lamb Preschool behind the hedge, and not in the visitor parking or main parking lot.

CONTACT PERSON: Jeffrey W. Pratt, Director, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, telephone (502) 564-3410, fax (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey W. Pratt
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation stipulates general provisions for public and semipublic water supplies to enable the supplies to comply with KRS 224.10-110 as well as the Safe Drinking Water Act, as amended.
(b) The necessity of this administrative regulation: KRS 224.10-100(50) and 224.10-110 authorize the cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use. This administrative regulation is necessary so that the regulated entities will know what general requirements are required of a public water system.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides general provisions for public and semipublic water supplies, including operation, maintenance, and safety requirements, and reporting and record keeping requirements. These provisions are part of the overall drinking water program for the regulation and control of the purification of water for public and semipublic use.
(d) How this administrative regulation current assists or will assist in the effective administrative of the statutes: This administrative regulation provides general provisions for public and semipublic water supplies and is a part of the overall drinking water program for
the purification of water for public and semipublic use.

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

(a) For the amendment will change this existing administrative regulation: Some of the amendments to this administrative regulation will clarify the cabinet's intent regarding boil water and consumer advisories; the term "boil water notice" is also being deleted. This administrative regulation is also being amended to remove the requirements on a semipublic water system that is a commercial facility that uses its own water. Finally, the amendments will update the reference documents for this administrative regulation, including the "Recommended Standards for Water Works" (also known as "Ten States Standards"). The most recent version (2003) is being incorporated.

(b) The necessity of the amendment to this administrative regulation: The changes relating to the boil water and consumer advisories are necessary because it is not the cabinet's intent that a "boil water notice" be issued every time a line break occurs. The changes relating to the semipublic commercial operation are necessary because of changes to other administrative regulations that had previously been made. This amendment corrects a previous oversight when those administrative regulations were amended. The change that updates the reference method is necessary so that the cabinet's permit reviewers are using the most up-to-date requirements. The latest version of Ten States Standards will be used for design and specifications for water loading stations since that is the version that can be purchased, and it has the most recent recommendations for technical and operational considerations.

(c) How the amendment conforms to the content of the authorizing statutes: These amendments will allow the cabinet to maintain its program for the purification of water for public and semipublic use and to continue to implement its comprehensive program for the purification of water for public and semipublic use.

(d) How the amendment will assist in the effective administration of the statutes: The amended general provisions will be a part of the cabinet's program for the purification of water for public or semipublic use.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to all public and semipublic water suppliers of drinking water in Kentucky. There are currently about 560 public water systems and 70 semipublic water systems, serving about 3,700,000 Kentuckians. The changes relating to boil water and consumer advisories will apply to water systems only if they are required to issue such advisories. About 700 notices and advisories are issued by public water systems in a year.

(4) Provide an assessment of how the above groups or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: The cabinet expects the number of boil water and consumer advisories to decrease under these proposed amendments. For the updates to the reference methods, all systems would be required to plan changes for water loading stations using the updated "Ten States Standards" for their water system design.

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

(a) Initially: There are no initial costs as a result of these changes to the general provisions. There could be some savings, in that staff would not have to track as many boil water notices or advisories.

(b) On a continuing basis: There are no continuing costs as a result of the changes to the general provisions. There could be some continuing savings, if the number of advisories continues to decrease.

(5) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Monies allocated by the Kentucky General Assembly in its biennial budget will be used to implement and enforce the administrative regulations throughout 401 KAR Chapter 8, including this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering was not applied. This administrative regulation provides the general provisions for public and semipublic water supplies to use in the operation of the water supply systems. Therefore, tiering is generally not applicable. However, other administrative regulations in this chapter are tiered.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 141.3, 141.31, 141.70, 141.72(b), 141.74, 141.75

2. State compliance standards. 401 KAR 8:020.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations contain standards for coverage; reporting, record keeping, and public notification requirements; filtration and disinfection requirements; requirements for systems that filter; and analytical and monitoring requirements.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? The requirements are generally the same, except that Kentucky extends by statute some provisions to semipublic water systems, instead of just public water systems. In addition, Kentucky requires all systems to submit monthly operating reports. Also, it is an additional requirement for a public water system to notify the local health department if a boil water advisory or consumer advisory is issued.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The additional requirements are necessary for Kentucky to implement and maintain its program for the purification of public and semipublic water supplies, as directed by KRS 224.10-110. Also, the Cabinet for Health and Family Services requested that the system notify CHFS when boil water and consumer advisories are issued.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect public water systems, many of which are owned or controlled by local governments.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation. This administrative regulation relates to public water systems that provide drinking water to their customers. The federal regulations in 40 C.F.R. Part 141 contain the requirements for public water systems. Specifically, 40 C.F.R. 141.3, 141.31, 141.70, 141.72(b), 141.74, 141.75 contain standards for coverage; reporting, record keeping, and public notification requirements; filtration and disinfection requirements; requirements for systems that filter; and analytical and monitoring requirements.

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

   Revenues (+/-): There is no anticipated effect on current revenues since this administrative regulation provides the general provisions that apply to public water systems that are regulated by the cabinet.

   Expenditures (+/-): The expenditures relating to boil water and consumer advisories could be reduced in that a system could reduce the number of advisories that it issues, if it continues to properly maintain its distribution lines. There could be a possible expenditure of $8 plus shipping AND handling costs to purchase the
4. Other violations or situations determined by the cabinet to require a public notice under this administrative regulation, not already listed in Appendix A to 40 C.F.R. Part 141, Subpart Q.

(2) Tiers. Three (3) tiers of public notifications shall be used that take into consideration the seriousness of the violation or situation and of potential adverse health effects that may be involved. The public notification requirements shall be determined by the tier to which it is assigned, as determined by the following tiers. Appendix A to 40 C.F.R. Part 141, Subpart Q identifies the tier assignment for each specific violation or situation.

(a) Tier 1 public notice: for violations of 401 KAR Chapter 8 and situations with significant potential to have serious adverse effects on human health as a result of short-term exposure;

(b) Tier 2 public notice: for all other violations of 401 KAR Chapter 8 and situations with potential to have serious adverse effects on human health; and

(c) Tier 3 public notice: for all other violations of 401 KAR Chapter 8 requiring public notification and situations not included in Tier 1 or Tier 2.

(3) Notification.

(a) A public water system shall provide public notice to persons served by the water system in accordance with this administrative regulation:

1. A public water system that sells or otherwise provides drinking water to other public water systems, or consecutive water systems, shall give public notice to the owner or operator of the consecutive system.

2. The consecutive system shall provide public notice to the persons it serves.

(b) If a public water system has a violation in a portion of the distribution system that is physically or hydraulically isolated from other parts of the distribution system, the system may limit distribution of the public notice to only persons served by that portion of the system that is out of compliance. The system shall obtain written permission from the cabinet for limiting distribution before distributing the notice.

(c) Certification. After the public notification has been made, the public water system shall send a copy of the public notice and a certification of its distribution to the cabinet in accordance with the following requirements:

1. Within ten (10) days of completing the public notification requirements of this administrative regulation, the public water system shall submit to the cabinet for the initial public notice and any repeat notification certification that it has fully complied with the public notification requirements of this administrative regulation.

2. The certification shall include:
   a. The system’s name;
   b. PWSID number;
   c. The violator’s monitoring period covered by the notice;
   d. The violation number, type of violation, and contaminants included in the violation;
   e. An explanation of how the system distributed the public notification to its customers;
   f. The names of the consecutive systems that were given public notice pursuant to paragraph (a) of this subsection and their PWSID numbers; and
   g. A verification that the public notice contains the ten (10) elements required in a public notification.

3. The public water system shall include with the certification a copy of each type of notice distributed, published, posted, and made available to the persons served by the system and to the media. If printed in the newspaper, the page of the newspaper with the public notice shall be submitted, showing the name of the newspaper and the date it was published.

4. The certification shall be signed and dated by the person responsible for preparing and distributing the public notice.

5. The system shall submit the certification and required documentation to the cabinet at the following address: Division of Water Enforcement Branch, ATTN: PN 14, Reilly Road, Frankfort, Kentucky 40601.

(d) Record maintenance. The public water system shall retain a copy of each public notice issued pursuant to this administrative regulation and its certification pursuant to paragraph (c) of this subsection for at least three (3) years after its issuance.
Section 2. Tier 1 Public Notice - Form, Manner, and Frequency. (1) Tier 1 notices shall be given for the following violation categories and other situations:
   (a) Violation of the MCL for total coliforms if fecal coliform or E. coli are present in the water distribution system, as specified in 401 KAR 8:200; or
   (b) If the water system fails to test for fecal coliforms or E. coli when a repeat sample tests positive for coliform, as specified in 401 KAR 8:200.

   (b) Violation of the MCL for nitrate, nitrite, or total nitrate and nitrite, as specified in 401 KAR 8:250; or
   (c) If the water system fails to take a confirmation sample within twenty-four (24) hours of the system's receipt of the first sample showing an exceedance of the nitrate or nitrite MCL, as specified in 401 KAR 8:250.

(c) Exceedance of the nitrate MCL by a noncommunity water system; if permitted to exceed the MCL by the cabinet under 40 C.F.R. 141.11(d), as allowed under Section 8 of this administrative regulation;

   (d) Violation of the MRDL for chlorine dioxide, as specified in 401 KAR 8:510, if one (1) or more samples taken in the distribution system the day following an exceedance of the MRDL at the entrance of the distribution system exceeds the MRDL or
   (e) If the water system does not take the required samples in the distribution system, as specified in 401 KAR 8:510.

   (f) Violation of the surface water treatment rule in 401 KAR 8:150 or interim enhanced surface water treatment rule in 401 KAR 8:160 treatment technique requirement resulting from a single exceedance of the maximum allowable turbidity limits, as identified in Appendix A to 40 C.F.R. Part 141, Subpart Q, if the cabinet determines after consultation that a Tier 1 notice shall occur; or

   (g) Chemical spill or unexpected loading of possible pathogens into the source water that significantly increases the potential for drinking water contamination; and

   (h) Other violations or situations with significant potential to have serious adverse effects on human health as a result of short-term exposure.

(2) When Tier 1 notice required. A public water system shall:
   (a) Provide a public notice of a Tier 1 violation as soon as practical but no later than twenty-four (24) hours after the system learns of the violation;

   (b) Initiate consultation with the cabinet as soon as practical, but no later than twenty-four (24) hours after the public water system learns of the violation or situation, to determine additional public notice requirements; and

   (c) Comply with additional public notification requirements, including repeat notices or direction on the duration of the posted notice, that are established as a result of the consultation with the cabinet. These requirements may include the timing, form, manner, frequency, and content of any repeat notices, and other actions designed to reach all persons served.

(3) Tier 1 notices - form and manner. (a) A public water system shall provide the Tier 1 public notice within twenty-four (24) hours in a form and manner reasonably calculated to reach all persons served.

   (b) The form and manner of a Tier 1 public notice used by the public water system shall fit the specific situation, and shall be designed to reach residential, transient, and nontransient users of the water system.

   (c) To reach all persons served, water systems shall use, at a minimum, one (1) or more of the following forms of delivery, as applicable to the system:

      1. Appropriate broadcast media, such as radio and television;
      2. Posting of the notice in conspicuous locations throughout the area served by the water system;
      3. Hand delivery of the notice to persons served by the water system; or

      4. Another delivery method that has been approved in writing by the cabinet.

Section 3. Tier 2 Public Notice - Form, Manner, and Frequency of Notice. (1) Tier 2 public notices shall be given for the following violation categories and other situations:

   (a) A violation of the MCL, MRDL, and treatment technique requirements, unless a Tier 1 notice is required under Section 2 of this administrative regulation, or the cabinet determines that a Tier 1 notice is required;

   (b) A violation of the monitoring and testing procedure requirements, if the cabinet determines that a Tier 2 rather than a Tier 3 public notice is required, taking into account potential health impacts and persistence of the violation; and

   (c) Failure to comply with the terms and conditions of a variance or extension in place.

(2) When Tier 2 notice required. (a) Initial notice. 1. A public water system shall provide public notice of a Tier 2 violation as soon as practical, but no later than thirty (30) days after the system learns of the violation.

   2. If the public notice is posted, the notice shall remain in place while the violation or situation persists, but for no less than seven (7) days, even if the violation or situation is resolved.

   3. Except as provided in clause b of this subparagraph, the cabinet may allow additional time for the initial notice of up to three (3) months from the date system learns of the violation.

   b. The cabinet shall not:

      (i) Grant an extension to the thirty (30) day deadline for an unresolved violation; or

      (ii) Allow across-the-board extensions for other violations or situations that require a Tier 2 public notice.

   c. Extensions granted by the cabinet shall be in writing.

   (b) Repeat notice. 1. The public water system shall repeat the notice every three (3) months while the violation or situation persists, unless the cabinet determines that appropriate circumstances warrant a different repeat notice frequency.

   2. The repeat notice shall not be given less frequently than once per year.

   3. The system shall not give less frequent repeat notice for:

      a. An MCL violation under the total coliform rule; or

      b. A treatment technique violation under the surface water treatment rule or interim enhanced surface water treatment rule, resulting from a single exceedance of the maximum allowable turbidity limit.

   4. There shall be no across-the-board reductions in the repeat notice frequency for other ongoing violations that require a Tier 2 repeat notice.

   5. Cabinet determinations allowing repeat notices to be given less frequently than once every three (3) months shall be in writing.

   (c) Turbidity violations. 1. The system shall consult with the cabinet for a violation of the treatment technique requirement from the surface water treatment rule or interim enhanced surface water treatment rule, resulting from a single exceedance of the maximum allowable turbidity limit.

   2. For a turbidity violation specified in subparagraph 1 of this paragraph, a public water system shall consult with the cabinet as soon as practical, but no later than twenty-four (24) hours after the public water system learns of the violation, to determine if a Tier 1 public notice under Section 2 of this administrative regulation is required to protect public health.

   3. If consultation does not take place within the twenty-four (24) hour period, the water system shall distribute a Tier 1 notice of the violation within the next twenty-four (24) hours, which shall be no later than forty-eight (48) hours after the system learns of the violation.

   4. Following the requirements under Section 2(2) and (8) of this administrative regulation.

   (3) Tier 2 notices - form and manner. A public water system shall provide the initial public notice and repeat Tier 2 notices in a form and manner that is reasonably calculated to reach persons served in the required time period. The form and manner of the public notice may vary based on the specific situation and type of water system, but it shall meet at least the following requirements:

      a. Community water system. Unless directed otherwise by the
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cabinet in writing, a community water system shall provide notice by:
1. Mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system; and
2. Other methods reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice required in subparagraph 1 of this paragraph.
These persons may include those who do not pay water bills or do not have service connection addresses, for example, house renters, apartment dwellers, university students, nursing home patients, prison inmates, etc.
b. Other methods may include:
(i) Publication in a local newspaper;
(ii) Delivery of multiple copies for distribution by customers who provide their drinking water to others, for example apartment building owners or large private employers;
(iii) Posting in public places served by the system or on the Internet; or
(iv) Delivery to community organizations.
(b) Noncommunity water system. Unless directed otherwise by the cabinet in writing, a noncommunity water system shall provide notice by:
1. Posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system, or by mail or direct delivery to each customer and service connection, if known; and
2. Other methods reasonably calculated to reach other persons served by the system if they would not normally be reached by the notice required in subparagraph 1 of this paragraph. Those persons may include those served who may not see a posted notice because the posted notice is not in a location they routinely pass by.
b. Other methods may include:
(i) Publication in a local newspaper or newsletter distributed to customers;
(ii) Use of e-mail to notify employees or students; or
(iii) Delivery of multiple copies in central locations, for example, community centers.

Section 4, Tier 3 Public Notice - Form, Manner, and Frequency of Notice. (1) The following violations or situations shall require a Tier 3 public notice:
(a) A monitoring violation under the administrative regulations of 401 KAR Chapter 8, except that required to be a Tier 1 or Tier 2 violation under Section 2 or 3 of this administrative regulation;
(b) Failure to comply with a testing procedure established in 401 KAR Chapter 8, unless Tier 1 notice is required by Section 2 of this administrative regulation;
(c) Operation under a variance or an exemption granted under 401 KAR 8:060; and
(d) Exceedance of the fluoride secondary maximum contaminant level, as required under Section 7 of this administrative regulation.
(2) When Tier 3 notice provided:
(a) Initial notice. A public water system shall provide public notice of a Tier 3 violation no later than one (1) year after the public water system learns of the violation or situation or begins operating under a variance or exemption.
2. Repeat notice. Following the initial notice, the public water system shall repeat the notice annually while the violation, variance, exemption, or other situation persists. If the public notice is posted, the notice shall remain in place while the violation, variance, exemption, or other situation persists, but for no less than seven (7) days, even if the violation or situation is resolved.
(b) Instead of individual Tier 3 public notices, a public water system may use an annual report detailing all violations and situations that occurred during the previous twelve (12) months, if the timing requirements of paragraph (a) of this subsection are met.
(3) Tier 3 notices - form and manner. A public water system shall provide the initial notice and any repeat notices of a Tier 3 violation in a form and manner that is reasonably calculated to reach persons served in the required time period. The form and manner of the public notice may vary based on the specific situation and type of water system, but it shall meet at least the following requirements:
(a) Community water system. Unless directed otherwise by the cabinet in writing, a community water system shall provide notice by:
1. Mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system; and
2. Other methods reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice required in subparagraph 1 of this paragraph. These persons may include those who do not pay water bills or do not have service connection addresses, for example, house renters, apartment dwellers, university students, nursing home patients, prison inmates, etc.
b. Other methods may include:
(i) Publication in a local newspaper;
(ii) Delivery of multiple copies for distribution by customers that provide their drinking water to others, for example apartment building owners or large private employers;
(iii) Posting in public places served by the system or on the Internet; or
(iv) Delivery to community organizations;
(b) Noncommunity water system. Unless directed otherwise by the cabinet in writing, a noncommunity water system shall provide notice by:
1. Posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system, or by mail or direct delivery to each customer and service connection, if known; and
2. Other methods reasonably calculated to reach other persons served by the system, if they would not normally be reached by the notice required in subparagraph 1 of this paragraph. Those persons may include those who may not see a posted notice because the notice is not in a location they routinely pass by. Other methods may include:
(a) Publication in a local newspaper or newsletter distributed to customers;
(b) Use of e-mail to notify employees or students; or
(c) Delivery of multiple copies in central locations, for example, community centers.
(4) Alternative delivery method. For a community water system, the consumer confidence report required by 401 KAR 8:075 may be used as a vehicle for only the initial Tier 3 public notice and all required repeat notices, if:
(a) The report is provided to persons served no later than twelve (12) months after the system learns of the violation or situation as required in subsection (2) of this section;
(b) The Tier 3 notice contained in the system’s report meets the content requirements of Section 3 of this administrative regulation;
(c) The report is distributed following the delivery requirements in subsection (3) of this section; and
(d) The system submits a separate certification of the public notice as required by Section 1 of this administrative regulation and a certification of the report as required by 401 KAR 8:075, Section 4.

Section 5, Public Notice Contents. (1) Each public notice required by Section 1 of this administrative regulation shall include the following elements:
(a) A description of the violation or situation, including the contaminants of concern, and as applicable, the contaminant levels;
(b) When the violation or situation occurred;
(c) The potential adverse health effects from the violation or situation, including the standard language under subsection (4)(a) or (b) of this section, whichever is applicable;
(d) The population at risk, including subpopulations particularly vulnerable if exposed to the contamination in their drinking water;
(e) If alternative water supplies should be used;
(f) What actions consumers should take, including when they should seek medical help, if known;
(g) What the water system is doing to correct the violation or situation;
(h) When the water system expects to return to compliance or resolve the situation;
(i) The name, business address, and phone number of the water system owner, operator, or designee of the public water system or a source of additional information concerning the notice; and
(j) A statement to encourage the notice recipient to distribute the public notice to other persons served, using the standard language
in subsection (4)(c) of this section, if applicable.

(2) Exemption or variance. A public water system operating under a variance or exemption shall include the following information in a public notice:

(a) If a public water system has been granted a variance or an exemption, the public notice shall contain:
   1. An explanation of the reasons for the variance or exemption;
   2. The date on which the variance or exemption was issued;
   3. A brief status report on the steps the system is taking to install treatment, find alternative sources of water, or otherwise comply with the terms and schedules of the variance or exemption; and
   4. A notice of opportunity for public input in the review of the variance or exemption.

(b) If a public water system violates the conditions of a variance or exemption, the public notice shall contain the ten (10) elements listed in subsection (1) of this section.

(3) Presentation. A public notice required by Section 1 of this administrative regulation shall:

(a) Be displayed in a conspicuous way when printed or posted;
(b) Not contain overly-technical language or very small print;
(c) Not be formatted in a way that defeats the purpose of the notice;
(d) Not contain language that nullifies the purpose of the notice; and
(e) Comply with the following multilingual requirement:
   1. The public notice shall contain information in an appropriate language to reach a large proportion of non-English speaking consumers regarding the importance of the notice or contain a telephone number or address so that persons served by the system can contact the water system to obtain a translated copy of the notice or to request assistance in the appropriate language.

(4) Standard language. A public water system shall include the following standard language in its public notice:

(a) Standard health effects language for an MCL or MRLD violation, treatment technique violation, and violation of the conditions of a variance or exemption. A public water system shall include in each public notice the health effects language specified in Section 10 of this administrative regulation corresponding to each MCL, MRLD, and treatment violation technique listed in Appendix A to 40 C.F.R. Part 141, and for each violation of a condition of a variance or exemption.

(b) Standard language for monitoring and testing procedure violations. A public water system shall include the following language in its notice, including the language necessary to complete the information in the braces, for all monitoring and testing procedure violations listed in Appendix A to 40 C.F.R. Part 141, Subpart Q: "We are required to monitor your drinking water for specific contaminants on a regular basis. Results of regular monitoring are an indicator of whether or not your drinking water meets health standards. During (compliance period) we ("did not monitor or test" or "did not complete all monitoring or testing") for (contaminants), and therefore cannot be sure of the quality of your drinking water during that time."

(c) Standard language to encourage the distribution of the public notice to all persons served. A public water system shall include in its notice the following language, where applicable: "Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail."

Section 6. New Billing Units or Customers. (1) A community water system shall give a copy of the most recent public notice for any continuing violation, the existence of a variance or exemption, or other ongoing situations requiring a public notice to all new billing units or new customers before or when service begins.

(2) A noncommunity water system shall continuously post the public notice in conspicuous locations to inform new consumers of a continuing violation, variance or exemption, or other situation requiring a public notice while the violation, variance, exemption, or other situation persists.

Section 7. Special Notice for Fluoride Exceedances. (1)(a) A community water system that exceeds the fluoride secondary maximum contaminant level of two (2) mg/l as specified in 401 KAR 8:020, as determined by the last single sample taken in accordance with 401 KAR 8:250, but does not exceed the maximum contaminant level of four (4) mg/l for fluorides, as specified in 401 KAR 8:250, shall provide the public notice in subsection (3) of this section to persons served by the system.

(b) Public notice shall be provided as soon as practical but no later than twelve (12) months from the date the water system learns of the exceedance.

(c) A copy of the notice shall also be sent to all new billing units and new customers when service begins and to the public health officer of the Cabinet for Health and Family Services.

(d) The public water system shall repeat the notice at least annually while the secondary MCLs being exceeded.

(2) If the public notice is posted, the notice shall remain in place while the secondary MCL is being exceeded, but for no less than seventy (70) days, even if the exceedance is eliminated.

(3) The Cabinet may require an initial notice sooner than twelve (12) months and repeat notices more frequently than annually if necessary to notify the customers of an exceedance.

(2) Form and manner. The form and manner of the special public notice required by this section including repeat notices, shall follow the requirements for a Tier 3 public notice in Section 4(3).

(4) Standard (c) of this administrative regulation.

(3) The notice shall contain the following mandatory language, including the language necessary to complete the information in the braces: "This is an alert about your drinking water and a cosmetic dental problem that might affect children under nine years of age. At low levels, fluoride can help prevent cavities, but children drinking water containing more than 2 milligrams per liter (mg/l) of fluoride may develop cosmetic discolouration of the permanent teeth (dental fluorosis). The drinking water provided by your community water system (name) has a fluoride concentration of (insert value) mg/l.

"Dental fluorosis, in its moderate or severe forms, may result in a brown staining and/or pitting of the permanent teeth. This problem occurs only in developing teeth, before they erupt from the gums. Children under nine should be provided with alternative sources of drinking water or water that has been treated to remove the fluoride to minimize the possibility of staining or pitting of their permanent teeth. You may also want to contact your dentist about proper use by young children of fluoride-containing products. Older children and adults may safely drink the water."

"Drinking water containing more than 4 mg/l of fluoride (The U.S. Environmental Protection Agency's drinking water standard) can increase your risk of developing bone disease. Your drinking water does not contain more than 4 mg/l of fluoride, but we are required to notify you when we discover that the fluoride levels in your drinking water exceed 2 mg/l because of this cosmetic dental problem.

"For more information, please call (name of water system contact) of (name of community water system) at (phone number). Some home water treatment units are also available to remove fluoride from drinking water. To learn more about available home water treatment units, you may call NSF International at 1-877-8-NSF-HELP."

Section 8. Special Notice for Specific Nitrate Exceedances. (1) The owner or operator of a noncommunity water system that has been granted permission by the cabinet to exceed the nitrate MCL under 40 C.F.R. 141.11(d) shall provide notice to persons served according to the requirements for a Tier 1 notice under Section 2(1) and (2) of this administrative regulation.

(2) A noncommunity water system granted permission by the cabinet to exceed the nitrate MCL under 40 C.F.R. 141.11(d) shall provide continuous posting of the fact that nitrate levels exceed ten (10) mg/l and the potential health effects of exposure according to the requirements for a Tier 1 notice delivery under Section 2(3) of
this administrative regulation and the content requirements in Section 5 of this administrative regulation.

Section 9. Notice by Cabinet. (1) The cabinet may give the notice required by this administrative regulation on behalf of the owner and operator of the public water system if the cabinet complies with the requirements of this administrative regulation.

(2) The owner or operator of the public water system shall remain responsible for ensuring that the requirements of this administrative regulation are met, even if the cabinet provides the notice on behalf of the owner and operator.

Section 10. Standard Health Effects Language. In its public notice of a violation required by Section 1 of this administrative regulation, a public water system shall provide the following health effects language for the indicated contaminant:

(1) Microbiological contaminants.

(a) Total coliform. Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.

(b) Fecal coliform, E. coli, fecal coliforms, and E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. These may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.

(c) Turbidity. Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a microbal growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

(d) Giardia Lamblia. Inadequately treated water may contain disease-causing organisms. These organisms can include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

(2) Inorganic chemicals.

(a) Antimony. Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.

(b) Arsenic. Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.

(c) Asbestos. Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.

(d) Barium. Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.

(e) Beryllium. Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.

(f) Cadmium. Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.

(g) Chromium, total. Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.

(h) Cyanide. Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.

(i) Fluoride. Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Fluoride in drinking water at high levels in the MCL or above can cause motting of children's teeth, usually in children less than nine (9) years old. Motting, also known as dental fluorosis, may include brown staining and/or pitting of the teeth, and occurs only in developing teeth before they erupt from the gums.

(j) Mercury, inorganic. Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.

(k) Nitrate. Infants below the age of six (6) months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.

(l) Nitrate. Infants below the age of six (6) months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.

(m) Total nitrate and nitrite. Infants below the age of six (6) months who drink water containing nitrate and nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.

(n) Selenium. Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.

(o) Thallium. Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.

(3) Lead and copper.

(a) Lead. Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.

(b) Copper. Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.

(4) Synthetic organic chemicals.

(a) 2,4-D. Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.

(b) 2,4,5-TP. Silvex. Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems.

(c) Alachlor. Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.

(d) Atrazine. Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.

(e) Benz(a)pyrene, PAHs. Some people who drink water containing benz(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.

(f) Carbaryl. Some people who drink water containing carbaryl in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems.

(g) Chloride. Some people who drink water containing chloride in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.

(h) Dalapon. Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.

(i) Di (2-ethylhexyl) adipate. Some people who drink water containing di (2-ethylhexyl) adipate in excess of the MCL over many years could experience toxic effects such as weight loss, liver enlargement, or possible reproductive difficulties.

(j) Di (2-ethylhexyl) phthalate. Some people who drink water containing di (2-ethylhexyl) phthalate well in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.

(k) Dibromochloropropane or DBCP. Some people who drink water containing DBCP in excess of the MCL over many years could
experience reproductive difficulties and may have an increased risk of getting cancer.

(i) Dinoseb. Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.

(m) TCDD. Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.

(n) Endothall. Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.

(p) Endrin. Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.

(q) Ethylene dibromide. Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.

(r) Glyphosate. Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.

(s) Pentachlorophenol. Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.

(t) Lindane. Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.

(x) Methoxychlor. Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.

(y) Oxamyl, or pydate. Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.

(y) Pentachlorophenol. Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.

(a) Picloram. Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.

(b) Polychlorinated biphenyls, or PCBs. Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.

(c) Simazine. Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.

(d) Toxaphene. Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer.

(5) Volatile organic chemicals.

(a) Benzene. Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.

(b) Carbon tetrachloride. Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.

(c) Chlorobenzene, or monochlorobenzene. Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.

(d) o-Dichlorobenzene. Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.

(e) p-Dichlorobenzene. Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.

(f) 1,2-Dichloroethane. Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.

(g) 1,1-Dichloroethylenes. Some people who drink water containing 1,1-dichloroethylenes in excess of the MCL over many years could experience problems with their liver.

(h) cis-1,2-Dichloroethene. Some people who drink water containing cis-1,2-dichloroethene in excess of the MCL over many years could experience problems with their liver.

(i) trans-1,2-Dichloroethene. Some people who drink water containing trans-1,2-dichloroethene well in excess of the MCL over many years could experience problems with their liver.

(j) Dichloromethane. Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.

(k) 1,2-Dichloropropane. Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.

(l) Ethylbenzene. Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.

(m) Styrene. Some people who drink water containing styrene in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.

(n) Tetrachloroethylene. Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.

(o) Toluene. Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.

(p) 1,2,4-Trichlorobenzene. Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.

(q) 1,1,1-Trichloroethylene. Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.

(r) 1,1,2-Trichloroethane. Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune system.

(s) Trichloroethylene. Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.

(t) Vinyl chloride. Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.

(u) Xylenes. Total. Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.

(5) Radioactive contaminants.

(a) Beta or photon emitters. Certain minerals are radioactive and may release forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.

(b) Alpha emitters. Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.
of getting cancer.

(b) Epichlorhydrin. Some people who drink water containing high levels of epichlorhydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.


(2) The provisions of the public notification rule related to the public notification tiers shall be covered by Appendix A. (Notification for Tier One Violations. (f)(1) The owner or operator of a public or semipublic water system shall notify the public in accordance with the requirements of this section. The water system fails to comply with:

4. The following applicable requirements established by 401 KAR Chapter 8:
(a) Maximum contaminant level;
(b) Treatment technique; and
(c) Maximum residual disinfectant level for chlorine dioxide; or
2. The requirements of a schedule-prescribed pursuant to a variance or exemption.
(b) These violations are Tier One violations and shall be designated by the cabinet as ordinary or acute. Acute violations shall represent a class of violations that may represent an immediate threat to the public health, requiring consumers to take special precautions.
3. Public water systems. The owner or operator of a 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 be given by publication in a weekly newspaper of general circulation serving the area. In an area not served by a daily or weekly newspaper of general circulation, notice shall be given by a community water system 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.
(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 has directed the violation or failure in violation of the system's written procedures for non-compliance with variations in water quality. If the cabinet chooses to issue a waiver, it shall issue the waiver in writing and within the forty-five (45) days period;
(c) 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:
1. Mail delivery, by direct mail or with the water bill; or
2. Hand delivery; and
(d) Acute violation. In addition to the 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 6:250; and
3. Other violations that the cabinet or public water system determines call for special care by the consumer.
3. 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 of 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.

(4) 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. (a) The owner or operator of a public or semipublic water system that meets the following criteria shall notify persons served by the system as prescribed in this section:
1. The system fails to:
   a. Perform the monitoring required by 401 KAR Chapter 8.
   b. Make a report required by 401 KAR Chapter 8 except for 401 KAR 8:075; or
   c. Comply with a testing procedure established by 401 KAR Chapter 8; or
2. The system is subject to:
   a. A variance to 401 KAR Chapter 8 issued by the cabinet;
   b. An exemption from 401 KAR Chapter 8 granted by the cabinet.
(b) The violation or receipt of a variance or exemption shall be considered a Tier Two category violation.

(2) 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 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 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 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.

(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 if criteria for the reduction have been approved as a program revision, as stipulated by the U.S. Environmental Protection Agency.
increased risks of leukemia among certain industrial workers. 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 may also 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 in humans who are exposed at lower levels over long periods of time. This chemical is used in industry and is found in drinking water as a result of the breakdown of related solvents. 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 cancer in laboratory animals. 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 vinyl chloride at 0.02 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.

(6) 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 in industry and is found in drinking water as a result of the breakdown of related solvents. 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 cancer in laboratory animals. 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 1,1,1-trichloroethane at 0.02 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.

(7) 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 1.0 parts per million (ppm). This amount is within the range of 0.7 to 4.5 ppm which is the level at which adverse health effects 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.

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 cause 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 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 dental fluorosis is reduced. Removal of fluoride from your water supply 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 if 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. When water samples 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 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-thousandths (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 if 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 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 are associated with sewage or animal waste. 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 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 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 both 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 federal authorities).

(12) Microbiological contaminants, for use if there is a violation of the treatment technique requirements for filtration and disinfection in 401 KAR 8:150 or 401 KAR 8:160. 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 in drinking-water greater 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 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 groundwater. 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 they are exposed at high levels over their lifetime. 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.

(18) 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 supplies from mining operations and some 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 0.05 parts per million (ppm). 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 electronics, consumer products, and some improper waste disposal 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.

(16) 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 humans and/or farm animals and generally gets into drinking water from these 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 nitrate 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 these 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 0.1 ppm to protect against the risk of these adverse effects. EPA has also set a drinking-water standard for nitrite (converted to nitrate in humans) at ten (10) ppm and for the sum of nitrate and nitrite at 0.1 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 has been observed in laboratory animals. This 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 groundwater. 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 groundwater 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. 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 groundwater 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.
mained that aldicarb sulf oxide is a health concern at certain levels of exposure. Aldicarb is a widely used pesticide. Aldicarb sulf oxide in groundwater is primarily a breakdown product of aldicarb. Under certain soil and climatic conditions (e.g., sandy soil and high rainfall), aldicarb sulf oxide may reach groundwater 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 mice exposed to high levels. EPA has set the drinking water standard for aldicarb sulf oxide 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 sulf oxide.

(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 sulfone is a commonly used pesticide. Aldicarb sulfone is formed from the breakdown of aldicarb and is considered for regulation as a pesticide under the name aldicarb sulf oxide. Under certain soil and climatic conditions (e.g., sandy soil and high rainfall), aldicarb sulfone may reach groundwater 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 mice exposed to high levels of drinking water. 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 sulfide.

(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. Atrazine is a widely used herbicide. Atrazine is an organic chemical is a herbicide. When soil and climatic conditions are favorable, atrazine may enter into drinking water by runoff into surface water or by leaching into groundwater. 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 enter into drinking water by runoff into surface water or by leaching into groundwater. 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) Chlordecone. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that chlordecone is a health concern at certain levels of exposure. This organic chemical is a pesticide used to control termites. Chlordecone 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 and other adverse 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 chlordecone.

(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, dibromochloropropene may get into drinking water by runoff into surface water or by leaching into groundwater. 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 may also 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 drinking 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 their 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 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 exposed at high levels over their lifetimes. Some humans who were exposed to relatively large amounts of this chemical also suffered damage to the nervous system. EPA has set the drinking water standard for cis-1,2-dichloroethylene at 0.07 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to cis-1,2-dichloroethylene.

(32) trans-1,2-Dichloroethylene. The United States Environmental Protection Agency (EPA) establishes drinking water standards and has determined that trans-1,2-dichloroethylene is a health concern at certain levels of exposure. This organic chemical is used as a solvent and intermediate in chemical production. It generally gets into 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 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-dichlorobenzene may get into drinking water by runoff into surface water or by leaching into groundwater. 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.
periods of time. EPA has set the drinking-water standard for 1,2-dichloropropane at 0.008 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 groundwater. 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 2,4-D 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 this 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 at high levels over their lifetimes. Epichlorohydrin has set the drinking-water standard for epichlorohydrin 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 epichlorohydrin.

(36) Ethylene dibromide (EDB). The United States Environmental Protection Agency (EPA) sets drinking-water standards and has determined that ethylene dibromide is a health concern at certain levels of exposure. This organic chemical is a major component of waste disposal or leaking gasoline tanks. It generally gets into drinking 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 at high levels during their lifetimes. EPA has set the drinking-water standard for ethylene dibromide at seven-tenths (0.7) parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to ethylene dibromide.

(37) Ethylene. The United States Environmental Protection Agency sets drinking-water standards and has determined that ethylene is a health concern at certain levels of exposure. This organic chemical is once a popular pesticide. When soil and climatic conditions are favorable, ethylene may get into drinking water by runoff into surface water or by leaching into groundwater. 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 high levels over long periods of time. EPA has set the drinking-water standard for ethylene 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 ethylene.

(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 once was a widely-used pesticide. When soil and climatic conditions are favorable, heptachlor may get into drinking water by runoff into surface water or by leaching into groundwater. 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 high levels over long periods of time. EPA has set the drinking-water standard 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 widely-used pesticide. When soil and climatic conditions are favorable, heptachlor epoxide may get into drinking water by runoff into surface water or by leaching into groundwater. 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 high levels over their lifetimes. EPA has set the drinking-water standard 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 groundwater. 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. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed at high levels over their lifetimes. EPA has set 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 this 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 groundwater. This chemical has been shown to damage the liver, kidney, nervous system, and immune system of laboratory animals such as rats and mice 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 drinking 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 at 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 in-
Industrial equipment. They generally get into drinking water by improper waste disposal or leaking electrical equipment. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the adults 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 groundwater. 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. 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 of 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 damage the kidney, nervous system, and liver of laboratory animals. 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 drinking water by improper waste disposal or leakage into underground storage tanks. This chemical has been shown to damage the kidney, nervous system, and liver of laboratory animals. 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 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 groundwater. 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 groundwater. 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 0.005 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 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 drinking water by improper waste disposal. This chemical has been shown to damage the liver 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, groundwater, 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 alter 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, groundwater, and surface waters and is often used in electrical equipment and electrical components. It generally gets into drinking 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 risk via drinking water exposure. Therefore, EPA based the health assessment on noncancer effects with an uncertain 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 to very low levels of time. EPA has set the drinking water standard for beryllium at 0.004 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 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 and animals after poisoning. 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 soil, groundwater 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 for nickel 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 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 sealsants 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 0.002 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) Dieldrin. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that dieldrin is a health concern at certain levels of exposure. This organic chemical is widely used as a pesticide. It may get into drinking water after application to control grasses in crops, drainage ditches and along railroad tracks. 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 dieldrin 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 dieldrin.

(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 to very low levels of time. EPA has set the drinking water standard for dichloromethane at 0.006 parts per million (ppm) to reduce the risk of 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 reduce 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 polystyrene (PS) 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 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 is generally used for growing grasses, vegetables, fruits, 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 cause death 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 run-off 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 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.

(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. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to endrin.

(65) 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 groundwater or run off into surface water after application. This chemical may 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 simazine at 0.004 parts per million (ppm) to reduce the risk of cancer in humans who are exposed to 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 in humans who are exposed to 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 in humans who are exposed to long periods of time.

(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 over their lifetimes. This chemical may 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 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 liver 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 run-off into surface water or leaching into groundwater. 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) Picrotop. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that picrotop 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 run-off 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 picrotop 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 picrotop.

(70) 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 produced 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.

(71) 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 drinking 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 0.006 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 1,1,2-trichloroethane.

(72) 2,3,7,8-TCDD (Dioxin). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 2,3,7,8-TCDD (dioxin) is a health concern at certain levels of exposure. This chemical is a contaminant 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. EPA has set the drinking water standard for dioxin at 0.000000003 parts per million (ppm) to reduce the risk of cancer and 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.

(73) 1,1,1-Trichloroethane. The United States 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 has been shown to cause damage to several organs, including the adrenal glands. EPA has set the drinking water standard for 1,1,1-trichloroethane 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 1,1,1-trichloroethane.
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 solder 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 human beings at relatively low levels of exposure. These effects 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. In addition, lead is a serious hazard for young children, who are more susceptible to lead poisoning than adults. Lead poisoning can be a result of 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’s “action level”) have optimized their corrosion control treatment. Any water system that exceeds the action level must monitor their source water to determine whether to remove lead in source water. A system must continue 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.

(76) Chlorine. 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 contamination of drinking water as a corrosion 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 to human beings, but in high doses it has been shown to cause stomach and intestines 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’s “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.

(77) Chlorine. The United States Environmental Protection Agency (EPA) sets drinking-water standards and has determined that chlorine is a health concern at certain levels of exposure. Chlorine is added to drinking water as a disinfectant to kill bacteria and other disease-causing microorganisms and is also added to provide continuous disinfection throughout the distribution system. Disinfection is required for surface water systems. However, at high doses for extended periods of time, chlorine has been shown to affect blood and the liver in laboratory animals. EPA has set a drinking water standard for chlorine to protect against the risk of these adverse effects. Drinking water which meets this EPA standard is associated with little to none of this risk and should be considered safe with respect to chloramines.

(78) Chlorine dioxide. The United States Environmental Protection Agency (EPA) sets drinking-water standards and has determined that chlorine dioxide is a health concern at certain levels of exposure. Chlorine dioxide is used in water treatment to kill disease-causing microorganisms and can be used to control taste and odors. Disinfection is required for surface water systems. However, at high doses, chlorine dioxide treated drinking water has been shown to affect blood in laboratory animals. Also, high levels of chlorine dioxide given to laboratory animals in drinking water have been shown to cause neurological effects on the developing nervous system. These effects in the developing nervous system are a result of a short-term excessive chlorine dioxide exposure. To protect against such potentially harmful exposures, EPA requires chlorine dioxide monitoring at the treatment plant, where disinfection occurs, and at representative points in the distribution system serving water users. EPA has set a drinking-water standard for chlorine dioxide to protect against the risk of these adverse effects.

(a) A system with a violation at the treatment plant, but not in the distribution system, shall use the following language and shall treat the violation as a nonacute violation: The chlorine dioxide violations reported today are the result of exceedances at the treatment facility only, and do not include violations within the distribution system serving users of this water supply. Continued compliance with chlorine dioxide levels within the distribution system minimizes the potential risk of these violations to present consumers. A system with a violation in the distribution system shall also use the following language and shall treat the violation as an acute violation: The chlorine dioxide violations reported today include exceedances of the EPA standard within the distribution system serving water users. Violations of the chlorine dioxide standard within the distribution system may harm human health based on short-term exposures. Certain groups, including pregnant women, infants, and young children, may be especially susceptible to adverse effects of excessive exposure to chlorine dioxide treated water. The purpose of this notice is to advise that such persons should consider reducing their risk of adverse effects from these chlorine dioxide violations by seeking alternate sources of water for human consumption until such exceedances are rectified. Local and state health authorities are the best sources for information concerning alternate drinking water.

(79) Disinfection by-products and treatment technique for DBPs. The United States Environmental Protection Agency (EPA) sets drinking-water standards and requires the disinfection of drinking water. However, when used in the treatment of drinking water, disinfectants react with naturally occurring organic and inorganic matter present in water to form chemicals called disinfection by-products (DBPs). EPA has determined that a number of DBPs are a health concern at certain levels of exposure. Certain DBPs, including some halogenated methane (THMs) and some haloacetic acids (HAAs), have been shown to cause cancer in laboratory animals. Other DBPs have been shown to affect the liver and the nervous system, and cause reproductive or developmental effects in laboratory animals. Exposure to certain DBPs may produce similar effects in people. EPA has set standards to limit exposure to THMs, HAAs, and other DBPs.

(80) Bromate. The United States Environmental Protection Agency (EPA) sets drinking-water standards and has determined that bromate is a health concern at certain levels of exposure. Bromate is formed as a by-product of ozone disinfection of drinking water. Ozone reacts with naturally occurring bromide in the water to form bromate. Bromate has been shown to produce cancer in rats. EPA has set a drinking water standard to limit exposure to bromate.

(81) Chlorite. The United States Environmental Protection Agency (EPA) sets drinking-water standards and has determined that chlorite is a health concern at certain levels of exposure. Chlorite is formed from the breakdown of chlorine dioxide, a drinking water disinfectant. Chlorite in drinking water has been shown to affect blood and the nervous system. EPA has set a drinking-water standard for chlorite to protect against these effects. Drinking water which meets this standard is associated with little to none of these risks and should be considered safe with respect to
of water by public water systems.

(d) How the amendment will assist in the effective administration of the statutes: Customers will continue to be informed when violations or special situations of the administrative regulations in 401 KAR Chapter 8 occur, and will be able to take any necessary actions for the protection of their health. This administrative regulation will be a part of the Cabinet’s comprehensive program for the purification of water for public and semipublic use.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public water systems are potentially affected by this administrative regulation. There are about 560 systems, some of which are owned or controlled by a city or county government. These water systems provide drinking water to about 3,700,000 Kentuckians. Only those systems that violate or exceed the requirements of the other administrative regulations in this chapter relating to maximum contaminant levels, treatment techniques, maximum residual disinfectant levels, and monitoring and reporting requirements are subject to this administrative regulation. The Cabinet issues Notices of Violation or other notification to those systems, and they must then provide public notification to their customers pursuant to this administrative regulation. The regulation also prescribes other situations that require a public notice.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: Public water systems that violate the standards prescribed in the administrative regulations of 401 KAR Chapter 8 or have a specific situation occur are required to notify their customers when violations or special situations occur according to the procedures in this administrative regulation. They are required to use the prescribed language in these amendments. Water systems are already following the procedures in the federal regulation, 40 C.F.R. Part 141, Subpart Q, and these amendments merely incorporate the federal requirements into Kentucky’s regulations.

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

(a) Initially: Those systems that violate an MCL, treatment technique, MRDL, or monitoring and reporting requirement, are required to publicly notify their customers of the Notice of Violation or special situation and the potential health risks according to this administrative regulation. If a system does not receive a Notice of Violation or have a specific situation occur, there is no cost to the system. The level of notification required depends on the type of violation. For most notifications, the system is required to mail or hand-deliver the notification, and publish it in a local newspaper. The costs to mail depend on the number of customers, and the costs to publish in the newspaper depend on the size of the notice and the local circulation of the newspaper. The costs could range from $100 to over $500 per notice. The costs to the agency will depend on the number of violations or specific situations occur. More violations or situations will require additional tracking of the violations or situations to ensure that the requirements of this administrative regulation are met.

(b) On a continuing basis: Same as above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The General Fund monies, as appropriated by the Kentucky General Assembly, will be used by the cabinet for the implementation and enforcement of this administrative regulation. The U.S. Environmental Protection Agency also issues grants to Kentucky for the enforcement and implementation of the Safe Drinking Water Act, and those funds are made a part of the cabinet’s budget, which is approved by the General Assembly.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: The cabinet does not expect an increase in fees or an increase in funding necessary to implement the amendments to this administrative regulation. Implementation will continue under the existing funding mechanisms appropriated by the Kentucky General Assembly in the General Fund monies. However, the cabinet has received an increase in funding from the U.S. EPA to implement the new provisions of the Safe Drinking Water Act, including those in this administrative regu-
lution.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fee.

(9) TIERING: Is tiering applied? Yes. Tiering is used in the different levels of violations (Tier 1, Tier 2, or Tier 3, and acute vs. nonacute) and the type of the water system (community or non-community). The tiers are based on the type of violation, the contaminant for which the violation is issued, and the impact of the violation on the public's health. There are different timing and delivery requirements for the public notifications, depending on the tier and type of water system (community or noncommunity). For instance, a Tier 1 violation requires notification of the customers within 24 hours of being aware of the violation, whereas a Tier 3 violation allows notification within one year of the violation. Different delivery requirements are also prescribed, depending on the type of water system and tier assignment of the violation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 141.201 to 141.210 (Subpart K)

2. Standards of compliance standards. 401 KAR 8:070

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires a public water system that violates standards or monitoring and reporting requirements report to its customers specific information on the violation. There are 10 required elements that a public notice shall contain, including mandatory language on potential health effects and other cautionary statements. The system is also required to distribute to its customers the notice in a specific manner, and certify to the cabinet that the public notification was performed.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? The certification requirements might be considered more stringent. The federal regulation requires that a certification be submitted within ten days of the certification being performed. The cabinet included some administrative provisions so that it can ensure that the public notification was performed correctly. This administrative regulation specifies that the system include some information regarding the public notification, including the name, date, a newspaper clipping, etc. to document that the public notification was performed.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These additional requirements are necessary so that the cabinet can verify that the public water system performed the necessary public notification requirements in the required timeframes. The additional requirements are administrative only, do not impose a financial burden on the water system, and allow the cabinet to effectively implement the program. The requirements for a public notification, including these administrative changes, are necessary only if a water system exceeds an MCL for a contaminant, or fails to perform monitoring and reporting requirements in 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 administrative regulation may affect some county or local governments that operate a public water system.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation. This administrative regulation would affect a county or local government that provides water service to its citizens. It is subject to the public notification requirements of 40 C.F.R. 141.201 to 141.210. However, those requirements apply if the public water system has violations of the standards or monitoring or reporting requirements of the administrative regulations of 401 KAR Chapter 8, or a specific situation occurs that requires a public notification under this administrative regulation.

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

Revenues (+/-): There is no anticipated effect on current revenues.

Expenditures (+/-): Expenditures could increase, if the water system has violations of the standards and monitoring and reporting requirements in 401 KAR Chapter 8, or a specified situation occurs. Those systems that violate an MCL, treatment technique, MPRD, or monitoring and reporting requirement, are required to publicly notify their customers of the Notice of Violation and the potential health risks according to this administrative regulation. If a system does not receive a Notice of Violation or a specified situation does not occur, this administrative regulation does not apply, and there is no cost to the system. The level of notification required depends on the type of violation. For most violations, the system is required to mail or hand deliver the notification, and publish it in a local newspaper. The costs to mail depend on the number of customers, and the costs to publish in the newspaper depend on the size of the notice and the local circulation of the newspaper. The costs could range from $100 to over $500 per notice.

Other explanation: None

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

Department for Environmental Protection

Division of Water

(Amendment)

401 KAR 8:075. Consumer confidence reports.

RELATES TO: KRS 224.10-100, 224.10-110, 40 C.F.R. 141.25(e), 141.40, 141.142, 141.143, 141.151-141.155, 42 U.S.C. 300f, 300g, 300h, 300j

STATUTORY AUTHORITY: KRS 224.10-100(30), 224.10-110, 40 C.F.R. 141.25(e), 141.40, 141.142, 141.143, 141.151-141.155, 42 U.S.C. 300f, 300g, 300h, 300j

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(30) and 224.10-110 authorize the cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use. This administrative regulation establishes the requirements for consumer confidence reports. This administrative regulation contains additional requirements to the Safe Drinking Water Act for reporting and recordkeeping to ensure that accurate reports are prepared and distributed to customers by specified dates, and for content and distribution requirements to ensure that a precise and clear report is distributed to customers.

Section 1. Applicability. (1) Notwithstanding 401 KAR 8:020, Section 2, a community water system shall submit an annual report to its customers and to the cabinet according to the requirements in this administrative regulation. The report shall contain information on the quality of the water delivered by the system and shall characterize the risks from exposure to contaminants detected in the drinking water in an accurate and understandable manner.

(2) An existing community water system shall deliver its [first] report by [October 15, 1999, its second report by July 1, 2000, and subsequent reports by July 1 of each year, annually thereafter]. The first report shall contain data collected during or before calendar year 1998 as prescribed in Section 2(2)(e) of this administrative regulation. Each report after the first report shall contain data prescribed by Section 2(3)c) of this administrative regulation collected during or before the previous calendar year.

(3) A new community water system shall deliver its first report by July 1 of the year after its first full calendar year in operation. Subsequent reports shall be delivered by July 1 of each year.

(4) A community water system that sells water wholesale to another community water system shall deliver the applicable information required in Section 2 of this administrative regulation to the
Section 2. Report Contents. The report required by this administrative regulation shall contain the information specified in this section and Section 3 of this administrative regulation. The report shall include the name of the water system near the top of the report, or on the front cover.

1. Information on the source of the water delivered:
(a) The report shall identify each source of the water delivered by providing information on:
   1. The type of water, either surface water, groundwater, or other specified water type; and
   2. The commonly used name and location of the body of water.
(b) If a source water assessment has been completed, the report shall notify consumers of the availability of the information and how to obtain it. A system may highlight the report significant sources of contamination in the source water area.
(2) Definitions. The report shall contain the definitions found in 401 KAR 8:010 for the following terms.
   (a) Maximum contaminant level goal, or MCLG;
   (b) Maximum contaminant level, or MCL;
   (c) Variance and exemption, if the system is operating under a variance or an exemption issued under 401 KAR 8:060;
   (d) Treatment technique, action level, maximum residual disinf ectant level goal or MRDLG, or maximum residual disinfectant level or MRDL, as applicable, if the report contains data on a contaminant for which [that] the U.S. EPA has set a treatment technique, action level, MRDLG, or MRDL.

(a) The report shall contain information on the following contaminants that are detected in the water, subject to mandatory monitoring, except Cryptosporidium:
1. The regulated contaminants that are subject to an MCL, action level, maximum residual disinfectant level, or treatment technique;
2. The unregulated contaminants for which monitoring is required by 40 C.F.R. 141.40 [401 KAR 8:440]; and
3. Disinfection by-products or microbial contaminants for which monitoring is required by 40 C.F.R. 141.142 and 141.143, except as provided under subsection (4)(a) of this section, and that are detected in the finished water.
(b) The data relating to the contaminants in paragraph (a) of this subsection shall be displayed in one (1) table or several adjacent tables. If a community water system includes in the report other monitoring results including a nondetected contaminant, the results shall be displayed separately.
(c) The data shall be derived from data collected to comply with cabinet and U.S. EPA monitoring and analytical requirements during the previous calendar year [1999 for the first report, and subsequent calendar years thereafter] except that:
   1. If a system is allowed to monitor for regulated contaminants less often than once a year:
      a. The table shall include the date and results of the most recent sampling; and
      b. The report shall include a brief statement indicating that the data presented in the report are from the most recent testing done in accordance with the administrative regulations in 401 KAR Chapter 8.
   2. Data that are older than five (5) years may be reported.
   2. Results of monitoring in compliance with 40 C.F.R. 141.142 and 141.143 shall be included for only five (5) years from the date of the last sample until the detected contaminant becomes regulated and subject to routine monitoring requirements, whichever occurs first.
(d) For detected regulated contaminants listed in Table A in this paragraph, the table in the report shall contain the information required in subparagraphs 1 to 10 of this paragraph.

<table>
<thead>
<tr>
<th>Contaminant [µg/L]</th>
<th>Traditional MCL in mg/L</th>
<th>To convert for CCR, multiply by</th>
<th>MCL in CCR Units</th>
<th>MCLG in CCR Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Microbiological contaminants</td>
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<td></td>
</tr>
<tr>
<td>[1] Total coliform bacteria</td>
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<tr>
<td>For a system that collects ≥ 40 samples per month: 5% of samples are positive; For a system that collects &lt; 40 samples per month: 1 positive monthly sample</td>
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<tr>
<td>For a system that collects ≥ 40 samples per month: 5% of monthly samples are positive; For a system that collects &lt; 40 samples per month: 1 positive monthly sample</td>
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<tr>
<td>[2] Fecal coliform and E. coli</td>
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<td>0</td>
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<tr>
<td>[3] Total organic carbon [mg/L]</td>
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<td>TT, ppm</td>
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<td>TT, ppm</td>
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<tr>
<td>n/a</td>
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<tr>
<td>Radioactive contaminants</td>
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<tr>
<td>[6] Beta or photon emitters</td>
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<tr>
<td>4 mrem/yr</td>
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<tr>
<td>4 mrem/yr</td>
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<tr>
<td>0 (n/a)</td>
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<tr>
<td>[7] Combined radium</td>
<td></td>
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<tr>
<td>5 pCi/L</td>
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<tr>
<td>5 pCi/L</td>
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<tr>
<td>n/a</td>
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<tr>
<td>[8] Antimony</td>
<td></td>
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<td>.006</td>
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<td>1000</td>
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<td>6 ppb</td>
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<td>6</td>
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<td>1000</td>
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<tr>
<td>50 ppb</td>
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<tr>
<td>n/a</td>
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<tr>
<td>[10] Asbestos</td>
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<tr>
<td>7 MFL</td>
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<td>7 MFL</td>
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<td>2</td>
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<tr>
<td>2 ppb</td>
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<td>2</td>
<td></td>
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<td></td>
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<tr>
<td>[12] Beryllium</td>
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<tr>
<td>.004</td>
<td></td>
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<tr>
<td>1000</td>
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<tr>
<td>4 ppb</td>
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<td>4</td>
<td></td>
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<tr>
<td>[13] Bromate</td>
<td></td>
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<tr>
<td>.010</td>
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<td>1000</td>
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<tr>
<td>10 ppb</td>
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<tr>
<td>0</td>
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<tr>
<td>[14] Cadmium</td>
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<td>.005</td>
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<tr>
<td>5 ppb</td>
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<td>5</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Substance</td>
<td>MRDL</td>
<td>MRDL = 4 ppm</td>
<td>MRDLG = 4 ppm</td>
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<tr>
<td>-----------------------------------</td>
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<td></td>
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<tr>
<td>Chloramines</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Chlorine</td>
<td>4</td>
<td>4 ppm</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chlorine dioxide</td>
<td>4</td>
<td>4 ppm</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chlorite</td>
<td>.1</td>
<td>1 ppm</td>
<td>.8</td>
<td></td>
</tr>
<tr>
<td>[44] Chromium</td>
<td>.1</td>
<td>1000</td>
<td>1000</td>
<td></td>
</tr>
<tr>
<td>[16] Copper</td>
<td>AL = 1.3</td>
<td>AL = 13 ppm</td>
<td>1.3</td>
<td></td>
</tr>
<tr>
<td>[16] Cyanide</td>
<td>.2</td>
<td>1000</td>
<td>200</td>
<td></td>
</tr>
<tr>
<td>[16] Fluoride</td>
<td>4</td>
<td>4 ppm</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>[18] Lead</td>
<td>AL = 0.15</td>
<td>AL = 15 ppm</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>[19] Mercury, inorganic</td>
<td>.002</td>
<td>1000</td>
<td>2 ppb</td>
<td></td>
</tr>
<tr>
<td>[20] Nitrate</td>
<td>10</td>
<td>10 ppm</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>[21] Nitrite</td>
<td>1</td>
<td>1 ppm</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>[22] Selenium</td>
<td>.05</td>
<td>1000</td>
<td>50 ppb</td>
<td></td>
</tr>
<tr>
<td>[23] Thallium</td>
<td>.002</td>
<td>1000</td>
<td>2 ppb</td>
<td></td>
</tr>
</tbody>
</table>

Synthetic organic contaminants including pesticides and herbicides

<table>
<thead>
<tr>
<th>Substance</th>
<th>MRDL</th>
<th>MRDL = 2,4,5-TP, Silvex</th>
<th>MRDL = 2,4-D, Silvex</th>
</tr>
</thead>
<tbody>
<tr>
<td>[24] 2,4-D</td>
<td>.07</td>
<td>1000</td>
<td>70 ppb</td>
</tr>
<tr>
<td>[25] 2,4,5-TP, Silvex</td>
<td>.06</td>
<td>1000</td>
<td>50 ppb</td>
</tr>
<tr>
<td>[26] Acrylamide</td>
<td>.002</td>
<td>1000</td>
<td>2 ppb</td>
</tr>
<tr>
<td>[27] Atrazine</td>
<td>.003</td>
<td>1000</td>
<td>3 ppb</td>
</tr>
<tr>
<td>[28] Atrazine</td>
<td>.002</td>
<td>1,000,000</td>
<td>200 ppb</td>
</tr>
<tr>
<td>[29] Benzene, pyrene, or PAH</td>
<td>.002</td>
<td>1,000,000</td>
<td>200 ppb</td>
</tr>
<tr>
<td>[30] Carbofuran</td>
<td>.04</td>
<td>1000</td>
<td>40 ppb</td>
</tr>
<tr>
<td>[31] Chlordane</td>
<td>.002</td>
<td>1000</td>
<td>2 ppb</td>
</tr>
<tr>
<td>[32] Dalapon</td>
<td>.2</td>
<td>1000</td>
<td>200 ppb</td>
</tr>
<tr>
<td>[33] Di-(2-ethylhexyl) adipate</td>
<td>.4</td>
<td>1000</td>
<td>400 ppb</td>
</tr>
<tr>
<td>[34] Di-(2-ethylhexyl) phthalate</td>
<td>.006</td>
<td>1000</td>
<td>6 ppb</td>
</tr>
<tr>
<td>[35] Diphenylmethane</td>
<td>.0002</td>
<td>1,000,000</td>
<td>200 ppb</td>
</tr>
<tr>
<td>[36] Dinosane</td>
<td>.007</td>
<td>1000</td>
<td>7 ppb</td>
</tr>
<tr>
<td>[37] Diquat</td>
<td>.02</td>
<td>1000</td>
<td>20 ppb</td>
</tr>
<tr>
<td>[38] Dioxin, 2,3,7,8-TCDD</td>
<td>.00000003, or 3 X 10^8</td>
<td>1,000,000,000, or 1 X 10^8</td>
<td>30 ppb</td>
</tr>
<tr>
<td>[39] Endothall</td>
<td>.1</td>
<td>1000</td>
<td>100 ppb</td>
</tr>
<tr>
<td>[40] Endrin</td>
<td>.002</td>
<td>1000</td>
<td>2 ppb</td>
</tr>
<tr>
<td>[41] Epichlorohydrin</td>
<td>.00005</td>
<td>1,000,000</td>
<td>50 ppt</td>
</tr>
<tr>
<td>[42] Ethylene dibromide</td>
<td>.0004</td>
<td>1,000,000</td>
<td>400 ppt</td>
</tr>
<tr>
<td>[43] Glycolate</td>
<td>.00002</td>
<td>1,000,000</td>
<td>200 ppt</td>
</tr>
<tr>
<td>[44] Hexachlorobenzene</td>
<td>.001</td>
<td>1000</td>
<td>1 ppb</td>
</tr>
<tr>
<td>[45] Hexachlorocyclopentadiene</td>
<td>.05</td>
<td>1000</td>
<td>50 ppb</td>
</tr>
<tr>
<td>[46] Lindane</td>
<td>.0002</td>
<td>1,000,000</td>
<td>200 ppb</td>
</tr>
<tr>
<td>[49] Methoxychlor</td>
<td>.04</td>
<td>1000</td>
<td>40 ppb</td>
</tr>
<tr>
<td>[50] Oxamyl, or Vydite</td>
<td>.2</td>
<td>1000</td>
<td>200 ppb</td>
</tr>
<tr>
<td>[54] PCBs, or Polychlorinated biphenyls</td>
<td>.00005</td>
<td>1,000,000</td>
<td>500 ppt</td>
</tr>
<tr>
<td>[55] Pentachlorophenol</td>
<td>.001</td>
<td>1000</td>
<td>1 ppb</td>
</tr>
<tr>
<td>[57] Picloram</td>
<td>.5</td>
<td>1000</td>
<td>500 ppb</td>
</tr>
<tr>
<td>[58] Simazine</td>
<td>.04</td>
<td>1000</td>
<td>4 ppb</td>
</tr>
<tr>
<td>[59] Toxaphene</td>
<td>.003</td>
<td>1000</td>
<td>3 ppb</td>
</tr>
</tbody>
</table>

Volatile organic contaminants

<table>
<thead>
<tr>
<th>Substance</th>
<th>MRDL</th>
<th>MRDL = 4 ppm</th>
<th>MRDLG = 4 ppm</th>
</tr>
</thead>
<tbody>
<tr>
<td>[61] Benzene</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>[63] Bromate</td>
<td>.05</td>
<td>1000</td>
<td>5 ppb</td>
</tr>
<tr>
<td>[64] Carbon tetrachloride</td>
<td>.010</td>
<td>1000</td>
<td>10 ppb</td>
</tr>
<tr>
<td>[65] Chlorobenzene</td>
<td>.005</td>
<td>1000</td>
<td>5 ppb</td>
</tr>
<tr>
<td>[66] Chlorine dioxide</td>
<td>.005</td>
<td>1000</td>
<td>5 ppb</td>
</tr>
<tr>
<td>[68] Chlorobenzene</td>
<td>1</td>
<td>1000</td>
<td>1000</td>
</tr>
<tr>
<td>[69] p-Chlorobenzene</td>
<td>.8</td>
<td>1000</td>
<td>600 ppb</td>
</tr>
<tr>
<td>[70] d-Chlorobenzene</td>
<td>.005</td>
<td>1000</td>
<td>75 ppb</td>
</tr>
<tr>
<td>[71] 1,2-Dichloroethane</td>
<td>.007</td>
<td>1000</td>
<td>7 ppb</td>
</tr>
<tr>
<td>[72] 1,1-Dichloroethylene</td>
<td>.07</td>
<td>1000</td>
<td>70 ppb</td>
</tr>
<tr>
<td>[74] cis,1,2-Dichloroethylene</td>
<td>1</td>
<td>1000</td>
<td>100 ppb</td>
</tr>
<tr>
<td>[75] trans,1,2-Dichloroethylene</td>
<td>.005</td>
<td>1000</td>
<td>5 ppb</td>
</tr>
<tr>
<td>[76] Dichloromethane</td>
<td>.005</td>
<td>1000</td>
<td>5 ppb</td>
</tr>
</tbody>
</table>

[41] 1,2-Dichloropropane            | .005 | 1000         | 5 ppb         |
1. The MCL for that contaminant expressed as a number equal to or greater than one and zero-tenths (1.0), as provided in Table A;
2. The MCLG for that contaminant, expressed in the same units as the MCL;
3. If there is no MCL for a detected contaminant, the table shall indicate that there is a treatment technique, or specify the action level, applicable to that contaminant. The report shall include the definition for treatment technique or action level, as appropriate;
4. For a contaminant subject to an MCL, except turbidity, total organic compounds, and total coliforms: the highest contaminant level used to determine compliance with 401 KAR 8:150 and 401 KAR 8:160 and the range of detected levels, as indicated in this subpara-
graph, expressed in the same unit as the MCL. If a result is rounded to determine compliance with the MCL, rounding shall be done be-
fore multiplying the result by the factor listed in Table A:
   a. If compliance with the MCL is determined annually or less
      frequently: the highest detected level at a sampling point and the
      range of detected levels;
   b. If compliance with the MCL is determined by calculating a
      running annual average of all samples taken at a sampling point: the
      highest average of any of the sampling points and the range of all
      sampling points;
   c. If compliance with the MCL is determined on a system-wide
      basis by calculating a running annual average of all samples at all
      sampling points: the average and range of detection.
5. For turbidity reported pursuant to 401 KAR 8:150 or 401 KAR
8:160: the highest single measurement and the lowest monthly per-
centage of samples meeting the turbidity limits specified in 401 KAR
8:150 and 401 KAR 8:160 for the filtration technology being used. The
report shall include an explanation of the reason for measuring
 turbidity;
6. For lead and copper: the 90th percentile value of the most
recent round of sampling and the number of sampling sites exceed-
ing the action level;
7. For total coliform:
   a. The highest monthly number of positive samples for systems
      collecting fewer than forty (40) samples per month; or
   b. The highest monthly percentage of positive samples for sys-
      tems collecting at least forty (40) samples per month; [1]
8. For fecal coliform: The total number of positive samples; [and]
9. For total organic carbons, TOCs. The lowest running annual
   average of the percent removal of TOCs achieved to the percent
   removal required, calculated quarterly, the range of the annual ra-
   tios, and an explanation of the treatment technique.
10. The likely source of each detected contaminant, to the best of
    the operator's knowledge. Specific information on a contaminant
    may be available in a sanitary survey or source water assessment,
    and shall be used if it is available to the operator. If the operator
    lacks specific information on the likely source, the report shall in-
    clude one (1) or more of the typical sources for that contaminant
    listed in Table B that are most applicable to the system.

<table>
<thead>
<tr>
<th>Contaminant, [-units]</th>
<th>Major Sources in Drinking Water</th>
<th>Health Effects Language</th>
</tr>
</thead>
<tbody>
<tr>
<td>Microbiological contamiants</td>
<td></td>
<td></td>
</tr>
<tr>
<td>[1] Total coliform bacteria</td>
<td>Naturally present in the environment.</td>
<td>Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.</td>
</tr>
<tr>
<td>[2] Fecal coliform and E. coli</td>
<td>Human and animal fecal waste.</td>
<td>Fecal coliforms and E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes.</td>
</tr>
<tr>
<td>[4.] Total organic carbon</td>
<td>Naturally present in the environment.</td>
<td>Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems. Total organic carbon [TOC] and turbidity have no health effects. However, total organic carbon in excess of the MCL may lead to adverse health effects, liver or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer.</td>
</tr>
<tr>
<td>[5.] Beta or photon emitters</td>
<td>Decay of natural and man-made deposits.</td>
<td>Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta particle and photon radioactivity in excess of the MCL over many years may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>[6.] Alpha emitters</td>
<td>Erosion of natural deposits.</td>
<td>Inorganic contaminants</td>
</tr>
<tr>
<td>[7.] Combined radium</td>
<td>Erosion of natural deposits.</td>
<td>Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Uranium</td>
<td>Erosion of natural deposits.</td>
<td>Inorganic contaminants</td>
</tr>
<tr>
<td>[8.] Antimony</td>
<td>Discharge from petroleum refineries; fire retardants; ceramics; electronics; solder.</td>
<td>Some people who drink water containing antimony in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.</td>
</tr>
<tr>
<td>[9.] Arsenic</td>
<td>Erosion of natural deposits; runoff from orchards; runoff from glass and electronics production wastes.</td>
<td>Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>[10.] Asbestos</td>
<td>Decay of asbestos cement water mains; erosion of natural deposits.</td>
<td>Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.</td>
</tr>
<tr>
<td>[11.] Barium</td>
<td>Discharge of drilling wastes; discharge from metal refineries; erosion of natural deposits.</td>
<td>Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.</td>
</tr>
<tr>
<td>[12.] Beryllium</td>
<td>Discharge from metal refineries and coal-burning factories; discharge from electrical, aerospace, and defense industries.</td>
<td>Some people who drink water containing beryllium in excess of the MCL over many years could develop intestinal lesions.</td>
</tr>
<tr>
<td>Bromate</td>
<td>By-product of drinking water disinfection</td>
<td>Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of cancer.</td>
</tr>
<tr>
<td>[13.] Cadmium</td>
<td>Corrosion of galvanized pipes; erosion of natural deposits; discharge from metal refineries; runoff from waste batteries and paints.</td>
<td>Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.</td>
</tr>
<tr>
<td>Chloramines</td>
<td>Water additive used to control microbes</td>
<td>Some people who drink water containing chloramines in excess of the MRDL could experience irritation effects to their eyes and nose. Some people who drink water containing chloramines in excess of the MRDL could experience stomach discomfort or anemia.</td>
</tr>
<tr>
<td>Chlorine</td>
<td>Water additive used to control microbes</td>
<td>Some people who drink water containing chlorine in excess of the MRDL could experience irritation effects to their eyes and nose. Some people who drink water containing chlorine in excess of the MRDL could experience stomach discomfort or anemia.</td>
</tr>
<tr>
<td>Chlorine dioxide</td>
<td>Water additive used to control microbes</td>
<td>Some people who drink water containing chlorine dioxide in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia.</td>
</tr>
<tr>
<td>Chlorite</td>
<td>Byproduct of drinking water chlorination</td>
<td>Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects.</td>
</tr>
<tr>
<td>[14.] Chromium</td>
<td>Discharge from steel and pulp mills; erosion of natural deposits</td>
<td>Similar effects may occur in fetuses of pregnant women who drink water containing chloride in excess of the MCL. Some people may experience anemia.</td>
</tr>
<tr>
<td>---------------------</td>
<td>---------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>[15.] Copper</td>
<td>Corrosion of household plumbing systems; erosion of natural deposits; leaching from wood preservatives.</td>
<td>Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.</td>
</tr>
<tr>
<td>[16.] Cyanide</td>
<td>Discharge from steel and metal factories; discharge from plastic and fertilizer factories.</td>
<td>Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.</td>
</tr>
<tr>
<td>[17.] Fluoride</td>
<td>Erosion of natural deposits; water additive that promotes strong teeth; discharge from fertilizer and aluminum factories.</td>
<td>Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Fluoride in drinking water at half the MCL or more may cause mottling of children's teeth, usually in children less than nine years old. Mottling, also known as dental fluorosis, may include brown staining and/or pitting of the teeth, and occurs only in developing teeth before they erupt from the gums. (Children may get mottled teeth.)</td>
</tr>
<tr>
<td>[18.] Lead</td>
<td>Corrosion of household plumbing systems; erosion of natural deposits.</td>
<td>Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.</td>
</tr>
<tr>
<td>[19.] Mercury, inorganic</td>
<td>Erosion of natural deposits; discharge from refineries and factories; runoff from landfills; runoff from cropland.</td>
<td>Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.</td>
</tr>
<tr>
<td>[20.] Nitrate</td>
<td>Runoff from fertilizer use; leaching from septic tanks; sewage; erosion of natural deposits.</td>
<td>Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.</td>
</tr>
<tr>
<td>[21.] Nitrite</td>
<td>Runoff from fertilizer use; leaching from septic tanks, sewage, erosion of natural deposits.</td>
<td>Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.</td>
</tr>
<tr>
<td>[22.] Selenium</td>
<td>Discharge from petroleum and metal refineries; erosion of natural deposits; discharge from mines.</td>
<td>Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.</td>
</tr>
<tr>
<td>[23.] Thallium</td>
<td>Leaching from ore-processing sites; discharge from electronics, glass, and drug factories.</td>
<td>Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.</td>
</tr>
</tbody>
</table>

**Synthetic organic contaminants including pesticides and herbicides:**

<table>
<thead>
<tr>
<th>[24.] 2,4-D</th>
<th>Runoff from herbicide used on row crops.</th>
<th>Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.</th>
</tr>
</thead>
<tbody>
<tr>
<td>[25.] 2,4,5-TP, or Silvex</td>
<td>Residue of banned herbicide.</td>
<td>Some people who drink water containing silvex in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.</td>
</tr>
<tr>
<td>[26.] Acrylamide</td>
<td>Added to water during sewage or wastewater treatment.</td>
<td>Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>[27.] Alachlor</td>
<td>Runoff from herbicide used on row crops.</td>
<td>Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>[28.] Atrazine</td>
<td>Runoff from herbicide used on row crops.</td>
<td>Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.</td>
</tr>
<tr>
<td>[29.] Benzo(a)pyrene, or PAH</td>
<td>Leaching from linings of water storage tanks and distribution lines.</td>
<td>Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>[30.] Carbofuran</td>
<td>Leaching of soil fumigant used on rice and alfalfa.</td>
<td>Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems.</td>
</tr>
<tr>
<td>[31.] Chlordane</td>
<td>Residue of banned termicid.</td>
<td>Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>[32.] Dalapon</td>
<td>Runoff from herbicide used on rights</td>
<td>Some people who drink water containing dalapon well in excess of...</td>
</tr>
<tr>
<td>Compound</td>
<td>Description</td>
<td>Health Effects</td>
</tr>
<tr>
<td>----------</td>
<td>-------------</td>
<td>----------------</td>
</tr>
<tr>
<td>Di (2-ethyl-hexyl) adipate</td>
<td>Discharge from chemical factories.</td>
<td>Some people who drink water containing di (2-ethylhexyl) adipate well in excess of the MCL over many years could experience [general] toxic effects such as weight loss, liver enlargement, or possible reproductive difficulties.</td>
</tr>
<tr>
<td>Di (2-ethyl-hexyl) phthalate</td>
<td>Discharge from rubber and chemical factories.</td>
<td>Some people who drink water containing di (2-ethylhexyl) phthalate well in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Dibromochloropropane</td>
<td>Runoff/leaching from soil fumigant used on soybeans, cotton, pineapples, and orchards.</td>
<td>Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive problems [difficulties] and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Dinoseb</td>
<td>Runoff from herbicide used on soybeans and vegetables.</td>
<td>Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.</td>
</tr>
<tr>
<td>Diquat [37-Diaquat]</td>
<td>Runoff from herbicide use.</td>
<td>Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.</td>
</tr>
<tr>
<td>Dioxin, or 2,3,7,8-TCDD</td>
<td>Emissions from waste incineration and other combustion; discharge from chemical factories.</td>
<td>Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Endothall</td>
<td>Runoff from herbicide use.</td>
<td>Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.</td>
</tr>
<tr>
<td>Endrin</td>
<td>Residue of banned insecticide.</td>
<td>Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.</td>
</tr>
<tr>
<td>Epichlorohydrin</td>
<td>Discharge from industrial chemical factories; an impurity of some water treatment chemicals.</td>
<td>Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Ethylene dibromide</td>
<td>Discharge from petroleum refineries.</td>
<td>Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Glyphosate</td>
<td>Runoff from herbicide use.</td>
<td>Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.</td>
</tr>
<tr>
<td>Heptachlor</td>
<td>Residue of banned pesticide.</td>
<td>Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Heptachlor epoxide</td>
<td>Breakdown of heptachlor.</td>
<td>Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Hexachlorobenzene</td>
<td>Discharge from metal refineries and agricultural chemical factories.</td>
<td>Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, or adverse reproductive effects, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Hexachlorocyclopentadiene</td>
<td>Discharge from chemical factories.</td>
<td>Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach.</td>
</tr>
<tr>
<td>Lindane</td>
<td>Runoff or leaching from insecticide used on cattle, lumber, gardens.</td>
<td>Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.</td>
</tr>
<tr>
<td>Methoxychlor</td>
<td>Runoff or leaching from insecticides used on fruits, vegetables, alfalfa, livestock.</td>
<td>Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.</td>
</tr>
<tr>
<td>Oxamyl, or Vydane</td>
<td>Runoff or leaching from insecticide used on apples, potatoes, and tomatoes.</td>
<td>Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.</td>
</tr>
<tr>
<td>PCBs, or Polychlorinated biphenyls</td>
<td>Runoff from landfills; discharge of waste chemicals.</td>
<td>Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Pentachlorophenol</td>
<td>Discharge from wood preserving factories.</td>
<td>Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Picloram</td>
<td>Herbicide runoff.</td>
<td>Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.</td>
</tr>
<tr>
<td>Simazine</td>
<td>Herbicide runoff.</td>
<td>Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.</td>
</tr>
<tr>
<td>Toxaphene</td>
<td>Runoff or leaching from insecticide used on cotton and cattle.</td>
<td>Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Compound</td>
<td>Source of Contamination</td>
<td>Health Effects</td>
</tr>
<tr>
<td>---------------------</td>
<td>-----------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Benzene</td>
<td>Discharge from factories; leaching from gas storage tanks and landfills.</td>
<td>Some people who drink water containing benzene in excess of the MCL over many years may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Bromate</td>
<td>Byproduct of drinking-water chlorination.</td>
<td>Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Carbon tetrachloride</td>
<td>Discharge from chemical plants and other industrial activities.</td>
<td>Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Chloramines</td>
<td>Water additive used to control microbes.</td>
<td>Some people who use water containing chloramines in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines in excess of the MRDL could experience stomach discomfort or anemia.</td>
</tr>
<tr>
<td>Chlorine</td>
<td>Water additive used to control microbes.</td>
<td>Some people who use water containing chlorine in excess of the MRDL could experience irritation to their eyes and nose. Some people who drink water containing chlorine in excess of the MRDL could experience stomach discomfort.</td>
</tr>
<tr>
<td>Chlorite</td>
<td>Byproduct of drinking-water chlorination.</td>
<td>Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorite in excess of the MCL. Some people may experience anemia.</td>
</tr>
<tr>
<td>Chlorine dioxide</td>
<td>Water additive used to control microbes.</td>
<td>Some infants and young children who drink water containing chlorine dioxide in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia.</td>
</tr>
<tr>
<td>Chlorobenzene</td>
<td>Discharge from chemical and agricultural chemical factories.</td>
<td>Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.</td>
</tr>
<tr>
<td>o-Dichlorobenzene</td>
<td>Discharge from industrial chemical factories.</td>
<td>Some people who drink water containing o-dichlorobenzene in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.</td>
</tr>
<tr>
<td>p-Dichlorobenzene</td>
<td>Discharge from industrial chemical factories.</td>
<td>Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.</td>
</tr>
<tr>
<td>1,2-Dichloroethane</td>
<td>Discharge from industrial chemical factories.</td>
<td>Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>1,1-Dichloroethylene</td>
<td>Discharge from industrial chemical factories.</td>
<td>Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.</td>
</tr>
<tr>
<td>cis-1,2-Dichloroethylene</td>
<td>Discharge from industrial chemical factories.</td>
<td>Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.</td>
</tr>
<tr>
<td>trans-1,2-Dichloroethylene</td>
<td>Discharge from industrial chemical factories.</td>
<td>Some people who drink water containing trans-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.</td>
</tr>
<tr>
<td>Dichloromethane</td>
<td>Discharge from pharmaceutical and chemical factories.</td>
<td>Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>1,2-Dichloropropane</td>
<td>Discharge from industrial chemical factories.</td>
<td>Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Ethylbenzene</td>
<td>Discharge from petroleum refineries.</td>
<td>Some people who drink water containing ethylbenzene in excess of the MCL over many years could experience problems with their liver or kidneys.</td>
</tr>
<tr>
<td>Haloacetic acids, or HAA</td>
<td>Byproduct of drinking water disinfection.</td>
<td>Some people who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Styrene</td>
<td>Discharge from rubber and plastic factories; leaching from landfills.</td>
<td>Some people who drink water containing styrene in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.</td>
</tr>
<tr>
<td>Tetrachloroethylene</td>
<td>Discharge from factories and dry cleaners.</td>
<td>Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>1,2,4-Trichlorobenzene</td>
<td>Discharge from textile-finishing factories.</td>
<td>Some people who drink water containing 1,2,4-trichlorobenzene in excess of the MCL over many years could experience changes in their adrenal glands.</td>
</tr>
<tr>
<td>1,1,1-Trichloroethane</td>
<td>Discharge from metal degreasing sites and other factories.</td>
<td>Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.</td>
</tr>
<tr>
<td>Commodity</td>
<td>Description</td>
<td>Health Risk</td>
</tr>
<tr>
<td>-----------</td>
<td>-------------</td>
<td>-------------</td>
</tr>
<tr>
<td>1,1,2-Trichloroethane</td>
<td>Discharge from industrial chemical factories.</td>
<td>Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.</td>
</tr>
<tr>
<td>Trichloroethylene</td>
<td>Discharge from metal degreasing sites and other factories.</td>
<td>Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Total Trihalomethanes (THMs)</td>
<td>By-product of drinking water disinfection (chlorination).</td>
<td>Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous systems, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Toluene</td>
<td>Discharge from petroleum factories.</td>
<td>Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.</td>
</tr>
<tr>
<td>Vinyl chloride</td>
<td>Leaching from PVC piping; discharge from plastics factories.</td>
<td>Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Xylenes</td>
<td>Discharge from petroleum factories; discharge from chemical factories.</td>
<td>Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.</td>
</tr>
</tbody>
</table>

Key (Where):
- AL = Action level
- MCL = Maximum contaminant level
- MCLG = Maximum contaminant level goal
- MFL = Million fibers per liter
- MRDL = Maximum residual disinfectant level
- MRDLG = Maximum residual disinfectant level goal
- mrem/yr = millirems per year, a measure of radiation absorbed by the body
- n/a = Not applicable
- NTU = Nephelometric turbidity unit, a measure of water clarity
- pCi/l = picocuries per liter, a measure of radioactivity
- ppm = parts per million, or milligrams per liter, mg/l
- ppb = parts per billion, or micrograms per liter, µg/l
- ppt = parts per trillion, or nanograms per liter
- ppq = parts per quadrillion, or picograms per liter
- TT = Treatment technique

(e) If a community water system distributes water to its customers from multiple hydraulically independent distribution systems that are fed by different raw water sources, the table shall contain a separate column for each service area and the report shall identify each separate distribution system. Alternatively, a system may produce separate reports tailored to include data for each service area or use another mechanism to clearly indicate the detections from the various raw water sources.

(f) A table shall clearly identify the data indicating violations of MCLs, MRDLs, or treatment techniques, and the report shall contain a clear and readily understandable explanation of the violation, including the length of the violation, the potential adverse health effects, and actions taken by the system to address the violation. To describe the potential health effects, the system shall use the relevant [applicable] language from Table B above for the contaminant that has a violation. [1]

(g) For detected unregulated contaminants for which monitoring is required, except Cryptosporidium, the table shall contain the average and range at which the contaminant was detected. The report may include a brief explanation of the reason for monitoring for unregulated contaminants.

Information on Cryptosporidium, radon, and other contaminants:

(a) If the system has performed monitoring for Cryptosporidium, including monitoring performed to satisfy the requirements of 40 C.F.R. 141.143, and the monitoring indicates that Cryptosporidium may be present in the source water or the finished water, the report shall include:
1. [A summary-e] The results of the monitoring; and
2. An explanation of the significance of the results.

(b) If the system has performed monitoring for radon that indicates that radon may be present in the finished water, the report shall include:
1. A summary of the results of the monitoring; and
2. An explanation of the significance of the results.

(c) If the system has performed additional monitoring that indicates the presence of another contaminant in the finished water, a system may report results that may indicate a health concern. The system shall contact the Safe Drinking Water Hotline, 800-426-4791, to determine if EPA has proposed national primary drinking water regulation [an NPDESWA] or issued a health advisory for that contaminant. A detection above a proposed MCL or health advisory level indicates a possible health concern. For that contaminant, the report shall include:
1. The results of the monitoring; and
2. An explanation of the significance of the results noting the existence of a health advisory or a proposed regulation.

(5) Compliance with 401 KAR 8:010 to 401 KAR 8:550: In addition to the requirements of subsection (3)(f) of this section, the report shall note a violation that occurred during the year covered by the report of a requirement listed below, and include a clear and readily understandable explanation of the violation, a potential adverse health effect, and the steps the system has taken to correct the violation.

(a) Monitoring and reporting of compliance data, [1]
(b) Filtration and disinfection prescribed by 401 KAR 8:160. For a system that failed to install adequate filtration or disinfection equipment or processes, or had a failure of the filtration or disinfection equipment or processes that constitutes a violation, the report shall include the following language as part of the explanation of potential adverse health effects: "Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches."
(c) Lead and copper control requirements prescribed by 401 KAR 8:300. For a system that fails to take one (1) or more actions prescribed by 401 KAR 8:300, Sections 2(5), 3, 4, 5, or 6 (30), 4, 5, 6, or 7, the report shall include the applicable language of subsection (3)(f) of this section for lead, copper, or both.
(d) Treatment techniques for acrylamide and epichlorohydrin prescribed by 401 KAR 8:100. For a system that violates the requirements of 401 KAR 8:100, Section 2, the report shall include the relevant language from subsection (3)(f) of this section.
(e) Recordkeeping of compliance data.

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Section 3. Additional Health Information. (1) A report shall prominently display the following language as a separate paragraph: “Some people may be more vulnerable to contaminants in drinking water than the general population. Immuno-compromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice about drinking water from their health care providers. EPA/CDC guidelines on appropriate means to lessen the risk of infection by Cryptosporidium and other microbial contaminants are available from Safe Drinking Water HelpLine (800-426-4791)."

(2) A system that detects arsenic above 0.005 mg/L and up to and including 0.010 mg/L, [at levels above twenty-five (25)-μg/L, but below the MCL] shall:
(a) Include in its report a short informational [information] statement about arsenic, using language such as: "While your drinking water meets EPA’s standard for arsenic, it does contain low levels of arsenic. EPA’s standard balances the current understanding of arsenic’s possible health effects against the costs of removing arsenic from drinking water. EPA continues to research the health effects of low levels of arsenic, which is a mineral known to cause cancer in humans at high concentrations and is linked to other health effects such as skin damage and circulatory problems." [EPA is reviewing the drinking water standard for arsenic because of special concerns that it may not be stringent enough. Arsenic is a naturally-occurring mineral known to cause cancer in humans at high concentrations."]
and
(b) Write its own educational statement that shall be approved by the cabinet before including it in the report.

(3) A system that detects nitrate [nitrates] at levels above five (5) mg/L, but below the MCL shall:
(a) Include a short informational statement about the impacts of nitrate on children using language such as: "Nitrate in drinking water at levels above ten (10) ppm is a health risk for infants of less than six months of age. High nitrate levels in drinking water can cause blue baby syndrome. Nitrate levels may rise quickly for short periods of time because of rainfall or agricultural activity. If you are caring for an infant you should ask advice from your health care provider.",
and
(b) Write its own educational statement that shall be approved by the cabinet before including it in the report.

(4) A system that detects lead above the action level in more than five (5) percent, and up to and including ten (10) percent, of homes sampled shall:
(a) Include a short informational statement about the special impact of lead on children using language such as: "Infants and young children are typically more vulnerable to lead in drinking water than the general population. It is possible that lead levels at your home may be higher than at other homes in the community as a result of materials used in your home’s plumbing. If you are concerned about elevated lead levels in your home’s water, you may wish to have your water tested and flush your tap for thirty (30) seconds to two (2) minutes before using tap water. Additional information is available from the Safe Drinking Water Hotline, 800-426-4791.",
and
(b) Write its own educational statement that shall be approved by the cabinet before including it in the report.

(5) A community water system that detects TTHM above 0.080 mg/L, but below the MCL in 401 KAR 8:500 as an annual average, monitored and calculated under the provisions of 401 KAR 8:500, shall include health effects language for TTHMs prescribed by Section 2(3)(d) of this administrative regulation.

(6) Beginning in the report due after the effective date of this administrative regulation, and ending January 22, 2006, a community water system that detects arsenic above 0.010 mg/L and up to and including 0.05 mg/L, shall include the health effects language for arsenic prescribed by Section 2(3)(d) of this administrative regulation.

Section 4. Report Delivery and Recordkeeping. (1) Except as provided in subsection (5) of this section, a community water system shall mail or otherwise directly deliver a copy of the report to each customer.

(2) The system shall also make a good-faith effort to reach con-
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sumers who do not get water bills. An adequate good-faith effort shall be tailored to the consumer who is served by the system, but is not a bill-paying customer, such as a rented-out worker. The system shall describe the good-faith efforts [albeit in the certification required in subsection (3) of this section. The good-faith efforts shall be made in addition to the distribution method that is used by the system to distribute its report as required for the size of the system [or when the report is submitted to the cabinet]. A good-faith effort to reach consumers may be a mix of methods appropriate to the particular system, such as:
(a) Posting the report on the Internet;
(b) Mailing to postal patrons in metropolitan areas;
(c) Advertising the availability of the report in the news media;
(d) Publishing the report in a local newspaper;
(e) Posting in a public place such as a cafeteria or lunch room of a public building;
(f) Delivering of multiple copies for distribution by single-biller customers in apartment buildings or large private employers;
(g) Delivering the report to a community organization; or
(h) Other means that accomplish the goal of notifying the consumer.

(3)(a) Within fourteen (14) days of distributing the report to its customers, but no later than the date specified in Section 1(2)(a) of this administrative regulation, the community water system shall mail a copy of the report and certification required in paragraph (b) of this subsection to the cabinet at the following address: Division of Water, Drinking Water Branch, Attn: CCR, 14 Reilly Road, Frankfort, Kentucky 40601. The system shall include a copy of the report and certification for each PWSID the system has, and shall include the name of the system and its PWSID number on all submittals. The system shall not mail the report or the certification to the cabinet until it has distributed the report to its customers.

(b) Certification.
   1. The community water system shall mail a certification to the cabinet by January 19, 2000, for the first report, by October 1 for the second report, and by July 1 annually thereafter (for subsequent reports).
   2. [The certification shall contain the following documentation. If the required documentation has been previously submitted, a system need not re-submit that information.] The certification shall include the typed or printed name and title of the person responsible for the overall operation or management of the system, and shall be signed by that person. The certification shall contain the following documentation:
      a. The following two (2) statements that are true for the system:
         (i) "The report was prepared and distributed according to the requirements for our system"; and
         (ii) "The report contains information that is correct and consistent with the compliance monitoring data previously submitted to the Division of Water;"
      b. An explanation [Documentation] of how and when the report was distributed to its customers. If a system serves a population of less than 10,000 and used the mailing waiver pursuant to subsection (6)(a) of this section, it shall include a copy of the report from the local newspaper, showing the date the report was printed and the name of the newspaper.
      c. If the system serves a population of less than 10,000, and used the mailing waiver allowed in subsection (5)(a) of this section, a description of how the system qualified for the mailing waiver by demonstrating that it performed all three (3) actions required for the mailing waiver;
      d. If the system serves a population of less than 500 and used the waiver allowed in subsection (5)(b) of this section, documentation of how it notified its customers that the report was available; and
      e. A description of the system’s good-faith efforts to reach its nonbill-paying customers, as required in subsection (2) of this section;
   4. A community water system shall make its report available to the public upon request.
   5. By the date specified in Section 1 of this administrative regulation, a community water system serving 100,000 or more persons shall post its current year’s report to a publicly-accessible site on the Internet. The version that is posted shall be identical to the report that is made available to the customers, to the extent allowed by the computer or electronic system.

(6) Waiver. A system shall document in the certification required in subsection (3)(b) of this section how it qualified for the waiver, by showing how it performed either the three (3) actions in paragraph (a) of this subsection, or the action required in paragraph (b) of this subsection, as applicable for the system’s size.

(a) A community water system that serves fewer than 10,000 persons shall be waived from the mailing requirement in subsection (1) of this section if the system performs the following three (3) actions before the date specified in Section 1 of this administrative regulation:
   1. Publishes the report in at least one (1) newspaper serving the area in which the system is located. The version that is printed in the newspaper shall be the same as is submitted to the cabinet, to the extent allowed by the newspaper;
   2. Informs the customers that the reports will not be mailed unless requested, either in the newspapers in which the reports are published, or by another means approved by the cabinet by which the customers are notified; and
   3. Makes the reports available to the public upon request.

(b) A system that serves more than 500 persons may forego the requirements of paragraph (a) and of this subsection if it provides notice to its customers at least once per year before the date specified by Section 1 of this administrative regulation by mail, door-to-door delivery, or by posting in an appropriate location that the report is available upon request.

(7) A community water system shall retain a copy of its consumer confidence report and certification for at least three (3) years.

LAJUANA S. WILCHER, Secretary
APPROVED BY AGENCY: May 14, 2004
FILED WITH LRC: June 4, 2004 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2004 at 1:00 p.m. (Eastern time) in Conference Room D-16 at the Department of Surface Mining, #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 14, 2004, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 2004. 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: Jeffrey W. Pratt, Director, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey W. Pratt, Director

(1) Provide a brief summary of:
(a) What this administrative regulation does. This administrative regulation incorporates into Kentucky’s administrative regulations the federal requirements in 40 C.F.R. 141.151 to 141.155 on Consumer Confidence Reports. It establishes reporting requirements for community water systems: every community water system shall prepare and distribute to their customers an annual report. The report shall contain information or the quality of the water delivered by the system and shall characterize the risks from exposure to contaminants detected in the drinking water.

(b) The necessity of this administrative regulation: KRS 224.10-
100(30) and 224.10-110 authorize the cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use. This administrative regulation establishes the requirements for consumer confidence reports. This administrative regulation is necessary for the U.S. Environmental Protection Agency to grant Kentucky the primacy for the enforcement of the federal regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation promulgates into Kentucky’s administrative regulations the provisions of the federal regulation, thus maintaining Kentucky’s program for the purification of water for public and semipublic use.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation requires that a community water system must prepare and distribute to its customers an annual report on the quality of the water provided by the system, thus assuring the customers that the water they receive meets the federal and state requirements for notifying them of any violations. This administrative regulation is a part of the cabinet’s program for the purification of water for public and semipublic use.

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

(a) How the amendment will change this existing administrative regulation: Some amendments will correct organizing errors. Other amendments will incorporate into Kentucky’s regulation the changes that the U.S. Environmental Protection Agency has made to its regulation since 2001. Some of these changes relate to mandatory wording for the potential adverse health effects, others relate to corrections of maximum contaminant levels, and other federal changes. Still other changes relate to effective dates of required actions. These changes will be consistent with the promulgation of the state regulation. Other amendments are to clarify Kentucky’s intent regarding the content of the report that a community water system must distribute to its customers and the cabinet, and the certification that the system must submit to the cabinet.

(b) The necessity of the amendment to this administrative regulation: These changes will ensure that Kentucky’s regulation maintains consistency with the federal regulation, so that the U.S. Environmental Protection Agency can grant Kentucky full primacy for implementation and enforcement of the federal program. Kentucky currently has interim primacy, until the corrections are made. The changes related to the clarifications will ensure that the public receives a report that is accurate, readable, and correctly depicts the quality of the water that the system delivers to its customers. The changes related to the cabinet to effectively administer the federal program. The changes are clerical in nature and should not increase costs to a community water system.

(c) How the amendment conforms to the content of the authorizing statutes: Some amendments are necessary to incorporate the provisions of the federal regulations; others are necessary to be part of maintaining the cabinet’s program for the purification of water for public and semipublic use.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will ensure that Kentucky’s regulation on consumer confidence reports are consistent with the federal requirements, are accurate, and will be a part of the cabinet’s program for the purification of water for public and semipublic use.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all community water systems. There are about 450 such systems in Kentucky, some of which are controlled or owned by local governments. Those public water systems provide drinking water to citizens of the commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: The amendments to this administrative regulation are to correct errors, add new federal language, and clarify the content or distribution of the reports. Changes are clerical in nature, and should not impose additional hardships or financial burdens on community water systems. Systems are already required to prepare and distribute a report; these changes just will be reflected in the content of the report so that customers can receive an accurate report, the certification, and distribution to ensure that nonbill paying customers are notified of the availability of the report.

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

(a) Initially: The cabinet is administering this administrative regulation as a part of its comprehensive program for the purification of public water systems; there is no additional cost to the agency as a result of these changes. These changes do not represent an additional cost to the system. Any costs on the system are already imposed because of the federal regulation, and subsequent promulgation of the current administrative regulation.

(b) On a continuing basis: Same as the initial costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Monies allocated by the Kentucky General Assembly in its biennial budget will be used to implement and enforce the administrative regulations throughout 401 KAR Chapter 5, including this administrative regulation. In addition, the cabinet receives grants from the U.S. EPA to implement the provisions of the federal Safe Drinking Water Act, as amended, if the cabinet’s program is no less stringent than the federal program. The cabinet would therefore maintain “primacy” for the enforcement and implementation of the federal program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase in fees or funding will be necessary to implement only this administrative regulation. However, the cabinet has received an increase in funding from the U.S. EPA to implement new provisions of the Safe Drinking Water Act, including this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. While all community water systems are required to prepare and distribute an annual report to their customers, systems that serve a population of less than 10,000 may use a waiver of the requirement to mail or otherwise hand deliver the reports to their customers. Systems that serve less than 10,000 may print the report in a local newspaper instead of mailing them to all customers, if they also notify their customers that the report will not be mailed unless requested, and then also make the reports available upon request. Systems that serve a population of less than 500 people may be further relieved of distribution requirements by just notifying their customers that the report is available upon request.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 141.1512 to 141.155 (Subpart O)

2. State compliance standards. 401 KAR 8:075

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires community water systems to prepare and distribute to their customers an annual report on the quality of the drinking water delivered to their customers. The federal regulation contains requirements on the content of the reports, and requirements as to how the report is to be delivered to a system’s customers, depending on the population served by the system.

4. Will this administrative regulation impose additional requirements, or additional or different responsibilities or requirements than those required by the federal mandate? Yes. The current regulation contains some provisions relating to reporting and record keeping requirements that are additional requirements. Those provisions were promulgated in 2001. Some amendments to this administrative regulation are administrative changes and represent clarifications of the content of the report, or how the report is to be distributed to the consumers. These changes should not impose additional costs on the system.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The requirement for system to submit the report and certification to the cabinet by the same date is currently in the regulation, promulgated in 2001, and has worked well for systems. Systems now have only one date to...
remind small systems to submit their reports to the cabinet and their customers and to submit the certifications to the cabinet; thus it saves them on mailing costs, in not having submit 2 different documents at 2 different times. This requirement has reduced the number of systems that have received a violation for not submitting the certification to the cabinet by the much-later dates; the reports must be submitted to the cabinet by July 1, regardless of the state regulation. Systems currently have more than 6 months to prepare to distribute their reports and submit the reports and the certification to the cabinet. That is a sufficient amount of time for them. Other current changes relate to the certification that the system submits to the cabinet, verifying that the report was submitted and distributed as required. This allows the cabinet to effectively administer the program. Some amendments are clarifications of the cabinet's intent regarding the content of the system's report and certification. Those clerical changes are necessary to ensure that the cabinet receives a report that is comprehensive and understandable, accurately represents the quality of the water that the system delivers to its customers, and ensures that the report has been distributed to their nonbill-paying customers. The amendments are necessary for the cabinet to effectively administer the federal program and ensure that the public is adequately and accurately notified of the quality of the water that it receives from its producing system.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.
2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation affects all community water systems, most of which are owned or controlled by local governments.
3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation. This administrative regulation relates to those affected public water systems that provide drinking water to their customers. Pursuant to 40 C.F.R. 141.151 to 141.155, community water systems must prepare and distribute to their customers an annual report on the quality of their water.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no anticipated effect on current revenues due to the changes to this administrative regulation.
Expenditures (+/-): There are no significant costs associated with the amendments to this administrative regulation. The amendments are clerical in nature and clarify the content of the reports, the certification, and the distribution of the reports to nonbill paying customers. The distribution of the reports to nonbill paying customers is a requirement of the federal regulation and the amendments clarify the intent.

Other explanation: None

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Water

(Amendment)

401 KAR 8:150. Disinfection, [and] filtration, and recycling.

RELATES TO: KRS 224.10-100, 224.10-110, 40 C.F.R. 141.70:141.76, 142.16 [Parts 141, 142, 143, 144, 145, 146] STATUTORY AUTHORITY: KRS 224.10-100(30), 224.10-110, 40 C.F.R. 141.70:141.76, 142.16 [Parts 141, 142, 143, 144, 145, 146], 42 U.S.C. 3001, 3002, 3003, 3007 Necessity, function, and conformity: KRS 224.10-100(30) and 224.10-110 authorize the cabinet to promulgate administrative regulations for the regulation and control of the purifica-
tion of water for public and semipublic use. This administrative regulation is necessary to establish requirements for the disinfection, filtration, recycling, and testing of drinking water in a public or semipublic water system using surface water or groundwater under the direct influence of surface water. This administrative regulation requires filtration on all water supplies that have surface water sources and disinfection of water supplies whose source is groundwater, which are not required under federal regulations. Filtration on all systems with surface water sources is necessary because those systems would not be able to meet the applicable standards without filtration. Groundwater disinfection is necessary due to the karstic nature of Kentucky's geology and to protect against bacteria that could develop in water systems.

Section 1. Disinfection. A public and semipublic water system shall provide disinfection, except as provided in this section. A semipublic water system 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. A public water system using groundwater or surface water as a source shall:
   a. A public water system that uses chlorine shall:
      1. Use continuous automatic disinfection by chlorination;
      2. Provide a contact period of at least thirty (30) minutes between the chlorine and the water to allow adequate time for disinfection;
   b. Disinfecting agents other than chlorine, such as chloramines and chlorine dioxide, must be acceptable to the cabinet but shall be specifically approved by the cabinet on a case-by-case basis.
   c. Chloramination is used, a minimum combined residual of five-tenths (0.5) milligrams per liter, or ppm, shall be provided throughout the distribution system.
2. A public water system 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 8 (2) of this administrative regulation.
   - The residual disinfectant concentration in the water entering the distribution system measured as specified in Section 3(1) of this administrative regulation shall 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) 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, and 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, or HP, as specified in Section 3(1) 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.

\[ V = \frac{c - d - a}{b} \times 100 \]

where:
- \( a \) = number of instances that the residual disinfectant concentration
Section 3(1) of this administrative regulation. (4) Other filtration technologies. (a) 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. (b) [Beginning January 1, 2002.] A system serving at least 10,000 people shall meet the requirements for other filtration technologies in 401 KAR 8:160, Section 4(2). (5) A semipublic water system 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 and the 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) A variance or exemption 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 C.F.R. 141.74, in effect on July 1, 2003 [2000], adopted without change in Section 7 [6] of this administrative regulation. (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 paragraphs (a) and [paragraph (a) of this subsection beginning July 1, 1982, and paragraph (b) of this subsection beginning January 1, 1995] or when filtration is installed [whenever 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 3,000 or fewer persons may take grab samples in lieu of providing continuous monitoring on an ongoing basis at the frequencies each day pre-
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 be sampled for 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 points are more representative of treated, or disinfected, water quality within the distribution system. Heterotrophic bacteria, measured as heterotrophic plate count, or HPC as specified in subsection (1) 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) 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) New construction projects and line extensions.

(a) 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.

(b) 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.

(c) Other methods and testing procedures that provide an equivalent level of protection may be used if the cabinet grants prior written approval.

(d) A new water distribution line shall not be placed into service until bacteriological samples taken at the points specified in paragraph (f) of this 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.]

(e) (2) A water distribution system shall submit to the cabinet results of bacteriological samples for each new construction project, [routine repair which includes restoration of pressure to pipes where pressure is lost] replacement, or extension to existing systems, after the disinfection and flushing.

(f) One (1) sample shall be taken at each connection point between the existing and new lines and one (1) sample shall be taken at one (1) mile intervals in the new line, replacement, or extension. One (1) sample shall also be taken at each dead end, without omitting any branch of the new or relocated water line.

(g) [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 shall be taken from each mile of new distribution line.] A new or routine replacement line shall not be placed in service until negative laboratory results are obtained on the bacteriological analyses.

(h) Sample bottles shall be clearly identified as "special" construction test and the results submitted to the cabinet shall be clearly marked as "special" samples.

(i) Notification of analytical results shall be submitted [given] to the cabinet with the routine monthly compliance bacteriological samples, unless the bacteriological samples are to be used to lift a boil water advisory. Samples to be used to lift a boil water advisory shall be submitted to the cabinet as soon as results are known.

(2) Line repairs due to breaks or ruptures.

(a) The system shall thoroughly flush the break area and maintain at least a minimum disinfectant residual, pursuant to Section 1(1) of this administrative regulation.

(b) The system may leave the line in service or return the line to service before receiving bacteriological results if:

1. Pressure is maintained;
2. The break area is thoroughly flushed; and
3. At least the minimum disinfectant residual, pursuant to Section 1(1) of this administrative regulation is maintained.

(c) The system shall take at least two (2) bacteriological tests, one (1) located before the break or rupture, and one (1) located behind the break or rupture, as close to the break or rupture as practical. Additional samples may be required, if necessary, to be representative of the area affected by the break.

(d) Sample bottles shall be clearly identified as "special" tests and the results submitted to the cabinet shall be clearly marked as "special" samples.

(e) 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-pressures 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 with routine monthly compliance samples unless the samples are required to lift a boil water advisory, and shall be maintained for one (1) year. Samples needed to remove a boil water advisory shall be submitted to the cabinet as soon as the results are known.

(e) A water system shall notify the cabinet immediately if the pressure drops below twenty (20) pounds per square inch in the distribution system surrounding the break, or a break or rupture occurs that requires [requiring] more than eight (8) hours to repair.

(f) The system shall issue a boil water advisory if the cabinet determines that a boil water advisory is necessary to protect the public health.

(g) [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 pursuant to 401 KAR 8:020, Section 2(7)(c) are not required for a loss of pressure, break, or rupture occurring in service lines serving only one (1) single family residence.

(h) Community and nontransient noncommunity public water systems shall maintain a log of all breaks or ruptures, which shall include [includes] the:
   a. Date and location of the break or rupture; [the]
   b. Time it was discovered; [the]
   c. Population affected; [the]
   d. Length of time required to repair the break or rupture; [the]
   e. Date and time disinfectant residuals are detected; and [the]
   f. Date and time bacteriological samples are taken.
   2. The log shall be available for inspection by the cabinet.

Section 5. Uncovered Facility. A public or semipublic water system subject to this administrative regulation shall not begin construction of an uncovered finished water storage facility.

Section 6. Recycling. (1) Applicability. The following type of system shall comply with the requirements in subsections (2) to (5) of this section. A public water system that:

(a) Uses as its source surface water or groundwater under the direct influence of surface water;
(b) Uses conventional filtration or direct filtration treatment; and
(c) Recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes.
(2) Reporting. A system shall have notified the cabinet in writing by the effective date of this administrative regulation, if the system recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes. The notification shall include at least the following information:
(a) A plant schematic that shows:
   1. The origin of all flows that are recycled, including:
      a. Spent filter backwash water;
      b. Thickener supernatant; and
      c. Liquids from dewatering processes;
   2. The hydraulic conveyance used to recycle them; and
   3. The location where they are reintroduced back into the treatment plant;
(b) Typical recycle flow, in gallons per minute, or gpm;
(c) The highest observed plant flow experienced in the previous year, gpm;
(d) Design flow for the treatment plant in gpm; and
(e) The operating capacity for the plant, if the cabinet has approved the operating capacity.
(3) Required treatment technique.
(a) A system that recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes shall return these flows through the processes of a system's existing conventional or direct filtration system or an alternative location approved by the cabinet, or a location that is consistent with the design and operating capacity of this administrative regulation.
(b) If capital improvements are required to modify the recycle location to comply with paragraph (a) of this subsection, the capital improvements shall be completed no later than June 8, 2006.
(4) Recordkeeping. The system shall collect and retain on file the following recycle flow information for review and evaluation by the cabinet beginning the effective date of this administrative regulation:
(a) A copy of the recycle notification and information submitted to the cabinet under subsection (2) of this section;
(b) A list of all recycle flows and the frequency with which they are returned;
(c) The average and maximum backwash flow rate through the filters, and the average and maximum duration of the filter backwash process in minutes;
(d) The typical filter run length and a written summary of how filter run length is determined;
(e) The type of treatment provided for the recycle flow;
(f) Data on the physical dimensions of the equalization or treatment unit;
(g) The typical and maximum hydraulic loading rates;
(h) The type of treatment chemicals used, and average dose and frequency of use; and
(i) The frequency at which solids are removed, if applicable.

Section 7. Federal Regulation Adopted Without Change. 40 C.F.R. 141.74, as in effect on July 1, 2003 (2000), is adopted without change. The subject matter of this administrative regulation relating to analytical methods shall be governed by this federal regulation.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Lajuana S. Wilcher, Secretary
APPROVED BY AGENCY: May 14, 2004
FILED WITH LRC: June 4, 2004 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2004 at 1 p.m. (Eastern time) in Conference Room D-16 at the Department of Surface Mining, #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 14, 2004, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. PARKING NOTE: Persons interested in attending the public hearing, other than those with handicap parking plates or placards, are asked to park in the "upper" parking lot on Hudson Hollow, next to the Little Lamb Preschool behind the hedge, and not in the visitor parking lot or main parking lot.

CONTACT PERSON: Jeffrey W. Pratt, Director, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, telephone (502) 564-3410, fax (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Jeffrey W. Pratt
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets out requirements for the disinfection, filtration, and recycling of drinking water in public water systems using surface water or groundwater under the direct influence of surface water.
(b) The necessity of this administrative regulation: KRS 224.10-100(30) and 224.10-110 authorize the cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use. This administrative regulation is necessary to establish requirements for the disinfection, filtration, recycling, and testing of drinking water in a public or semipublic water system using surface water or groundwater under the direct influence of surface water. The U.S. Environmental Protection Agency also has corresponding regulations for this topic. This administrative regulation is necessary so that Kentucky can be granted primacy for the federal requirements.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides disinfection, filtration, and recycling requirements as a part of the comprehensive program for the regulation and control of the purification of water for public and semipublic use. The disinfection, filtration, and recycling requirements are to protect customers of the water system from bacteria and microorganisms that can be harmful when ingested.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure that the water provided by a public or semipublic water system has been properly treated, and is safe for the citizens of the commonwealth.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: Some of the amendments to this administrative regulation will clarify the cabinet's intent regarding boil water and consumer advisories; the term "boil water notice" is also being deleted. The amendments will also clarify what testing will need to be performed for a boil water or consumer advisory, and how to submit the test results. Corresponding changes are also being made in 401 KAR 9:020 on this topic. This administrative regulation is also being amended to include the requirements of the federal regulation on filter backwash recycling in 40 C.F.R. 141.76. The federal regulation was promulgated June 8, 2001; regulated entities had to begin compliance with it on December 8, 2003. Kentucky will require compliance as of the effective date of the regulation. Finally, the amendments will update the reference to the federal regulation that is cited in this administrative regulation, 40 C.F.R. 141.74. The most recent version (2003) is being cited.
(b) The necessity of the amendment to this administrative regu-
The changes relating to the boil water and consumer advisories are necessary because it is not the cabinet's intention that a "boil water notice" be issued every time a line break occurs. These changes show that boil water and consumer advisories are necessary so that the most up-to-date regulations are cited. Finally, the amendments relating to the filter backwash rule ("recycling") are necessary so that Kentucky can be delegated primacy for the enforcement of the federal rule on this topic. Kentucky is currently enforcing the federal regulation under an interim agreement, until the state regulation is amended, and EPA approves the changes. The filter backwash rule requires systems to filter the backwash water, thus trapping coagulants, metals, and microbes such as cryptosporidium.

(c) How the amendment conforms to the content of the authorizing statute: These amendments will allow the cabinet to maintain its program for the purification of water for public and semipublic use and to comply with the comprehensive program for the purification of water for public and semipublic use.

(d) How the amendment will assist in the effective administration of the statutes: The amended provisions, including the filter backwash provisions, will be a part of the cabinet's program for the purification of water for public and semipublic use.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to all public and semipublic water suppliers of drinking water in Kentucky. There are currently about 560 public water systems and 70 semipublic water systems, serving about 3,700,000 Kentuckians. The changes relating to boil water and consumer advisories will apply to water systems only if they are required to issue such advisories. About 700 notices and advisories are issued by public water systems in a year. About 7 systems in Kentucky are subject to the filter backwash rule.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: The cabinet expects the number of boil water and consumer advisories to decrease under these proposed amendments. The filter backwash requirements generally relax the comprehensive program to comply with the federal regulations.

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

(a) Initially: There are no initial costs as a result of these changes. There could be some savings relating to the advisories, in that staff would not have to track as many boil water notices or advisories.

(b) On a continuing basis: There are no continuing costs as a result of these changes. There could be some continuing savings, if the number of advisories continues to decrease.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Monies allocated by the Kentucky General Assembly in its biennial budget will be used to implement and enforce the administrative regulations throughout 401 KAR Chapter 8, including this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation on disinfection, filtering, or recycling. However, the cabinet has received an increase in funding from the U.S. EPA to implement the new provisions of the Safe Drinking Water Act, including the new changes relating to disinfection, filtering, or recycling.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes, tiering was applied. Tiering is used in various places in this administrative regulation. Different turbidity limits are specified, depending on the type of treatment technique used by the system. Also, some systems with populations of greater than 10,000 are subject to 401 KAR 8:160, and are required to meet a new turbidity limit after 2002, depending on the type of treatment techniques used. The provisions on filter backwash apply only to those systems that recycle their filter backwash water into their treatment processes.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 141.70 to 141.76
2. State compliance standards. 401 KAR 8:150
3. Minimum or uniform standards contained in the federal mandate. The federal regulation prescribes the disinfection, filtration, and recycling requirements for public water systems. There are no federal requirements on boil water or consumer advisories.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? Yes. The amendments to this administrative regulation are not more stringent than federal requirements, although the current regulation is. The federal regulation does not require systems whose source is groundwater ("groundwater systems") to disinfect their water, as long as the system meets the maximum contaminant levels and other standards prescribed in the federal regulations. Also, the federal regulation does not require filtration of all public water systems using surface water as a source, as long as they meet the federal drinking water standards. The provisions relating to filter backwash are identical to the federal requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Since most of Kentucky systems use surface water as the source, and since those systems could not meet the maximum contaminant levels without filtration, Kentucky requires filtration on all systems. Also, due to the karstic nature of Kentucky's geology, bacteria could easily enter into a public water system that uses groundwater under the direct influence of surface water as its source. Disinfection of these sources ensures that citizens of the commonwealth receive water that has been treated from possible contamination from bacteria and microorganisms.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect public water systems, many of which are owned or controlled by local governments.
3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation. This administrative regulation relates to public water systems that provide drinking water to their customers. The federal regulations in 40 C.F.R. Part 141 contain the requirements for public water systems. Specifically, 40 C.F.R. 141.70 to 141.76 contain standards for disinfection, filtration, and recycling for public water systems.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Expenditures (+/-): There is no anticipated effect on current revenues.

Expenditures (+/-): The expenditures relating to boil water and consumer advisories could be reduced in that a system could reduce the number of advisories that it issues, if it continues to prop-

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bury maintains its distribution lines. The changes relating to recycling the filter backwash water relate to procedures and reporting that the system must follow. These costs are justified by protecting the public health by the removal of possible cryptosporidium oocysts.

Other explanation: None.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 8:300. Lead and copper.

RELATES TO: KRS 224.10-100, 224.10-110 [Chapter-224], 40 C.F.R. 141.23(h), 141.43, 141.80-141.91, 42 U.S.C. 300-6[6e] [Part 141 (1965)].

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 40 C.F.R. 141.23 (h), 141.43, 141.80-141.91 [141- (1966)], 42 U.S.C. [U.S.C.-A.] 300f, 300g, 300g-6[e], 300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 and 224.10-110 authorize [directs] the cabinet to promulgate [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 a [any] public water system, or [any] plumbing in a residential or nonresidential facility providing water for human consumption that [which] is connected to a public water system, shall be lead-free, as defined in 401 KAR 8:010 [within the meaning of subsections (1) and (2) of this section]. This prohibition shall [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 containing not more than two tenths (0.2) percent lead, and
(2) The term "lead-free," when used with respect to pipe and fittings, refers to pipe 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 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 in used, the notice shall have been posted in a conspicuous place in the area served by the system, shall have been posted no later than June 19, 1988, and shall have continued for three (3) months.

(4) 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 taking 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.

(5) 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.

(6) 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).

(7) 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 shall constitute the primary drinking water regulations for lead and copper. Unless otherwise indicated, each provision of this administrative regulation shall apply to all 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 [9][f] 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 8 [9][f] of this administrative regulation is greater than one thousand (1.3) mg/L, [i.e., if the 90th percentile copper level is greater than one and three-hundredths (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 zero and nine tenths (0.9).

3. The contaminant concentration in the number of samples yielded by the calculation in subparagraph 2 of this paragraph shall be 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 shall be computed by taking the average of the highest and second highest concentrations.

5. Corrosion control treatment requirements.
All water systems shall install and operate optimal corrosion control treatment as defined in 401 KAR 8:010.

(2) A [Any] system that complies with the applicable corrosion control treatment requirements approved by the cabinet under Sections 3 and 4 [and 6] of this administrative regulation shall be deemed in compliance with the treatment requirement contained in paragraph (a) of this subsection.

(3) Source water treatment requirements. A [Any] system exceeding the lead or copper action level shall implement all applicable source water treatment requirements specified by the cabinet under Section 5 [6] of this administrative regulation.

(4) Lead service line replacement requirements. A [Any] system exceeding the lead action level after implementation of applicable corrosion control source and water treatment requirements shall complete the lead service line replacement requirements contained in Section 6 [7] of this administrative regulation.

(5) Public education requirements. A [Any] system exceeding the lead action level shall implement the public education requirements contained in Section 7 [8] of this administrative regulation.

(6) 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 8 to 11 [9 to 12] of this administrative regulation.

(7) Reporting requirements. Systems shall report to the cabinet any information required by this administrative regulation.

(8) Recordkeeping requirements. Systems shall maintain records in accordance with Section 13 [14] of this administrative regulation.

(9) Violation of national primary drinking water regulations. Failure to comply with the applicable requirements of this section and Sections 3 to 13 [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 3. [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 4 [5] of this administrative regulation, by the deadlines established in this section.

(a) A large system, [serving more than 3,300 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 may [is not required to] complete the applicable corrosion control treatment steps identified in this section if the system satisfies one of the following criteria specified in paragraphs (a) through (c) of this subsection. A system deemed to have optimized corrosion control under this subsection and that has treatment in place, shall continue to operate and maintain optimized corrosion control treatment and meet the requirements that the cabinet determines appropriate to ensure optimal corrosion control treatment is maintained.

(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 8 [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.

(3) Any small or medium-size water system that shall [is-re-
required to) complete the corrosion control steps due to its exceed-
ance 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 8(9) of this administrative regulation and submits the results
to the cabinet.
(b) If the [any such] water system then [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.
(c) 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 the [such a]
determination and explain the basis for its decision.
(d) The requirement for a [any small] or medium-size system,
including a system [systems] deemed to have optimized corrosion
control under subsection (2)(a) of this section, to implement coro-


corrosion control treatment steps in accordance with subsection (5) of
this section shall be triggered if a [any small] or medium-size system
exceeds the lead or copper action level.
(e) Treatment steps and deadlines for large systems. Except as
provided in paragraph (2)(b) and (c) of this section, large systems
shall complete the following corrosion control treatment steps, de-
cribed in the referenced portions of Sections 4, 8, and 9 [5, 9, and
10] of this administrative regulation, in the indicated time frames [by
the indicated dates].
(a) Step 1: The system shall conduct [have conducted] the initial
monitoring required by Sections 8(4)(a) and 9(2) [9(4)(a) and 10(2)]
of this administrative regulation during two (2) consecutive six (6)
month monitoring periods within the first year of operation or the first
year after a change of circumstances or as specified in subsection
(2)(c) of this section. If the system was in operation as of January
1, 1992, the initial monitoring shall have been conducted by January
1, 1993.
(b) Step 2: The system shall complete the corrosion control
studies required by Section 4(3) [5(9)] of this administrative regula-
tion within eighteen (18) months after completing Step 1 in para-
graph (a) of this subsection [by July 1, 1994].
(c) Step 3: The cabinet shall approve or designate an optimal
corrosion control treatment pursuant to Section 4(4) [5(4)] of this
administrative regulation within six (6) months after completing Step
2 in paragraph (b) of this subsection [by January 1, 1996].
(d) Step 4: The system shall install the optimal corrosion control
treatment required by Section 4(5) [5(5)] of this administrative regu-
lation within twenty-four (24) months after completing Step 3 in
paragraph (c) of this subsection [by January 1, 1997].
(e) Step 5: The system shall complete the follow-up sampling
required by Sections 8(4)(b) and 9(3) [9(4)(b) and 10(3)] of this
administrative regulation within one (1) year after completing Step 4 in
paragraph (d) of this subsection [by January 1, 1998].
(f) Step 6: The cabinet shall review installation of treatment and
approve or designate optimal water quality control parameters pur-
suant to Section 4(6) [5(6)] of this administrative regulation, within
six (6) months after completing Step 5 in paragraph (e) of this sub-
section [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 4(7) [5(7)] of this administrative
regulation, and continue to conduct tap sampling as required by
Sections 8(4)(c) and 9(4) [9(4)(c) and 10(4)] of this administrative
regulation.
(h) 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 Sec-

tions 4, 8, and 9 [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 8(4)(a) and 9(2) [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 8(4)(d) [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
4(1) [5(1)] of this administrative regulation within six (6) months af-
fter 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 4(2)
[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 4(4)
[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 4(3) [5(3)] of
this administrative regulation within eighteen (18) months after the
cabinet notifies the system that the studies shall be conducted.
(d) Step 4: If the system has performed corrosion control studies
pursuant to paragraph (b) of this subsection, the cabinet shall ap-
proach the designated optimal corrosion control treatment pursuant to
Section 4(4) [5(4)] of this administrative regulation within six (6)
months after completion of step 3 in paragraph (c) of this subsec-
tion.
(e) Step 5: The system shall install the optimal corrosion control
treatment required by Section 4(5) [5(5)] of this administrative regu-
lation 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 8(4)(b) and 9(3) [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 4(6) [5(6)] of this administrative regu-
lation within six (6) months after completion of step 6 in para-
graph (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 4(7) [5(7)] of this administrative
regulation and shall continue to conduct the tap sampling required by
Sections 8(4)(c) and 9(4) [9(4)(c) and 10(4)] of this administrative
regulation.

Source

Section 4. [5] Description of Corrosion Control Treatment Re-

duirements. Each system shall complete the corrosion control treat-


ment requirements described below which are applicable to the
system under Section 3 [4] of this administrative regulation.
(1) System recommendation regarding corrosion control treat-


ment. 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 para-


ter monitoring in accordance with Section 9(2) [10(2)] of this admin-
istrative regulation to assist the cabinet in reviewing the system's
recommendation.
(2) Cabinet decision to require studies of corrosion control treat-


ment. [(a) 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 subsec-


(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, to
determine 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 **if (when)** an inhibitor containing a phosphorus compound is used;**
8. Silicate **if (when)** an inhibitor containing a silicate compound is used;**

(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;
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.

(g) Cabinet designation or approval of a designated optimal corrosion control treatment.

(h) 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. If [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.

(3) 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 (2) of this section.

(4) 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 if [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 sys-
quality parameter at the sampling location, the daily value shall be the daily value calculated on the most recent day on which the water quality parameter was measured at the sample site.

(b) Modification of cabinet’s treatment decisions.

(a) Upon its own initiative, or in response to a request by a water system or other interested parties, the cabinet may modify its determination of the optimal corrosion control treatment under subsection (4) of this section or optimal water quality control parameters under subsection (6) of this section.

(1) A request for modification by a system or other interested party shall:

a. Be in writing;

b. Explain why the modification is appropriate; and

c. Provide supporting documentation.

(b) The cabinet may modify its determination if it concludes that change is necessary to ensure that the system continues to optimize corrosion control treatment.

(1) A revised determination shall:

a. Be made in writing;

b. Set forth the new treatment requirements;

c. Explain the basis for the cabinet’s decision; and

d. Provide an implementation schedule for completing the treatment modifications.

Section 5, [6.] Source Water Treatment Requirements.

(1) Deadlines for completing source water treatment steps. Systems shall complete the source water monitoring and treatment requirements, described in the referenced portions of subsection (2) of this section and Sections 8 and 10 [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 10(2) [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, and complete the monitoring required by Section 10(2) [11(2)] of this administrative regulation and the source water monitoring required by Section 10(3) [11(3)] of this administrative regulation within thirty-six (36) months after completion of paragraph (b) 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 8(4)(b) [9(4)(b)] of this administrative regulation and the source water monitoring required by Section 10(3) [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 10(4) [11(4)] of this administrative regulation.

(2) Description of source water treatment requirements.

(a) A system that 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 if 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 10 [11] of this administrative regulation. The system shall be [6] in violation of this paragraph [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.

(1) A request for modification by a system or other interested party shall:

a. Be in writing;

b. Explain why the modification is appropriate; and

c. Provide supporting documentation.

(2) 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.

b. A revised determination shall:

(i) Be made in writing;

(ii) Set forth the new treatment requirements;

(iii) Explain the basis for the cabinet’s decision; and

(iv) Provide an implementation schedule for completing the treatment modifications.

Section 6, [7.] Lead Service Line Replacement Requirements.

(1) A system that fails to meet the lead action level in tap samples taken pursuant to Section 8(4)(b) [9(4)(b)] of this administrative regulation, after installing corrosion control or source water treatment, whichever sampling is later, shall replace lead service lines in accordance with the requirements of this section.

(a) If a system is in violation of Section 3 or 5 [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 8(4)(b) [9(4)(b)] of this administrative regulation has passed.

(b) A water 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 shall be 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, including an identification of the portion owned by the system, based on its own materials evaluation, including the evaluation required under Section 8(1) [9(4)] of this administrative regulation and relevant legal authorities, e.g., contracts and local ordinances, regarding the portion owned by the system. 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.

(c) A system may replace an individual lead service line.
service line if the lead concentration in all service line samples from that line, taken pursuant to Section 8(2)(c) [92(3)(e)] of this administrative regulation, is less than or equal to 0.015 mg/l.

(4) A water system shall replace that portion of the lead service line that it owns, if the system does not own the entire lead service line, the system shall notify the owner of the line, or the owner's authorized agent, that the system will replace the portion of the service line that it owns and shall offer to replace the owner's portion of the line. A system may bear the cost of replacing the privately-owned portion of the line, and may replace the privately-owned portion if the owner chooses not to pay the cost of replacing the privately-owned portion of the line, or if replacing the privately-owned portion would be precluded by state, local, or common law. A water system that does not replace the entire length of the service line shall also complete the following tasks:

(a) At least five (45) days before beginning with the partial replacement of a lead service line, the water system shall provide notice to the residents of the buildings served by the line, explaining that they may experience a temporary increase of lead levels in their drinking water, along with guidance on measures consumers may take to minimize their exposure to lead. The cabinet may allow the water system to provide notice under the previous sentence less than forty-five (45) days before beginning partial service line replacement, if the replacement is in conjunction with emergency repairs.

2. The water system shall also inform the residents served by the line that the system will, at the system's expense, collect a sample from each partially-replaced lead service line that is representative of the water in the service line for analysis of lead content, as prescribed under Section 8(2)(c) of this administrative regulation, within seventy-two (72) hours after the completion of the partial replacement of the service line.

3. The system shall collect the sample and report the results of the analysis to the owner and the residents served by the line within three (3) business days of receiving the results. Mailed notices postmarked within three (3) business days of receiving the results shall be considered to meet this requirement.

(b) The water system shall provide the information required by paragraph (a) of this subsection to the residents of individual dwellings by mail or by other methods approved by the cabinet. If multifamily dwellings are served by the line, the water system may instead post the information at a conspicuous location, the entire service line up to the building inlet, unless it demonstrates to the satisfaction of the cabinet, under Section 43(5)(d) of this administrative regulation, 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. If 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 43(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 conclusion.

(6) A [7(2)(c)] A system shall replace lead service lines on a shorter schedule than that required by [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) [7(2)(c)] A system may cease replacing lead service lines if first draw samples collected pursuant to Section 8(2)(c) 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 re-commence replacing lead service lines pursuant to subsection (2) of this section.

(8) [7(2)(c)] To demonstrate compliance with subsections (1) to (4) of this section, a system shall report to the cabinet the information specified in Section 12(5) [13(5)] of this administrative regulation.

Section 7. [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 8(9) of this administrative regulation, 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 the portion of each lead service line that we consider control. If the level of lead exceeds the action level 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 notice 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.

1. [a]r. 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 the portion of each lead service line that we consider control. If the level of lead exceeds the action level 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 notice 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.

2. [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.

3. [c] Lead in drinking water:

[4] 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 twenty (20) percent or more of a person's total lead exposure to lead.

b. [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.

c. [3] When water stands in lead pipes or plumbing systems containing lead for several hours or more, the lead may dissolve into your water. This means the first few 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.

4. (d) Steps You Can Take in the home to reduce exposure to lead in drinking water.

a. [1] Despite our best efforts mentioned earlier to control water corrosivity and remove lead from the water supply, lead levels in some homes can be higher than levels in others. If you want 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).

b. [2] If a water test indicates that the drinking water drawn from a tap in your home contains lead above fifteen (15) ppb, then you should take the following precautions:

(i) [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 any time the water in the faucet has gone unused for more than six (6) hours. This is an 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.

(ii) [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 in the stove.

(iii) [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.

(iv) [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.

(v) [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. If you can answer the following questions affirmatively, you can be reasonably sure that your service line is made of lead.

- [1] Is your home older than 1950?
- [2] Are there any signs of lead solder on the plumbing fixtures in your home?
- [3] Are any pipes made of lead visible in your home?

If you cannot answer the questions affirmatively, consult a qualified plumber or your local public health or water utilities agency for help. (Insert name, phone number, or other contact information for local health or water utilities agency.)
noncommunity water system shall either include the text specified in paragraph (a) of this subsection or shall include the following text in all of the printed materials it distributes through its lead public education program. A water system may delete information pertaining to lead service lines upon approval by the cabinet if no lead service lines exist in the water system service area. Additional information presented by a system shall be consistent with the information below and be in plain English that can be understood by lay people.

1. Introduction. The United States Environmental Protection Agency (EPA) and state (insert name of state) are concerned about lead in your drinking water. Some drinking water samples taken from this facility 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 state when corrosion control will be completed for your system). This program includes (insert details). Lead is of concern to you because it is a significant cause of health problems in children and pregnant women. Amounts of lead that won’t harm children and pregnant women. Amounts of lead that won’t harm adults can slow down normal mental and physical development of growing babies. 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.

2. Health effects of lead. Lead is 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 harm adults can slow down normal mental and physical development of growing babies. 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.

3. Lead in drinking water. 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 twenty (20) percent or more of a person’s total exposure to lead.

b. Lead is unusual among drinking water contaminants in that it seldom enters your water 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 houses and buildings to water mains (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 (8.0) percent.

c. 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 if the water has not been used all day, can contain fairly high levels of lead.

4. Steps you can take to reduce exposure to lead in drinking water.

a. Let the water run from the tap before using it for drinking or cooking any time the water in a faucet has been unused for more than (6) six hours. The longer water resides in plumbing the more lead it may contain. Flushing the tap means running the cold water faucet for about fifteen (15) to thirty (30) seconds. Although toilet flushing or showering flushes water through a portion of the 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 health. It usually uses less than one (1) gallon of water.

b. Do not 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 then heat it.

c. The steps described above will reduce the lead concentrations in your drinking water. However, if you are still concerned, you may wish to use bottled water for drinking and cooking.

d. You can consult a variety of sources for additional information.

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 your body if you drink water through the plumbing in your house. 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)

c. Delivery of a public education program.

a. In communities where a significant proportion of the population speaks a language other than English, public education material shall be communicated in the appropriate language.

b. A community water system that exceeds [use blanks to meet] the lead action level on the basis of tap water samples collected in accordance with Section 8 [use blanks to meet] this administrative regulation and that is not yet preparing public education tasks pursuant to paragraph (c), (g), or (h) of this subsection shall:

1. Insert notices in each customer’s 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 BE A SIGNIFICANT RISK TO YOUR HEALTH. PLEASE READ THE ENCLOSED NOTICE FOR FURTHER INFORMATION."

2. Submit the information in subsection (1)(a) 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)(a) and (4)(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.

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.

(3) Within sixty (60) days after it exceeds the lead action level, unless it already is repeating public education tasks pursuant to paragraph (e) of this subsection, a nontransient noncommunity water system shall deliver the public education materials specified by [contained-in] subsection (1)(a)-(f), and (d) of this section or the public education material specified by subsection (1)(b) of this section and 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. The system may use electronic transmittal instead of or combined with printed material, if it achieves at least the same coverage.

(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 8 (g) of this administrative regulation. The [Such-a] system shall recommence public education in accordance with this section if it subsequently exceeds the lead action level during any monitoring period.

(g) A community water system may apply to the cabinet, in writing, to use the text specified in subsection (1)(b) of this section instead of the text in subsection (1)(a) of this section and to perform the tasks listed in paragraphs (d) and (e) of this subsection instead of the tasks in paragraphs (b) and (c) of this subsection if:

1. The system is a facility, such as a prison or a hospital, where the population served is not capable of or is prevented from making improvements to plumbing or installing point of use treatment devices; and
2. The system provides water as part of the cost of services provided and does not separately charge for water consumption.

(b)1. A community water system that serves 3,300 or fewer people may omit the task contained in paragraph (b)4 of this subsection. If it distributes notices containing the information contained in subsection (1)(a) of this section to every household served by the system, the system may further limit its public education program as follows:

a. A system that serves 500 or fewer people may forego the task contained in paragraph (b)2 of this subsection. The system may limit the distribution of the public education material required under paragraph (b)3 of this subsection to facilities and organizations served by the system that are most likely to be visited regularly by pregnant women and children, unless it is notified by the cabinet in writing that it shall make a broader distribution.

b. If approved by the cabinet in writing, a system that serves 501 to 3,300 people may omit the task in paragraph (b)2 of this subsection or limit the distribution of the public education material required under paragraph (b)3 of this subsection to facilities and organizations served by the system that are most likely to be visited regularly by pregnant women and children.

2. A community water system that serves 3,300 or fewer people that delivers public education in accordance with subparagraph 1 of this paragraph shall repeat the required public education tasks at least once during each calendar year in which the system exceeds the lead action level.

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 8 (g) 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 may [is-not-required-to] pay for collecting or analyzing the sample, and [nor-is] the system may [required-to] collect and analyze the sample itself.


(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 is able to [financially] 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 shall [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 shall [is-required-to] collect under 401 KAR 8:350, Section 1 if [when] conducting a materials evaluation. If [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 if [whereas] possible in the course of its normal operations for instance, [e.g.,] checking service line materials when reading water meters or performing maintenance activities on such.

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;
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 sampling sites.

1. The sampling sites selected for a community water system's sampling pool, [if] "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) Tier 2 sampling sites. [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:
   a. Contain copper pipes with lead solder installed after 1982 or contain lead pipes; or
   b. Are served by a lead service line.

(e)1. Tier 3 sampling sites. [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.

2. Other sampling sites. A community water system with insufficient Tier 1, Tier 2, and Tier 3 sampling sites shall complete its sampling pool with representative sites throughout the distribution system. For the purpose of this subparagraph, a representative site shall be a site in which the plumbing material used at that site would be commonly found at other sites served by the water system.

(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)1. 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.

2. If additional sites are needed to complete the sampling pool.
the nontransient noncommunity water system shall use representa-
tive sites throughout the distribution system. For the purpose of this
subparagraph, a representative site shall be a site in which the
plumbing materials used at that site would be commonly found at
other sites served by the water system.

(b) 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(3)(h) of this administrative regulation
why a review of the information listed in paragraph (b) of this sub-
section was inadequate to locate a sufficient number of Tier 1 sites.
Any-collecting system of a 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 is not
able to [cannet] 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 6(2)[7(3)] of this administrative
regulation and samples collected under paragraph (e) of this sub-
section, 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.

(c) First-draw samples from a nonresidential building shall be one
(1) liter in volume and shall be collected at an interior tap from which
water is typically drawn for consumption.

(d) A nonfirst draw sample collected instead of a first draw sam-
ple pursuant to paragraph (a) of this subsection shall be one (1) liter
in volume and shall be collected at an interior tap from which water
is typically drawn for consumption.

(e) First draw samples may be collected by the system or the
system may allow residents to collect first-draw samples after in-
structing the residents of the sampling procedures specified in this
paragraph.

(f) 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.

(g) 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 of water which would be indicative of water that has
been standing in the lead service line.

(h) 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 is not able to [cannet] 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 if [as long as] the new site meets the same
targeting criteria, and is within reasonable proximity of the original
site. (e) A nontransient noncommunity water system, or a community
water system that meets the criteria of Section 7(3)(g) of this ad-
ministrative regulation, that does not have enough taps that are able
to supply first draw samples, may apply to the cabinet in writing to
substitute non-first draw samples. These systems shall collect as
many first draw samples from appropriate taps as possible and
identify sampling sites and locations that would likely result in the
longest standing time for the remaining samples.

(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 of
the table in this subsection headed [below] "standard monitoring"
[i]. A system conducting reduced monitoring under subsection (4)(d)
of this section shall [may] collect at least one (1) sample from the
number of sites specified in the [second] column of the table in this
subsection headed [below] "reduced monitoring" [i] during each
monitoring period specified in subsection (4)(d) of this section. The
reduced monitoring sites shall be representative of the sites required
for standard monitoring. The cabinet may specify sampling locations
if a system is conducting reduced monitoring.

<table>
<thead>
<tr>
<th>System Size (# People Served)</th>
<th># of sites (Standard Monitoring)</th>
<th># of sites (Reduced Monitoring)</th>
</tr>
</thead>
<tbody>
<tr>
<td>greater than 100,000</td>
<td>100</td>
<td>50</td>
</tr>
<tr>
<td>10,001 to [1]-100,000</td>
<td>60</td>
<td>30</td>
</tr>
<tr>
<td>3,001 to 10,000</td>
<td>40</td>
<td>20</td>
</tr>
<tr>
<td>501 to 3,300</td>
<td>20</td>
<td>10</td>
</tr>
<tr>
<td>101 to 500</td>
<td>10</td>
<td>5</td>
</tr>
<tr>
<td>less than or equal to 100</td>
<td>5</td>
<td>5</td>
</tr>
</tbody>
</table>

(4) Timing of monitoring.

(a) Initial tap sampling. The first six (6) month monitoring period
for small, medium-size and large systems shall have begun [begin]
on the following dates:

<table>
<thead>
<tr>
<th>System Size (# People Served)</th>
<th>First Six (6) Month Monitoring Period Begin (Begin) On</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greater than 50,000</td>
<td>January 1, 1992</td>
</tr>
<tr>
<td>3,001 to 50,000</td>
<td>July 1, 1992</td>
</tr>
<tr>
<td>less than or equal to 3,300</td>
<td>July 1, 1993</td>
</tr>
</tbody>
</table>

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 re
requirements under Section 2(4) of this administrative regulation. If
so, [in which case] the system shall continue monitoring in ac
dance 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. If so, [in which
case] the system may reduce monitoring in accordance with para
graph (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 34(4)[4(4)](d) of this administrative
regulation shall monitor during the (2) consecutive six (6) month
monitoring periods by the date specified in Section 3(4)(e)[4(4)(e)]
of this administrative regulation.

2. Any small or medium-size system which installs optimal cor
rosion control treatment pursuant to Section 3(6)(e)[4(6)(e)] of this
administrative regulation shall monitor during two (2) consecutive six
(6) month monitoring periods by the date specified in Section 3(6)(f)
[4(6)(f)] of this administrative regulation.

3. Any system which installs source water treatment pursuant
to Section 5(1)(c)[6(4)(b)] of this administrative regulation shall mon
itor during two (2) consecutive six (6) month monitoring periods by the
date specified in Section 5(1)(d)[6(4)(d)] of this administrative regu
lation.
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(c) After the cabinet specifies the values for water quality control parameters under Section 4(6) [56(6)] of this administrative regulation, the system shall monitor during each subsequent six (6) month monitoring period the first monitoring period to begin on the date the cabinet specifies the optimal values under Section 4(6) [56(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 [two] (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 4(6) [56(6)] of this administrative regulation during each of two [two] (6) month monitoring periods may [request that the cabinet allow the system] 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, if it receives written approval from the cabinet.

a. The cabinet shall review the monitoring, treatment, and other relevant information submitted by the water system in accordance with Section 12 [12] of this administrative regulation, and shall notify the system [in writing] in writing when it determines that the system is eligible to begin reduced monitoring pursuant to this subparagraph [setting forth the basis for its determination].

b. The cabinet shall review, and if 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 [three] (3) consecutive years of monitoring may reduce the frequency of monitoring for lead and copper from annually to once every three [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 4(6) [56(6)] of this administrative regulation during three [three] (3) consecutive years of monitoring may [request that the cabinet allow the system] reduce the frequency of monitoring from annually to once every three [three] (3) years if it receives written approval from the cabinet.

a. The cabinet shall review the monitoring, treatment, and other relevant information submitted by the water system in accordance with Section 12 [12] of this administrative regulation, and shall notify the system in writing when it determines that the system is eligible to reduce the frequency of monitoring to once every three [three] (3) years [setting forth the basis for its determination].

b. The cabinet shall review, and if 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.

A water system that reduces the number and frequency of sampling shall collect the samples from representative sites included in the pool of targeted sampling sites identified in subsection (1) of this section. A system [System] sampling annually or less frequently shall conduct the lead and copper tap sampling during the months of June, July, August, or September unless the cabinet has approved a different sampling period in accordance with clause a of this subparagraph.

a. The cabinet may approve a different period for conducting the lead and copper tap sampling for systems collecting a reduced number of samples. The reduced period shall be no longer than four (4) consecutive months and shall represent a time of normal operation when the highest levels of lead are most likely to occur.

b. For a nontransient noncommunity water system that does not operate during the months of June through September, and for which the period of normal operation where the highest levels of lead are most likely to occur is not known, the cabinet shall designate a period that represents a time of normal operation for the system.

b. A system monitoring annually, that has been collecting samples during the months of June through September and that receives cabinet approval to alter its sample collection period under clause a of this subparagraph, shall collect its next round of samples during a time period that ends no later than twenty-one (21) months after the previous round of sampling.

(i) A system monitoring triennially that has been collecting samples during the months of June through September, and receives state approval from the cabinet to alter the sampling collection period pursuant to clause a of this subparagraph, shall collect its next round of samples during a time period that ends no later than forty-five [forty-five] (45) months after the previous round of sampling.

(ii) Subsequent rounds of sampling shall be collected annually or triennially, as required by this section.

(iv) A small system with a waiver granted pursuant to subsection (7) of this section, that has been collecting samples during the months of June through September and chooses to alter its sample collection period pursuant to clause a of this subparagraph shall collect its next round of samples before the end of the nine (9) year period.

5. A water system that demonstrates for two [two] (2) consecutive six (6) month monitoring periods that the tap water lead level computed under Section 2(4)(c) of this administrative regulation is less than or equal to 0.005 mg/L and the tap water copper level computed under Section 2(4)(c) of this administrative regulation is less than or equal to 0.05 mg/L may reduce:

a. The number of samples in accordance with subsection (3) of this section; and

b. The frequency of sampling to once every three (3) calendar years.

6. A [6.] A small or medium-size water system subject to reduced monitoring that exceeds the lead or copper action level shall resume 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. The system shall also conduct water quality parameter monitoring in accordance with Section 9(2) [10(2)], (3), or (4) of this administrative regulation, as appropriate, during the monitoring period in which it exceeded the action level. The system may resume annual monitoring for lead and copper at the tap at the reduced number of sites specified in subsection (3) of this section after it has completed two (2) subsequent consecutive six (6) month rounds of monitoring that meet the criteria of subparagraph 6 of this paragraph or may resume triennial monitoring for lead and copper at the reduced number of sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria of either subparagraphs 3 or 5 of this paragraph.

b. A water system subject to the reduced monitoring frequency that fails to operate at or above the minimum value or within the range of values for the water quality parameters specified by the cabinet under Section 4(6) [56(6)] of this administrative regulation when it exceeds the action level shall conduct monitoring within nine (9) days in any six (6) month period specified in Section 9(4) of this administrative regulation.

The system may resume monitoring for water quality parameters within the distribution system in accordance with Section 9(4) of this administrative regulation. The system may resume monitoring for lead and copper at the tap at the reduced number of sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria of either subparagraphs 3 or 5 of this paragraph.

(i) The system may resume annual monitoring for lead and copper at the tap at the reduced number of sites specified in subsection (3) of this section after it has completed two (2) subsequent six (6) month rounds of monitoring that meet the criteria of clause a of this subparagraph and the system has received written approval from the cabinet that it is appropriate to resume reduced monitoring on an annual frequency.

(ii) The system may resume triennial monitoring for lead and copper at the tap at the reduced number of sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria of clause a of this subparagraph and the system has received written approval from the cabinet that it is appropriate to resume triennial monitoring.

(iii) The system may reduce the number of water quality parameter tap water samples required in accordance with Section 9(5)(a) of this administrative regulation and the frequency with which it collects the samples in accordance with Section 9(5)(b) of this administrative regulation. The system shall not resume triennial monitoring.
monitoring for water quality parameters at the tap until it demonstrates, in accordance with the requirements of Section 965(b) of this administrative regulation, that it has requalified for triennial monitoring.

7. A water system subject to a reduced monitoring frequency under this paragraph that either adds a new source of water or changes a water treatment shall inform the cabinet in writing in accordance with Section 12(11)c of this administrative regulation. The cabinet may require the system to resume 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 or take other appropriate steps such as increased water quality parameter monitoring or reevaluation of its corrosion control treatment given the potentially different water quality considerations.

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 9 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 submitted by the system to the cabinet in making any determinations, for instance if-i.e., calculating the 90th percentile lead or copper level, [1] under this administrative regulation.

(6) Invalidation of lead or copper tap water samples. A sample invalidated under this subsection shall not count toward determining lead or copper 90th percentile levels under Section 24(c) of this administrative regulation or toward meeting the minimum monitoring requirements of subsection (3) of this section.

(a) The cabinet shall invalidate a lead or copper tap water sample at least if one of the following conditions is met:

1. The laboratory establishes that improper sample analysis caused erroneous results;
2. The cabinet determines that the sample was taken from a site that did not meet the site selection criteria of this section;
3. The sample container was damaged in transit;
4. There is substantial reason to believe that the sample was subject to tampering.

(b) The system shall report the results of all samples to the cabinet and all supporting documentation for samples the system believes should be invalidated.

(c) To invalidate a sample under paragraph (a) of this subsection, the decision and the rationale for the decision shall be documented in writing. The cabinet shall not invalidate a sample solely on the grounds that a follow-up sample result is higher or lower than that of the original sample.

(d) The water system shall collect replacement samples for a sample invalidated under this section if, after the invalidation of one or more samples, the system has too few samples to meet the minimum requirements of subsection (3) of this section. The replacement samples shall be taken as soon as possible, but no later than 20 days after the date the cabinet invalidated the sample, or by the end of the applicable monitoring period, whichever occurs later. Replacement samples taken after the end of the applicable monitoring period shall not also be used to meet the monitoring requirements of a subsequent monitoring period. The replacement sample shall be taken at the same location as the invalidated sample, or, if that is not possible, at a location other than that already used for sampling during the monitoring period.

(7) Monitoring waivers for small systems. A small system that meets the criteria of this subsection may apply to the cabinet to reduce the frequency of monitoring for lead and copper under this section to once every nine (9) years, or a "full waiver", if it meets all of the materials criteria specified in paragraph (a) and (b) of this subsection and also the materials criteria specified in paragraph (b) of this subsection. A small system that meets the criteria in paragraphs (a) and (b) of this subsection only for lead, or only for copper, may apply to the cabinet for a waiver to reduce the frequency of tap water monitoring to once every nine (9) years for that contaminant only, or a "partial waiver".

(a) Materials criteria. The system shall demonstrate that its distribution system and service lines and all drinking water supply plumbing, including plumbing conveying drinking water within all residences and buildings connected to the system, are free of lead-containing materials or copper-containing materials, as those items are used in this paragraph, as follows:

1. Lead. To qualify for a full waiver, or a waiver of the tap water monitoring requirements for lead, or a "lead waiver", the water system shall provide certification and supporting documentation to the cabinet that the system is free of all lead-containing materials, as follows:
   a. It contains no plastic pipes that contain lead plasticizers, or plastic service lines that contain lead plasticizer, and
   b. It is free of lead service lines, lead pipes, lead soldered pipe joints, and leaded brass or bronze alloy fittings and fixtures, unless the fittings and fixtures meet the specifications of a standard established pursuant to 42 U.S.C. 6006-606.
2. Copper. To qualify for a full waiver, or a waiver of the tap water monitoring requirements for copper, or a "copper waiver," the water system shall provide certification and supporting documentation to the cabinet that the system contains no copper pipes or copper service lines.

(b) Monitoring criteria for waiver issuance. The system shall have completed at least one (1) six (6) month round of standard tap water monitoring for lead and copper at sites approved by the cabinet and from the number of sites required by subsection (3) of this section and demonstrate that the 90th percentile levels for the rounds of monitoring conducted since the system became free of all lead-containing or copper-containing materials, as appropriate, meet the following criteria:

1. Lead levels. To qualify for a full waiver or a lead waiver, the system shall demonstrate that the 90th percentile lead level does not exceed 0.005 mg/L.
2. Copper levels. To qualify for a full waiver or a copper waiver, the system shall demonstrate that the 90th percentile copper level does not exceed 0.05 mg/L.

(c) Cabinet approval of waiver application. The cabinet shall notify the system of its waiver determination, in writing, stating forth the date of its decision and the condition of the waiver. As a condition of the waiver, the cabinet may require the system to perform specific activities to avoid the risk of lead or copper concentration of concern in tap water. Specific activities include limited monitoring or periodic outreach to customers to remind them to avoid installation of materials that might void the waiver. The small system shall continue monitoring for lead and copper at the tap as required by subsection (4)(a) to (9) of this section, as appropriate, until it receives written notification from the cabinet that the waiver has been approved.

(d) Monitoring frequency for systems with waivers.

1. A system with a full waiver shall conduct tap water monitoring for lead and copper in accordance with subsection (4)(d) of this section at the reduced number of sampling sites identified in subsection (3) of this section at least once every nine (9) years, and provide the materials certification specified in paragraph (a) of this subsection for both lead and copper to the cabinet along with the monitoring results.

2. A system with a partial waiver shall conduct tap water monitoring for the waived contaminant in accordance with subsection (4)(d) of this section at the reduced number of sampling sites specified in subsection (3) of this section at least once every nine (9) years and provide the materials certification specified in paragraph (a) of this subsection pertaining to the waived contaminant along with the monitoring results. The system shall also continue to monitor for the nonwaived contaminant in accordance with requirements of subsection (4)(a) to (d) of this section, as appropriate.

3. If a system with a full or partial waiver adds a new source of water or changes a water treatment, the system shall notify the cabinet in writing in accordance with Section 12(11)c of this administrative regulation. The cabinet may require the system to add or modify waiver conditions, for example, require recertification that the system is free of lead-containing or copper-containing materials or require additional rounds of monitoring, if the modifications are necessary to address treatment or source water changes at the system.

4. A system with a partial waiver for a system with a full or partial waiver that is no longer free of lead-containing or copper-containing materials, as appropriate, for example as a result of new construction or re-
pairs, the system shall notify the cabinet in writing no later than sixty (60) days after becoming aware of the change.

(a) Continued eligibility. If the system continues to satisfy the requirements of paragraph (d) of this subsection, the waiver shall be renewed automatically, unless any of the conditions listed in subparagraphs 1 to 3 of this paragraph occurs. A system whose waiver has been revoked may reapply for a waiver when it again meets the appropriate materials and monitoring criteria of paragraphs (a) and (b) of this subsection.

1. A system with a full waiver or a lead waiver no longer satisfies the materials criteria of paragraph (a) of this subsection or has a 90th percentile lead level greater than 0.005 mg/L.

2. A system with a full waiver or a copper waiver no longer satisfies the materials criteria of paragraph (a) of this subsection or has a 90th percentile copper level greater than 0.65 mg/L or

3. The cabinet notifies the system, in writing, that the waiver has been revoked, setting forth the basis of its decision.

(f) Requirements following waiver revocation. A system whose full or partial waiver has been revoked by the cabinet shall be subject to the corrosion control treatment and lead and copper tap water monitoring requirements, as follows:

1. If the system exceeds the lead or copper action level, the system shall implement corrosion control treatment in accordance with the deadlines specified in Section 3(6) of this administrative regulation, and other applicable requirements of this administrative regulation; or

2. If the system meets both the lead and copper action levels, the system shall monitor for lead and copper at the tap no less frequently than once every three (3) years, using the reduced number of sample sites specified in subsection (3) of this section.

Section 9. [16] 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. 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(11) [9(11)] of this administrative regulation.

(b) Number of samples. [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.

<table>
<thead>
<tr>
<th>System Size (# People Served)</th>
<th># of Sites For Water Quality Parameters</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greater than 100,000</td>
<td>25</td>
</tr>
<tr>
<td>10,001 to 100,000</td>
<td>10</td>
</tr>
<tr>
<td>3,301 to 10,000</td>
<td>3</td>
</tr>
<tr>
<td>501 to 3,300</td>
<td>2</td>
</tr>
<tr>
<td>101 to 500</td>
<td>1</td>
</tr>
<tr>
<td>Less than or equal to 100</td>
<td>1</td>
</tr>
</tbody>
</table>

2. [Except as provided in subsection (3)(c) of this section, a system of 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, a system of 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 8(4)(a) [9(4)(a)] of this administrative regulation. All small and medium-size systems shall monitor 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 8(4)(a) [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 an inhibitor containing a phosphate compound is used;

(d) Silica, if 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 that installs optimal corrosion control treatment pursuant to Section 3(4)(d) [4(4)(d)] of this administrative regulation shall monitor the water quality parameters at the locations and frequencies specified below during each six (6) month monitoring period specified in Section 8(4)(b) [9(4)(b)1] of this administrative regulation. A small or medium-size system that installs optimal corrosion control treatment shall conduct monitoring during each six (6) month monitoring period specified in Section 8(4)(b) [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 an inhibitor containing a phosphate compound is used;

4. Silica, if an inhibitor containing a silicate compound is used; and

5. Calcium, if calcium carbonate stabilization is used as a part of corrosion control.

(b) Except as provided in paragraph (c) of this subsection, at each entry point to the distribution system, at least one (1) sample no less frequently than every two (2) weeks, or [every two (2) weeks] for:

1. pH;

2. If 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. 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.

(c) [A ground water system may limit entry point sampling described in paragraph (b) of this subsection to those entry points that are representative of water quality and treatment conditions throughout the system. If water from untreated ground water sources mixes with water from treated ground water sources, the system shall monitor for water quality parameters both at representative entry points receiving treatment and representative entry points receiving no treatment. Before the start of monitoring under this paragraph, the system shall provide to the cabinet written information identifying the selected entry points and documentation, including information on seasonal variability, sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the system.

(4) Monitoring after water quality parameter values optimal corrosion control are specified. After the cabinet specifies the values for applicable water quality control parameters reflecting optimal corrosion control treatment under Section 4(6) [5(6)] of this administrative regulation, all systems shall measure the applicable water quality parameters in accordance with subsection (3) of this section and determine compliance with the requirements of Section 4(7) of this administrative regulation every six (6) months with the first six (6) month period to begin on the date the cabinet specifies the optimal values under Section 4(6) of this administrative regulation. A [during each monitoring period specified in Section 8(4)(c) of this administrative regulation. Any small or medium-size system shall conduct the monitoring during each six (6) month monitoring period specified in this paragraph [Section 8(4)(c) of this administra-
tive regulation] in which the system exceeds the lead or copper action level. For the small and medium-size system that is subject to a reduced monitoring frequency pursuant to Section 8(4)(d) of this administrative regulation when the action level exceedance occurs, the end of the applicable six (6) month period under this paragraph shall coincide with the end of the applicable monitoring period under Section 8(4)(d) of this administrative regulation. Compliance with cabinet-designated optimal water quality parameter values shall be determined as specified under Section 4(7) of this administrative regulation. [It 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 4(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:

<table>
<thead>
<tr>
<th>System Size (# People Served)</th>
<th>Reduced # of Sites for Water Quality Parameters</th>
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<tbody>
<tr>
<td>Greater than 100,000</td>
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<td>Less than or equal to 100</td>
<td>1</td>
</tr>
</tbody>
</table>

(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 4(6) [6(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 4(6) [6(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.

2. A water system may reduce the frequency with which it collects tap samples for applicable water quality parameters specified in paragraph (a) of this subsection to every three (3) years if it demonstrates during two (2) consecutive monitoring periods that:

(a) Its tap water lead level at the 90th percentile is less than or equal to the practical quantitation limit for lead specified in Section 11 of this administrative regulation;

(b) Its tap water copper level at the 90th percentile is less than or equal to 0.65 mg/L for copper in Section 2(4)(d) of this administrative regulation; and

(c) It also has maintained the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the cabinet under Section 4(6) [6(6)] of this administrative regulation.

3. A water system that conducts sampling annually shall collect these samples every throughout the year so as to reflect seasonal variability.

4. A water system subject to reduced monitoring frequency that fails to operate at or above the minimum value or within the range of values for the water quality parameters specified by the cabinet under Section 4(6) [6(6)] of this administrative regulation for more than nine (9) days in a six (6) month period specified in Section 4(7) of this administrative regulation shall resume distribution system tap water sampling in accordance with the number and frequency requirements in subsection (4) of this section.

2. The system may resume:

(a) Annual monitoring for water quality parameters at the tap at the reduced number of sites specified in paragraph (a) of this subsection after it has completed two (2) subsequent consecutive six (6) month rounds of monitoring that meet the criteria of that paragraph; or

(b) Triennial monitoring for water quality parameters at the tap at the reduced number of sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria of either paragraph (b)1 or 2 of this subsection.

(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, for example [i.e., determining concentrations of water quality parameters, [i] under this section or Section 4(4) of this administrative regulation.

Section 10. [44.] 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 4(4) of this administrative regulation shall collect and copper source water samples in accordance with the following requirements regarding sample location, number of samples, and collection methods:

1. A ground water system shall take a minimum of one (1) sample at every entry point to the distribution system that is representative of each well after treatment, called a “sampling point.” The system shall take one (1) sample at the same sampling point unless the conditions make another sampling point more representative of each source or treatment plant.

2. A surface water system shall take a minimum of one (1) sample at every entry point to the distribution system after an application of treatment or in the distribution system at a point that is representative of each source after treatment, called a “sampling point.” The system shall take each sample at the same sampling point unless the conditions make another sampling point more representative of each source or treatment plant. For the purposes of this subparagraph, a surface water system shall include a system with a combination of surface and ground sources.

3. If a system draws water from more than one (1) source and the sources are combined before distribution, the system shall sample at each entry point to the distribution system during normal operating conditions, or example, when water is representative of all sources being used.

4. Compositing may be used to reduce the total number of samples that shall be analyzed. Compositing of samples shall be done by certified laboratory personnel. Composite samples from a maximum of five (5) samples are allowed, if the lead concentration in the composite sample is greater than or equal to 0.011 mg/L or the copper concentration is greater than or equal to 0.160 mg/L, then either:

(a) A follow-up sample shall be taken and analyzed within fourteen (14) days at each sampling point included in the composite; or

(b) If duplicates of or sufficient quantities from the original samples from each sampling point used in the composite are available, the system may use these instead of resampling, [specified in 401-KAR-8-250, Section 1(1)(a) 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 3(2)(d) [3(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, [i] but not to exceed two (2) weeks, [j] 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 (PQLs) 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 that [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 that [which] installs source water treatment pursuant to Section 51(g) (6)(4)(e) 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 51(d) (6)(4)(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 52(d) (6)(2)(d) of this administrative regulation or determines that the system is not required to install source water treatment under Section 52(b) (6)(2)(b) of this administrative regulation.

1. A water system using only groundwater shall collect samples once during the three (3) year 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 may [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 62(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 and/or copper in source water to once during each nine (9) year compliance cycle if the system meets one (1) of the following criteria:

1. The system 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 52(d) of this administrative regulation during at least three (3) consecutive compliance periods in which sampling was conducted under subsection (4)(a) of this section; or

2. The cabinet has determined that source water treatment is not needed and the system demonstrates that, during at least three (3) consecutive compliance periods in which sampling was conducted under subsection (4)(a) of this section, the concentration of lead in source water was less than or equal to 0.005 mg/L and the concentration of copper in source water was less than or equal to 0.65 mg/L.

(b) A water system using surface water, or a combination of surface water 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 62(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 if the system meets one (1) of the following criteria:

1. The system 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 52(d) of this administrative regulation for at least three (3) consecutive years; or

2. The cabinet has determined that source water treatment is not needed and the system demonstrates that, during at least three (3) consecutive years, the concentration of lead in source water was less than or equal to 0.005 mg/L and the concentration of copper in source water was less than or equal to 0.65 mg/L.

(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 51(e) (6)(4)(e) of this administrative regulation.

Section 11. [42] Analytical Methods. Analyzes for lead, copper, pH, conductivity, calcium, alkalinity, orthophosphate, silica, and temperature shall be conducted in accordance with 40 C.F.R. 141.23(k) and 141.89, in effect on July 1, 2003 [1996], [herein] adopted without change in Section 14 of this administrative regulation.

Section 12. Reporting Requirements. A water system [143] [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) Except as provided in subparagraph 7 of this paragraph, a water system shall report the information specified below for all tap water samples specified in Section 8 of this administrative regulation and for the water quality parameter samples specified in Section 9 of this administrative regulation within the first ten (10) days following the end of each applicable monitoring period specified in Sections 8 and 9 [130] and 14 of this administrative regulation, i.e., every six (6) months, annually, or [every three (3) years, or every nine (9) years].

1. The results of all tap samples for lead and copper including the location of each site and the criteria under Section 8(1[g] (9)[44](e), (d), (e), (f), and (g) of this administrative regulation under which the site was selected for the system's sampling pool;

2. Documentation for each tap water lead or copper sample for which the water system requests invalidation pursuant to Section 8(6)[b)] of this administrative regulation. 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 8(b) of this administrative regulation;

4. [44] 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 2(4)(c) (3)(4)(a) of this administrative regulation;

5. [6] With the exception of initial tap sampling conducted pursuant to Section 9(4)(a) (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. [6] The results of all tap samples for pH, and [if [where] applicable, alkalinity, calcium, conductivity, temperature, and orthophosphate or silica collected under Section 9(2) [142](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 9(2) [142](3) to (5) of this administrative regulation; and

A water system shall report the results of all water quality parameter samples collected under Section 9(3) through (6) of this administrative regulation during each six (6) month monitoring period specified in Section 9(4) of this administrative regulation within the first ten (10) days following the end of the monitoring period unless the cabinet specifies a more frequent reporting requirement.

(b) For a nontransient noncommunity water system, or a community water system that meets the criteria of Section 7(3)(a) of this administrative regulation, that does not have enough taps to provide
first draw samples, the system shall provide written documentation to the cabinet identifying standing times and locations for enough nonfirst draw samples to make up its sampling pool under Section 8(2)(e) of this administrative regulation. This administrative regulation begins after April 1, 2000.

(c) No later than sixty (60) days after the addition of a new source or a change in water treatment, unless earlier notification is required by 401 KAR 8:100, a water system deemed to have optimized corrosion control under Section 8(2)(c) of this administrative regulation, a water system subject to the reduced monitoring pursuant to Section 8(4)(d) of this administrative regulation, or a water system subject to a monitoring waiver pursuant to Section 8(7) of this administrative regulation, shall send written documentation to the cabinet describing the change.

(d) A small system applying for a monitoring waiver under Section 8(7) of this administrative regulation, or subject to a waiver granted pursuant to Section 8(7)(c) of this administrative regulation, shall provide the following information to the cabinet in writing by the specified deadline:

1. By the start of the first applicable monitoring period in Section 8(4) of this administrative regulation, a small water system applying for a monitoring waiver shall provide the documentation required to demonstrate that it meets the waiver criteria of Section 8(7)(a) and (b) of this administrative regulation.

2. No later than nine (9) years after the monitoring previously conducted pursuant to Section 8(7)(b) or (d) of this administrative regulation, a small system desiring to maintain its monitoring waiver shall provide the information required by Section 8(7)(d)1 and 2 of this administrative regulation.

3. No later than sixty (60) days after it becomes aware that it is no longer free of lead-containing or copper-containing material, as appropriate, the small system with a monitoring waiver shall provide written notification to the cabinet, setting forth the circumstances resulting in the lead-containing or copper-containing materials being introduced into the system and what corrective action, if any, the system plans to take to remove these materials.

(a) A ground water system that limits water quality parameter monitoring to a subset of entry points under Section 9(3)(c) of this administrative regulation shall provide, by the beginning of the monitoring, written correspondence to the cabinet that identifies the selected entry points and includes information sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the system. By the applicable date in Section 9(4)(a) of this administrative regulation for commencement of monitoring, each-continuous monitoring water system that 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.

(b) By the applicable date in Section 9(4)(a) of this administrative regulation for commencement of monitoring, each nontransient, noncommunity water system that 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.

(c) 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.

(d) 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 10 [41] 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 10 [41] of this administrative regulation.

(b) With the exception of the first round of source water sampling conducted pursuant to Section 10(2) [41][42] 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.

(c) Corrosion control treatment reporting requirements. By the applicable dates under Section 2.4 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 3(2)(b) [42][43] of this administrative regulation;

(b) For systems required to optimize corrosion control, their recommendation regarding optimal corrosion control treatment under Section 4(1) [43][44] of this administrative regulation;

(c) For systems required to evaluate the effectiveness of corrosion control treatments under Section 4(3) [43][45] 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 4(4) [43][46] of this administrative regulation, a letter certifying that the system has completed installing that treatment.

3. Source water treatment reporting requirements. By the applicable dates in Section 5 [46] of this administrative regulation, public water systems shall submit the following information to the cabinet:

(a) If required under Section 5(2)(a) [46][47] of this administrative regulation, their recommendation regarding source water treatment;

(b) If required under Section 5(2)(b) [46][48] 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.

4. Lead service line replacement reporting requirements. Systems shall report the following information to the cabinet to demonstrate compliance with the requirements of Section 6 [47] of this administrative regulation:

(a) Within twelve (12) months after a system exceeds the lead action level in sampling referred to in Section 6(1) [47][48] 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 6(1) [47][49] 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 identification schedule for replacing annually at least seventy (70) 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 6(1) [47][48] of this administrative regulation, and every twelve (12) months thereafter, the system shall demonstrate to the cabinet in writing that the system has installed:

1. Replaced in the previous twelve (12) months at least seven (7) percent of the initial lead service lines, [for a greater number of lines specified by the cabinet pursuant to Section 6(5) [47][50] of this administrative regulation, [i] 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 6(2)(c) [47][51] of this administrative regulation for replacing annually at least seventy (70) percent of the initial number of lead lines identified under subsection (1) of this section, [i] or the percentage specified by the cabinet pursuant to Section 6(5) [47][52] of this administrative regulation [j];

(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) A system that collects lead service line samples following...
partial lead service line replacement required by Section 6 of this administrative regulation shall report the results to the cabinet within the first ten (10) days of the month following the month in which the system receives the laboratory results, or as specified by the cabinet. If the cabinet determined that the results are not necessary to protect public health, a system shall also report additional information to verify that all partial lead service line replacement activities have taken place. [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(4) 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.

(5) Public education program reporting requirements.

(a) A water system that is subject to the public education requirements in Section 7 of this administrative regulation shall, within ten (10) days after the end of each period in which the system is required to perform public education tasks in accordance with Section 7(3) of this administrative regulation, send written documentation to the cabinet that:

1. A demonstration that the system has delivered the public education materials that meet the content requirements in Section 7(1) and (2) of this administrative regulation and the delivery requirements in Section 7(3) of this administrative regulation; and

2. A list of the newspapers, radio stations, television stations, and facilities or organizations to which the system delivered public education materials during the period in which the system was required to perform the public education tasks.

(b) If there have been no changes in the distribution list, a system that previously has submitted the information required by paragraph (a)(2) of this subsection shall:

1. Certify that the public education materials were distributed to the same list submitted previously; or

2. Submit the information required by paragraph (a)(2) of this subsection. [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 or 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 action level.]

(7) Reporting of additional monitoring data. A system that [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) following the end of the applicable monitoring period, under Sections 8, 9, and 10 [4 and 11] of this administrative regulation, during which the samples are collected.

Section 13. [14.] Recordkeeping Requirements. A [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 through 10 [4 through 14] of this administrative regulation. The [Each] water system shall retain the records required by this section for no fewer than twelve (12) years.

Section 14. Federal Regulations Adopted Without Change. (1) 40 C.F.R. 141.23(k) and 141.89, as in effect on July 1, 2003.

(2) The subject matter of this administrative regulation relating to the analysis of data for lead and copper testing and water quality parameters shall be governed by these federal regulations.

LAJUANA S. WILCHER, Secretary

APPROVED BY AGENCY: May 14, 2004
FILED WITH LRC: June 4, 2004 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2004 at 1 p.m. (Eastern time) in Conference Room D-16 at the Department of Surface Mining, #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 14, 2004, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. PARKING NOTE: Persons interested in attending the public hearing, other than those with handicap parking permits or placards, are asked to park in the "upper" parking lot on Hudson Hollow, next to the Little Lamb Preschool behind the hedge, and not in the visitor parking lot or main parking lot.

CONTACT PERSON: Jeffrey W. Pratt, Director, Division of Water, Department for Environmental Protection, 14 Reily Road, Frankfort, Kentucky 40601, telephone (502) 564-3410, fax (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey W. Pratt, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the standards for public water systems regarding lead and copper. The action levels are specified as well as public education, source water testing, and line replacement requirements if a water system exceeds the action levels.

(b) The necessity of this administrative regulation: 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 bans lead in drinking water facilities and provides standards for lead and copper in drinking water. This administrative regulation is necessary to continue the primacy that has been granted for the federal lead and copper program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation promulgates into Kentucky’s administrative regulations the provisions of the federal regulation, thus maintaining Kentucky’s program for the purification of water for public and semipublic use.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the requirements for public water systems to follow regarding lead and copper, thus maintaining its program for the purification of water for public and semipublic use.

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

(a) How the amendment will change this existing administrative regulation: These amendments will incorporate into Kentucky’s regulations the “minor revisions” that were made to the federal regulations in 40 C.F.R. Part 141, Subpart I in January 2000. The minor revisions became effective April 2000, and states were given additional time to implement their regulations. The purpose of the federal changes includes eliminating unnecessary requirements and streamlining and reducing monitoring and reporting burdens. Most of the minor revisions relate to revised public education requirements for community and noncommunity systems, monitoring waivers for systems that qualify, optimal corrosion control for systems that have exceeded the action levels, and lead service line replacement provisions.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary for Kentucky to maintain primacy for the implementation and enforcement of the federal lead and copper program.
(c) How the amendment conforms to the content of the authorizing statutes: These amendments incorporate into Kentucky’s administrative regulation the provisions of the amendments to the federal regulation, thus maintaining Kentucky’s program for the purification of water for public and semipublic use.

(d) How the amendment will assist in the effective administration of the statutes: These amendments incorporate the federal lead and copper “minor revisions” into Kentucky’s regulations, thus maintaining its program for the purification of water for public and semipublic use.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all community and nontransient, noncommunity water systems. There are approximately 560 such systems in Kentucky. These systems provide water to about 3,700,000 Kentuckians. Some of the community water systems are owned or controlled by a city or county government.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: Water systems subject to this administrative regulation are required to notify their public according to this administrative regulation if they record an exceedance of the lead or copper action level. Systems that exceed the action levels will also have to provide optimal corrosion control according to the requirements; other provisions are as prescribed by the federal regulation.

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

(a) Initially: The costs to the systems would depend on its lead and copper monitoring results. If a system has exceedances of the action levels, then it could be required to perform indicated public education and corrosion control requirements, at additional costs. If there are no exceedances, and the monitoring results meet the prescribed levels, the system may qualify for the monitoring waiver, thus reducing the monitoring costs. In some cases, the revisions reduce monitoring, reporting, and public education requirements to systems that qualify. There are no additional costs to the agency. Any reductions on the system could be reflected as reduced impact on the agency in processing the data.

(b) On a continuing basis: Any continuing costs would be the same as the initial costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Monies allocated by the Kentucky General Assembly in its biennial budget will be used to implement and enforce the administrative regulations throughout 401 KAR Chapter 8, including this administrative regulation. In addition, the cabinet receives grants from the U.S. EPA to implement the provisions of the federal Safe Drinking Water Act, as amended, if the cabinet’s program is no less stringent than the federal program, and the cabinet maintains “primacy” for the enforcement and implementation of the federal program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There will not be an increase in fees or an increase in funding necessary to implement the amendments to lead and copper rule. Implementation will continue under the existing funding mechanisms appropriated by the Kentucky General Assembly in the General Fund monies. However, if the cabinet has received an increase in funding from the U.S. EPA to implement the new provisions of the Safe Drinking Water Act, including this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly or indirectly establish or increase any fees.

(9) TIERING: Is tiering applied? Yes, tiering is used throughout the administrative regulation. Tiering is used in the monitoring frequency. A system may qualify for reduced monitoring and reduced number of samples if the system does not exceed the action levels. Tiering is also used in the public education requirements, if the system monitors an exceedance of an action level. A nontransient, noncommunity water system is required to perform less extensive notification requirements than the community water system. Also, a smaller community water system may omit some notification tasks if it meets specified conditions. Tiering is also used in the waivers; if a water system records specified levels of either lead or copper that are well below the action levels, the system may apply for a full or partial waiver of the monitoring requirements. This would allow the system to monitor less frequently than the requirement of every three years, thus saving monitoring costs for the system.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 141.80 to 141.91
2. State compliance standards. 401 KAR 8:300
3. Minimum or uniform standards contained in the federal mandate. The federal regulation prescribes the requirements for public water systems when testing for lead and copper in the distribution system, and for source water monitoring and line replacement, if a system records exceedances of the action levels for lead or copper.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? There are no stricter, additional, or different requirements than those mandated by the federal rule.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter, additional, or different requirements than those mandated by the federal rule.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation applies to public water systems, some of which are owned by city and county governments.
3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation. This administrative regulation relates to public water systems that provide drinking water to their customers. The federal regulations in 40 C.F.R. Part 141 contain the requirements for the control of lead and copper in drinking water.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no anticipated effect on current revenues.

Expenditures (+/-): The costs to the systems would depend on the results of lead and copper monitoring. If a system has exceedances of the action levels, then it could be required to perform indicated public education and corrosion control requirements, at additional costs. If there are no exceedances, and the monitoring results meet the prescribed levels, the system may qualify for the monitoring waiver, thus reducing the monitoring costs.

Other explanation: There is no additional explanation.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 8:700. Bottled water.

RELATES TO: KRS 224.10-100, 224.10-110, 21 C.F.R. 165.110 [Chapter 224]

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110...
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 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. A [All] bottled water system [systems] shall comply with the provisions of 401 KAR Chapter 8 [8:010 through 8:700, inclusive] with the following exceptions and provisions:

(1) Distribution systems and free chlorine.

(a) Administrative regulations pertaining to distribution systems of a public water system, including provisions for a free chlorine residual, shall not apply.

(b) The requirements of 401 KAR 8:160 and 401 KAR 8:510 shall not apply to a bottled water system, unless specifically included by this administrative regulation.

(c) 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. A [All] bottled water system [systems] shall conduct microbiological sampling and testing at least once a week. Tests shall otherwise conform to the administrative regulations in 401 KAR Chapter 8 relating to microbiological sampling and testing.

(3) Samples location.

(a) Except as provided in paragraph (b) of this subsection, [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.

(b) A sample may be taken from a bottle immediately after bottling and before the bottle leaves the plant, if all other sampling procedures are met.

(c) 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 three-tenths (0.3) [five-tenths (0.5)] nephelometric turbidity units (NTU) [NTU] in at least ninety-five (95) percent of the measurements taken each month, and shall never exceed one (1) NTU.

(5) Sampling, MCL, and MRDL for other contaminants.

(a) MCLs.

1. Except for lead and copper, the MCL for a contaminant for which testing is required in this subsection shall be as specified in 401 KAR 8:250, 401 KAR 8:600, 401 KAR 8:420, and 401 KAR 8:710.

2. Lead and copper. The MCL shall be:

a. Lead: 0.005 mg/l; and

b. Copper: one-zero-thousands (1.0) mg/l.

3. Within twenty-four (24) hours of receiving the test results, a bottled water system shall report to the cabinet violations of the MCL for chlorite and bromate and shall immediately stop bottling operations.

(b) MRDLs.

1. Except as provided in subparagraph 2 of this subsection, the MRDL for disinfectants shall be as specified in 401 KAR 8:510.

2. The MRDL for chlorine dioxide shall be as specified in 401 KAR 8:510. Section 3. No two (2) consecutive daily samples shall exceed the MRDL monitored at the treatment plant after treatment.

3. A bottled water system shall report to the cabinet a violation of the MRDL for chlorine dioxide as soon as possible after learning of the exceedance, and shall immediately take steps to lower the level of chlorine dioxide in the system.

(c) Sampling.

1. A bottled water system shall monitor annually for the following:

a. (i) Contaminants specified in 401 KAR 8:250, 401 KAR 8:400, and 401 KAR 8:420, except as provided in subclause (ii) of this clause.

(ii) A bottled water system that uses as its source a public water system subject to 401 KAR Chapter 8 may apply for written approval from the cabinet, substitute the monitoring results of the public water system for the monitoring required by clause a of this subparagraph. The bottled water system shall submit a letter by January 30 of each year, stating that they will use the annual results of their purchasing system; the system shall include the PWSID of the purchasing system.

b. Lead:

1. Copper;

c. Total trihalomethanes, or TTHMs;

d. Haloacetic acids, or HAAs;

2. A bottled water system shall monitor for radionuclides every four (4) years pursuant to 401 KAR 8:550. [Other sampling. All other sampling for maximum contaminant levels and unregulated contaminants shall be conducted on the same schedule as community water systems.]

(e) Disinfection [method].

1. Disinfection shall be by chlorination, ultraviolet light, ozonation, chlorine dioxide, or other method approved by the cabinet that provides equivalent treatment.

(f) A bottled water system that uses:

1. Chlorine dioxide shall monitor for chlorate daily in the treatment plant.

2. Ozone shall monitor monthly for bromate in the treatment plant, or may, with written approval from the cabinet, replace bromate monitoring in accordance with 401 KAR 8:510, Section 5, except that the system shall continue to monitor for bromate.

(3) Surface water treatment. Bottled water systems using surface water sources may, with cabinet approval, use treatment techniques that are different from other surface water sources, if equivalent treatment is provided.

(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, if [provided] consumers are informed by proper labeling.

(9) Water bottled outside Commonwealth. Water bottled outside Kentucky shall not be subject to [is not-covered-by] this administrative regulation, regardless of its source.

(10)(a) Analyses shall be performed in accordance with methods approved by 401 KAR Chapter 8 or 21 C.F.R. 165.110, in laboratories that are certified to conduct testing pursuant to 401 KAR Chapter 8.

(b) Monitoring results shall be received by the cabinet no later than the tenth day of the month following the end of the reporting period.

(11) The public notification requirements of 401 KAR 8:070 and the reporting requirements of 401 KAR 8:075 shall not apply to a bottled water system.

Section 2. Failure to Comply. A [Any] bottled water system that exceeds a maximum contaminant level or MCL, or a maximum residual disinfectant level or MRDL, or otherwise [which] fails to comply with the [any-of-these] administrative regulations in 401 KAR Chapter 8 shall:

1. Immediately cease operations;

2. [Shall] Notify the cabinet and the Cabinet for Health and Family Services, Department for Public Health; and

3. [Shall not] Resume operation without the written approval of the cabinet.

LAUJANA S. WILCHER, Secretary
APPROVED BY AGENCY: May 14, 2004
FILED WITH LRC: June 4, 2004 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2004 at 1 p.m. (Eastern time) in Conference Room D-16 at the Department of Surface Mining, #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 14, 2004, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to the contact person. PARKING NOTE: Persons interested in attending the hearing, other than those with handicap parking plates or placards, are asked to park in the "upper" parking lot on Hudson Hollow, next to the Little Lamb Preschool behind the hedge, and not in the visitor parking lot or main parking lot.

CONTACT PERSON: Jeffrey W. Pratt, Director, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey W. Pratt, Director

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation prescribes the requirements for public water systems that bottle water in Kentucky for sale to customers.
(b) The necessity of this administrative regulation: KRS 224.10-100(30) and 224.10-110 authorize the cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use. This administrative regulation is necessary to prescribe requirements for public water systems that bottle water in Kentucky for public sale, thus protecting their public health.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is one aspect of the overall program for the regulation and control of the purification of water for public and semipublic use.
(d) How this administrative regulation currently assists or will assist in the enforcement of the statute: This administrative regulation provides for the control of bottled water systems, which provide water for public use to the citizens of the commonwealth.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This administrative regulation is being amended to more correctly prescribe the requirements for bottled water systems. Many of the new administrative regulations elsewhere in this chapter relate to the distribution system of a public water system. Those requirements are not applicable to a bottled water system. Also, several other requirements apply to individual filters; those requirements also are not applicable to a bottled water system. This administrative regulation is being amended to clarify that those requirements do not apply to bottled water systems. These requirements are consistent with those prescribed by the Food and Drug Administration and the International Bottled Water Association. In addition, although a bottled water system will still monitor for contaminants, the number of tests may not be the same that for a surface water system, and the tests may be performed less frequently.
(b) How necessary the amendment to this administrative regulation: These amendments are necessary because some of the requirements throughout 401 KAR Chapter 8 are not applicable to bottled water systems. However, the public still needs to be assured that the water it purchases in bottles is tested similar to other water systems and meets the maximum contaminant levels and maximum residual disinfectant levels for contaminants that are applicable to a bottled water system.
(c) How the amendment conforms to the content of the authorizing statutes: These amendments will ensure that this aspect of the cabinet's program for the control and purification of water for public and semipublic use is appropriate for bottled water systems.
(d) How the amendment will assist in the effective administration of the statutes: This amended regulation will be a part of the cabinet's program for the purification of water for public or semipublic use.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to public water systems that bottle water in Kentucky. This administrative regulation does not apply to a bottled water system that bottles water outside the commonwealth. There are ten bottled water systems in Kentucky to which this administrative regulation applies, all of which are owned by private entities. There are no state or local governments that own or operate a bottled water system.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: These amendments clarify what portions of the new requirements are applicable to a bottled water system. In some respects, the amendments represent deletions of some requirements. However, those requirements that are being deleted are not applicable to bottled water systems, therefore these amendments merely represent a clarification of the cabinet's intent for bottled water systems.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There are no initial costs; bottled water systems would not have to provide exactly the same type of monitoring that other water systems provide.
(b) On a continuing basis: There are no continuing costs as a result of these amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Monies allocated by the Kentucky General Assembly in its biennial budget will be used to implement and enforce the administrative regulations throughout 401 KAR Chapter 8, including this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. Tiering is applied because this administrative regulation applies only to bottled water systems. This administrative regulation prescribes fewer monitoring requirements for bottled water systems than for other public water systems.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for bottled water systems.
2. State compliance standards. 401 KAR 8.700.
3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? There is no federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

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 ad-
ministrative regulation will affect. This administrative regulation will not affect any local government.  
3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation. This administrative regulation will not affect any local government.  
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.  
Revenues (+): There is no anticipated effect on current revenues since this administrative regulation does not affect local governments.  
Expenditures (+): There is no anticipated effect on current expenditures since this administrative regulation does not affect local governments.  
Other explanation: None

TRANSPORTATION CABINET 
DEPARTMENT OF VEHICLE REGULATION 
DIVISION OF MOTOR CARRIERS 
(AMENDMENT)

601 KAR 1:005. Safety administrative regulation.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 281.600 authorizes the Transportation Cabinet to promulgate administrative regulations relating to safety requirements. This administrative regulation establishes requirements for motor carriers operating in Kentucky.

Section 1. Definitions. (1) "City bus" is defined in KRS 281.013(1).  
(2) "Daylight hours" means that period of time one-half (1/2) hour before sunrise through one-half (1/2) hour after sunset.  
(3) "Farm and agricultural transportation" means the operation of a motor vehicle that is controlled and operated by a farmer who, as a private motor carrier, is using a vehicle:  
(a) To transport agricultural products from his farm;  
(b) To transport farm machinery or farm supplies to his farm; or  
(c) Generally thought of as farm machinery; and  
(d) Which is not transporting hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with 601 KAR 1:025.  
(4) "Load limit" means the seating capacity established by the manufacturer for a passenger-carrying vehicle plus an additional twenty-five (25) percent.  
(5) "Suburban bus" is defined in KRS 281.013(2).  
(6) "Utility" means an entity which provides water, electricity, natural gas, sewage disposal, telephone service, television cable, or community antenna service.

Section 2. Governing Federal Regulations. A commercial motor vehicle and its operator meeting the definitions set forth in 49 C.F.R. 390.5 operating for-hire or in private carriage, interstate or intrastate, except as set forth in Section 3 of this administrative regulation, shall be governed by the following Motor Carrier Safety Regulations and Transportation Security Administration Regulations and issued by the United States Department of Transportation, and thereby adopted without change:  
(1) 49 C.F.R. Part 40, as effective October 1, 2003, Procedures for Transportation Workplace Drug and Alcohol Testing Programs;  
(2) 49 C.F.R. Part 392, as effective October 1, 2003, Controlled Substances and Alcohol Use and Testing;  
(3) 49 C.F.R. Part 383, as effective October 1, 2003, as amended by 69 Fed. Reg. 63030, November 7, 2003, Commercial Driver's License Standards; Requirements and Penalties;  
(4) 49 C.F.R. Part 384, as effective October 1, 2003, State Compliance with Commercial Driver's License Program;  
(5) [44] 49 C.F.R. Part 385, as effective October 1, 2003, Safety Fitness Procedures;  
(6) [69] 49 C.F.R. Part 390, as effective October 1, 2003, General;  
(7) [69] 49 C.F.R. Part 391, as effective October 1, 2003, Qualifications of Drivers;  
(8) [77] 49 C.F.R. Part 392, as effective October 1, 2003, Driving of Commercial Motor Vehicles;  
(9) [89] 49 C.F.R. Part 393, as effective October 1, 2003, Parts and Accessories Necessary for Safe Operation;  
(10) [99] 49 C.F.R. Part 395, as effective October 1, 2003, Hours of Service of Drivers;  
(11) [109] 49 C.F.R. Part 396, as effective October 1, 2003, Inspection, Repair and Maintenance; and  
(12) [141] 49 C.F.R. Part 397, as effective October 1, 2003, Transportation of Hazardous Materials; Driving and Parking Rules; and  

Section 3. Exemptions and Exceptions. The following exemptions and exceptions to compliance with the provisions of Section 2 of this administrative regulation are adopted:

(a) A city or suburban bus shall not be required to comply with the federal regulations adopted by or incorporated by reference in this administrative regulation.

(b) (1) The operator of one (1) of these vehicles who is required by KRS Chapter 281A to obtain a commercial driver's license shall:

1. Comply with the provisions of 49 C.F.R. Parts 382 and 383; and  
2. a. Provide proof of having passed the medical examination set forth in 49 C.F.R. Part 391; or  
   b. Have received a medical waiver as set forth in 601 KAR 11:040 and subsection (7) of this section for intrastate operators or as set forth in 49 C.F.R. Part 381 for interstate operators.

(2) A motor vehicle operated by the federal government, a state government, a county government, a city government, or a board of education shall not be required to comply with the federal regulations adopted in this administrative regulation.

(a) A farm and agricultural transportation operator of one (1) of these vehicles who is required by KRS Chapter 281A to obtain a commercial driver's license shall provide proof of:

1. Having passed the medical examination set forth in 49 C.F.R. Part 391; or  
2. Having received a medical waiver as set forth in 601 KAR 11:040 and subsection (7) of this section for intrastate operators or as set forth in 49 C.F.R. Part 381 for interstate operators.

(c) The operator of a vehicle specified in paragraph (a) of this subsection shall meet the requirements of 49 C.F.R. Part 382 relating to drug and alcohol testing.

(a) A motor vehicle which is used exclusively in intrastate commerce and exclusively in farm-to-market agricultural transportation when operated during daylight hours by a private motor carrier shall not be required to comply with 49 C.F.R. 393.9 to 393.33, relative to lighting device requirements.

(b) A motor vehicle as described in paragraph (a) of this subsection shall have two (2) stop lamps and mechanical turn signals as set forth in 49 C.F.R. 393.9 to 393.33.

(a) A motor vehicle which is used exclusively in intrastate commerce and exclusively for the transportation of primary forest products from the harvest area to a mill or other processing facility which is located at a point not more than fifty (50) air miles (eighty and five-tenths (80.5) air kilometers) from the harvest area when operated during daylight hours shall not be required to comply with 49 C.F.R. 393.9 to 393.33, relative to lighting device requirements.

(b) A motor vehicle as described in paragraph (a) of this subsection shall have two (2) stop lamps and mechanical turn signals as set forth in 49 C.F.R. 393.9 to 393.33.
(5) Except for a transporter of hazardous materials subject to the requirements of 601 KAR 1:025, a motor vehicle operator who is operating a vehicle in intrastate commerce shall not be required to be twenty-one (21) years of age as set forth in 49 C.F.R. 391.11(b)(1). However, he shall be at least eighteen (18) years of age.

(6) A utility motor carrier, if operating exclusively in intrastate commerce, shall be exempt from the maximum and on-duty hours for drivers set forth in 49 C.F.R. 395.3 during an emergency as defined in 49 C.F.R. 390.5 which requires their employees to work to restore service. As authorized by 49 C.F.R. 350.331(d), the Transportation and Justice Cabinets shall delay the implementation and enforcement of state regulations tracking changes to the federal hours of service regulations, 49 C.F.R. Part 395, only as they apply to utility service vehicles, until the earlier of June 27, 2006 or the enactment by Congress of the highway funding reauthorization bill, currently known as the Safe, Accountable, Flexible, and Efficient Transportation Equity Act, or its successor legislation, provided that the delay does not result in the loss of federal Motor Carrier Safety Assistance Program funding. If the U.S. Department of Transportation issues an official finding that this provision may result in the loss of federal funding, the department may promulgate administrative regulations modifying this exemption as necessary to prevent the loss of federal funding.

(7) Medical waivers for intrastate drivers.

(a) A commercial vehicle operator who operates a commercial vehicle exclusively in intrastate commerce within Kentucky, may apply for a medical waiver of the requirements of 49 C.F.R. Part 391 under the provisions of 601 KAR 11:040.

(b) If a medical waiver is issued, the waiver shall be in the possession of the commercial driver any time he is operating a commercial motor vehicle.

(8) Except for a farm-to-market agricultural transportation motor vehicle with a gross vehicle weight rating of 26,000 pounds or less, a motor carrier which operates exclusively in intrastate commerce shall:

(a) Apply for an intrastate motor carrier identification number on Form TC 95-1, "Kentucky Trucking Application," April 2990 edition or Form TC 92-150, "Application for Intrastate Carrier Identification Number," March 1996 edition;

(b) Display the assigned intrastate motor carrier identification number and the name of the motor carrier in the same manner as required pursuant to 49 C.F.R. 390.21 except the identification number shall be preceded by the letters "USDOT" and followed by the letters "KY.

(9) Notwithstanding 49 C.F.R. 391.66(c), a Kentucky licensed commercial driver operating a passenger transportation vehicle on behalf of a private motor carrier of passengers shall not be exempt from the sections of 49 C.F.R. 391.41 and 391.45 requiring a driver to be medically examined and to have a medical examiner’s certificate on his person.

Section 4. Buses. (1) A bus shall be maintained in a clean and sanitary condition so that the health of passengers will not be impaired.

(2) A seat shall be comfortable in order that passengers will not be subjected to unreasonable discomfort which might be detrimental to their health and welfare.

(3) An employee in charge of buses shall be courteous and helpful to passengers, properly caring for baggage so that it will not be damaged, and shall be acquainted with the routes traveled and schedules maintained, so that the passengers will not be subjected to unnecessary delays.

(4) An operator shall take into consideration the health and welfare of his passengers and control his operations in the public interest.

(5) Express and freight, mail bags, newspapers and baggage shall be so placed as not to interfere with the driver or with the safety and comfort of passengers. These items shall be protected from the weather but shall not be carried in the aisles or in a position to block exits or doorways on the bus.

Section 5. Overcrowding of Passenger Vehicles. A bus operated by an authorized carrier, except city or suburban buses, shall not be used to transport passengers in excess of its load limit. A passenger shall not be permitted to occupy the rear door-well of any bus vehicle that is equipped with a rear doowell.

Section 6. Out-of-service Criteria and Sticker. (1) The basic safety criteria to be followed by the Kentucky Transportation Cabinet in determining if a commercial motor vehicle driver or commercial motor vehicle shall be declared unqualified or placed out-of-service shall be the "North American Uniform Out-of-service Criteria" issued by the Commercial Vehicle Safety Alliance.

(2)(a) If a commercial motor vehicle is being operated with improper or invalid registration, without registration or in violation of any safety regulation or requirement, an officer or inspector of the Division of Motor Vehicle Enforcement shall be authorized to affix to the vehicle a notice indicating the nature of the violation and requiring its correction before the commercial motor vehicle is further operated.

(b) Refusal of the vehicle operator to grant permission for a law enforcement officer or inspector to conduct a safety inspection of the vehicle shall be cause for the officer or inspector to place the vehicle out-of-service until the permission is granted.

(c) Operation of a vehicle in violation of the out-of-service notice affixed to it shall constitute a separate violation of this administrative regulation.

(3)(a) If a commercial motor vehicle driver is determined to be unqualified to drive and is placed out-of-service but the commercial motor vehicle is not placed out-of-service, the motor carrier may provide a different driver for the commercial motor vehicle.

(b) The commercial motor vehicle driver placed out-of-service shall not again operate a commercial motor vehicle until he is once again qualified.

(c) Refusal of the commercial motor vehicle driver to grant permission for a law enforcement officer or inspector to conduct a safety inspection regarding the driver himself shall be cause for the officer to place the driver out-of-service until the permission is granted.

(d) Operating a commercial motor vehicle in violation of an out-of-service order shall constitute a separate violation of this administrative regulation.

Section 7. Persons Allowed to Perform Physical Examinations. A physical examination required pursuant to state or federal law shall be conducted by a medical examiner as defined in 49 C.F.R. 390.5. The following shall qualify:

(1) Physician licensed by the Kentucky Board of Medical Licensure;

(2) Osteopath licensed by the Kentucky Board of Medical Licensure;

(3) Physician assistant certified by the Kentucky Board of Medical Licensure when working under the direct supervision of a licensed physician;

(4) Advanced registered nurse practitioner licensed by the Kentucky Board of Nursing; and

(5) Chiropractor licensed by the Kentucky State Board of Chiropractic Examiners.

Section 8. Intrastate Safety Rating System. (1) The Transportation Cabinet may issue a safety rating to a motor carrier subject to the provision of this administrative regulation if all of the commercial motor vehicles operated by the motor carrier are operated exclusively in intrastate commerce.

(2) The safety standards and rating criteria set forth in 49 C.F.R. Part 385 shall be used by the Transportation Cabinet in issuing a safety rating.

Section 9. Random Alcohol Testing Rate. Commercial Motor Vehicle employers shall randomly test a percentage of the average number of driver positions employed by them. The applicable percentage shall be determined by the Federal Motor Carrier Safety Administration’s Administrator annually as set forth in 49 C.F.R. 382.305.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

- 215 -
(a) "North American Uniform Out-Of-Service Criteria" revised January 1, 2004 by the Commercial Vehicle Safety Alliance;
(b) TC 95-1, revised April, 2000; and
(c) TC 92-150, revised March, 1998.

This material may be inspected, copied, or obtained, subject to applicable copyright law, at any of the weigh stations operated by the Transportation Cabinet, and at the Division of Motor Carriers, 2nd Floor, Transportation Cabinet Office Building, 200 Mero Street [Vehicle Enforcement, 8th Floor, State Office Building, Corner of High and Clinton Streets], Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

MAXWELL C. BAILEY, Secretary
MACK BUSHART, Commissioner
APPROVED BY AGENCY: May 28, 2004
FILED WITH LRC: June 7, 2004 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2004 at 10 a.m. local time at the Transportation Cabinet, Transportation Cabinet Office Building, Conference Room 612, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing at least five working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please so notify us in writing at least five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 2004. 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: Dana Fugazzi, Staff Attorney III, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Station W8-20-01, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dana Fugazzi

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This regulation sets forth the federal safety standards that have been adopted by this state and are applicable to the interstate motor carriers. It also sets forth the safety standards for intrastate carriers. These safety standards include guidelines for passing a medical examination or obtaining some form of medical waiver for the individual driver.
   (b) The necessity of this administrative regulation: Pursuant to KRS 281.600, the cabinet is required to regulate motor carriers and to apply the Federal Motor Carrier Act.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation adopts the federal safety regulations and clarifies other requirements for intrastate compliance.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the guidelines for the Transportation Cabinet in maintaining and enforcing safety standards for motor carriers driving in the commonwealth.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment updates the state regulation by adopting current federal regulations.
(b) The necessity of the amendment to this administrative regulation: It is necessary to adopt the updated federal regulations to remain compliant with the Federal Motor Carrier Act and fulfill the directive of the regulation in KRS 281.600.
(c) How the amendment conforms to the content of the authorizing statutes: It adopts the Federal Motor Carrier Act provisions regarding motor carrier safety.
(d) How the amendment will assist in the effective administration of the statutes: This will allow the cabinet to apply and enforce current safety requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect motor carriers directly and will have an indirect impact on the general motoring public. There are an estimated 40,000 motor carriers operating within the commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: These safety standards (both state and federal) will be applicable to motor carriers. Intrastate carriers are already subject to federal provisions and this should not impact their day-to-day operations. This regulation should also have a positive impact on other motorists by maintaining safety on roads and highways they share with motor carriers.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: No known cost.
   (b) On a continuing basis: There is on-going cost related to administration of the motor carrier program within the cabinet and enforcement of motor carrier regulations through vehicle enforcement. These amendments should not increase the current cost for these programs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Road funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: If new, or by the change if it is an amendment: The cabinet has not increased fees and does not anticipate a need for increased fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No

(9) TIERING: Is tiering applied? Tiering is applied to the extent that these larger vehicles are subject to more stringent regulations with regard to their operation than standard size vehicles.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Minimum or uniform standards contained in the federal mandate. These federal regulations contain the following minimum standards:
   (a) Commercial driver's license standards for the issuance, testing and withdrawal of a CDL;
   (b) Establishes a 0.04% BAC as the level at which an operator of a commercial vehicle is considered to be a DUl;
   (c) Establishes the maximum number of hours a commercial vehicle driver may be on-duty and how he must keep a record of the amount of time he has worked;
   (d) Establishes the qualifications for a commercial driver including his physical fitness, age, emotional condition, prior driving history and a drug testing program for interstate and intrastate motor carriers;
   (e) Defines the safe method in which a commercial vehicle must be operated including stopping at railroad crossings; cease driving when ill or fatigued; not to use drugs or alcohol while operating a commercial vehicle; conformance with the speed limit; required use of turn signals; use of seat belts; use of emergency flashers when the commercial vehicle is stopped on the highway; use of lights on the commercial vehicle; duty in case of accident; and fueling precautions;
   (f) Defines the parts and accessories necessary for the safe operation of a commercial vehicle;
   (g) Establishes a formal maintenance and repair schedule and records for the safe operation of a commercial vehicle and requires the maintenance and inspections to be performed by certified inspectors or mechanics; and
   (h) Driving and parking rules while transporting hazardous materials.

2. Will this administrative regulation impose stricter require-
ments, or additional or different responsibilities or requirements, than those required by the federal mandate? No. In fact, Kentucky, has imposed slightly less restrictive standards on intrastate drivers. For example, intrastate motor carriers have a minimal medical waiver program. However the medical waiver program for intrastate commercial drivers has been expanded. Unless operating a school bus or transporting hazardous materials, the intrastate Kentucky driver must only be 18 rather than 21, and farmers in daylight hours have less restrictive lighting requirements than the operators of other commercial vehicles. Kentucky is stricter with regard to exemptions from medical examination for private motor carriers of passengers. 49 C.F.R. 391.68(c) allows these carriers to avoid medical examination. Section 3(9) of this regulation requires examination "notwithstanding" that provision.

3. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The less stringent requirements for intrastate motor carriers were adopted to allow Kentucky companies to continue operating as they had been doing for years. The Transportation Cabinet was strongly petitioned by legislators and public interest groups to allow these exemptions. The stricter requirement as to medical waivers is not new and has not been changed as a result of this amendment. This stricter standard was adopted out of concern for safety of passengers.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Not applicable.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

TRANSPORTATION CABINET
Department Of Highways
Division Of Maintenance
(Amendment)

603 KAR 4:040. TODS signs; placement on public roads other than interstates or parkways.

RELATES TO: KRS 189.337
STATUTORY AUTHORITY: KRS 189.337
NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.337
requires the Department of Highways to establish standards for the placement of signs within highway right-of-way of a public road. The Transportation Cabinet has promulgated 603 KAR 5:050 which deals with all traffic control devices by incorporating the Manual on Uniform Traffic Control Devices by reference. The Manual on Uniform Traffic Control Devices allows for the erection of tourist oriented directional signs (TODS) to provide directional information for tourist activities offering goods and services that are of significant interest to the traveling public within certain parameters, but requires each jurisdiction to establish policies for those areas not covered in the manual. This administrative regulation sets forth the criteria to be followed in the erection and maintenance of TODS. The criteria included in this administrative regulation are consistent with the guidelines set forth in the Manual on Uniform Traffic Control Devices.

Section 1. Definitions. (1) "Clear zone" means the area between the edge of the driving lane of a public road and an imaginary line running parallel to the road but thirty (30) feet (9.12 meters) away from the road.

(2) "Contractor" means the entity selected by the Department of Highways pursuant to KRS Chapter 45A and 600 KAR Chapter 6 to administer the tourist oriented directional signs program in Kentucky. The activities of the contractor shall include but not be limited to marketing, determination of business eligibility, maintenance, erection and removal of the information panels for TODS.

(3) "Contractor year" means July 1 through the following June 30 [a one-(1)-year period beginning January 1, of each calendar year].

(4) "Cover" means a protective shield over a TODS sign which prohibits viewing of the sign.

(5) "Department" is defined by KRS 189.010(1).

(6) "Eligibility distance" means the distance from the at-grade intersection of the state highway at the point where the directional sign is located to the entrance driveway to the business.

(7) "Fully-controlled access highway" means a highway that:
(a) Gives preference to through traffic;
(b) Has access only at selected public roads; and
(c) Does not have a highway intersection or at-grade crossing.

(8) "Illegal sign" means an advertising device which has been determined to be illegal according to the provisions of 503 KAR 3:080.

(9) "Information panel" means an official sign placed within the highway right-of-way with space for one (1) or more individual TODS to be attached to it and which may display the legend "TOURIST ACTIVITIES."

(10) "Intersection" is defined by KRS 189.010(6).

(11) "Motorist service" means a place of business or a business location providing gas, food, lodging, or camping facilities or a combination thereof.


(13) "Public road" means all state-maintained roads other than interstate or parkway highways.

(14) "Ramp" means the on or off-access road from the interstate highway or parkway to or from the first public road.

(15) "Shopping area" means a group of ten (10) or more retail and other commercial establishments located within close proximity of one another that employ a unifying theme carried out by individual shops in their architectural design or their merchandise.

(16) "Shopping mall" means a group of retail and other commercial establishments that is 400,000 square feet or more and is planned, developed, owned, and managed as a single property.

(17) "TOD trailblazer" means a reduced-sized TODS used in areas where the speed limit is posted with a limit of forty-five (45) miles per hour or less (seventy-two and four-tenths (72.4) kilometers per hour) to direct the traveling public to a tourist attraction.

(18) "Tourist activity" means a public or private activity which provides a tourist attraction or motorist service to the traveling public.

(19) "Tourist attraction" means:
(a) A cultural, historical, recreational, agricultural, educational, or entertainment activity;
(b) A shopping mall or shopping area; or
(c) A commercial activity which is unique and local or indigenous in nature.

(20) "Tourist oriented directional sign" or "TODS" means an individual tourist information sign paid for and owned by the tourist activity and fabricated to the standards set forth in this administrative regulation and located on an information panel on the right-of-way of a public road. The TODS may provide the official name, directional information, and distance to a specific tourist activity.

Section 2. General Provisions. The Department of Highways shall control the erection and maintenance of information panels and TODS in accordance with the MUTCD and the provisions of this administrative regulation.

Section 3. Applications and Contracts for TODS. (1) An application for an activity or business to place a TODS or TOD trailblazer sign on an information panel shall be made on an "Application for Highway Tourist Oriented Directional Signage (TODS)" form prepared by the Kentucky Logos, Inc.

(2) The contract to be entered into between the participating activity or business and the Department of Highways' contractor shall be the "Highway TODS Program Agreement" form prepared by the Kentucky Logos, Inc. Addenda to this form may be included in the contract if appropriate.

Section 4. Information Panels for TODS. (1) General requirements for information panels.

(a) The information panels shall be located to:
1. Take advantage of natural terrain;
2. Have the least impact on the scenic environment; and
3. Avoid visual conflict with other signs within the highway right-of-way.
(b) Information panels for TODS shall not be erected:
1. On a fully-controlled access highway;
2. On the on/off ramps of a fully-controlled access highway;
3. Where there is insufficient space to locate both other traffic control devices and the information panels;
4. So that the traffic is directed onto a fully-controlled access highway; and
5. Except for TOD trailblazers, on those sections of public road with a speed limit of forty-five (45) miles (seventy-two and four-tenths (72.4) kilometers) per hour or less.
(c) Unprotected information panel supports located within the clear zone shall be of a breakaway design.
(d) An information panel may be located laterally outside the normal longitudinal alignment of other traffic control signs, but shall be erected within the highway right-of-way.
(e) The location of any other traffic control device shall at all times take precedence over the location of an information panel.
(f) Intersection approach information panels.
(g) Information panels may be erected at the approach of an intersection on a public road.
(h) Except as provided in paragraph (g) of this subsection, each intersection approach information panel shall be located at least 200 feet (sixty and eight-tenths (60.8) meters) from the intersection.
(i) Except as provided in paragraph (g) of this subsection, an intersection approach information panel shall be placed at least 200 feet (sixty and eight-tenths (60.8) meters) from any other traffic control device including another intersection approach information panel.
(d) A separate information panel shall be installed for each of the directions of traffic on an approach to an intersection at which TODS will be placed for the identification of tourist activities. The directions of traffic are the following:
1. A right turn;
2. A left turn; and
3. No turn if the activity or business is located ahead if allowed by the provisions set forth in Section 6 of this administrative regulation.
(e) In the direction of traffic, the order of placement for separate information panels shall be for facilities to the left, to the right and straight ahead.
(f) If the AHEAD sign is used pursuant to the provisions of Section 6 of this administrative regulation, an attempt shall be made to locate it to the far right corner of the intersection, and it shall not obstruct the driver's critical viewing of other traffic control devices.

Section 5. TODS Design and Composition. (1) Each TODS shall:
(a) Be rectangular in shape;
(b) Have a white legend and border on a blue background;
(c) Have reflective legends, arrows, backgrounds and borders; and
(d) Contain the name of the business in not more than two (2) lines of legend which shall not include promotional advertising.
(2) Each TODS on an intersection approach information panel shall have:
(a) A separate directional arrow as set forth in Section 2D-B of the MUTCD;
(b) The distance to the activity or business shown beneath the arrow;
(c) Arrows pointing to the right at the extreme right of the TODS; and
(d) Arrows pointing to the left or up at the extreme left of the TODS.
(3) The arrangement of the tourist oriented directional signs on the advance information panels shall be the same as the arrangement on the intersection information panel except the directional arrows and distance shall be omitted.
(b) The appropriate legend NEXT RIGHT, NEXT LEFT, or AHEAD in letters of the same height as the other word messages shall be placed on the information panels above the TODS.
(c) The legend "RIGHT X MILE", "LEFT X KILOMETERS", or similarly worded leged may be used if there are intervening minor roads.
(d) More than four (4) TODS shall not be installed on a single information panel.
(5) TODS shall be arranged vertically on an information panel and if appropriate located so that the right turn signs are closer to the intersection. If not more than four (4) TODS are to be installed on an approach to an intersection, the TODS may be combined on the same information panel with the TODS for left turns placed above the TODS for right turns.
(6) The standard lettering for tourist oriented directional signs shall be in upper case letters of the type provided in the "Standard Alphabets for Highway Signs" book. Capital letters shall be six (6) inches (152.4 millimeters) in height. Spacing between characters shall conform to the tables in the metric edition of "Standard Alphabets for Highway Signs and Pavement Markings" published in 1966 by the U.S. Department of Transportation.
(7) A AHEAD sign shall not exceed seventy-two (72) inches (1828.8 millimeters) wide and eighteen (18) inches (457.2 millimeters) tall.
(b) The TODS signs on the same information panel shall all be the same width.
(c) The directional arrow with the distance to the activity or business underneath shall not exceed sixteen (16) inches (406.4 millimeters) wide and sixteen (16) inches (406.4 millimeters) tall.
(d) There shall be a one (1) inch (twenty-five and four-tenths (25.4) millimeters) while border surrounding the sign and separating the directional arrow and legend.
(e) There shall be a one (1) inch (twenty-five and four-tenths (25.4) millimeters) spacing between the border and legend and two (2) inch (fifty and eight-tenths (50.8) millimeters) spacing between lines of legend.
(f) The maximum length of the legend shall be five feet four inches (5'4") (1.64 meters) per line.
(8) Clearance of panels shall be governed by Sections 2A and 2D of the MUTCD.

Section 6. AHEAD Sign. (1) The legend "AHEAD" may be used in lieu of the up directional arrow set forth in Section 5(2d) of this administrative regulation.
(2) Signing for tourist activities in the AHEAD direction shall be considered only under the following circumstances:
(a) There is signing for a similar facility in either the right or left direction;
(b) Through traffic is not the normal traffic pattern; or
(c) The visibility of the establishment is obscured until a motorist is within 800 feet (243.2 meters) of the entrance.
Section 7. Trailblazer Signs. (1) At each turn required to be made by the traveling public when proceeding from a TODS to the tourist attraction, a legal sign shall be in place directing the turns. This may be accomplished by purchasing an additional TODS or TOD trailblazer sign.

(2) The Transportation Cabinet, based on engineering judgment, shall establish the size and location of each TOD trailblazer sign.

(3) The Transportation Cabinet shall approve the proposed trailblazing route for each tourist activity seeking trailblazing signs prior to the submission of the application for permit is required by Section 16 of this administrative regulation.

Section 8. Tourist Activity Eligibility. A tourist activity shall meet the following requirements to qualify for tourist oriented directional signing. A TODS sign shall not be erected until the tourist activity or site has been approved in accordance with this administrative regulation.

(1) A tourist activity shall be of significant interest to the traveling public. The types of activities or sites which are of significant interest to the traveling public are gas, food, lodging, camping, and tourist attractions, if at least one-third (1/3) of the income or visitors at the tourist activity are derived during the normal business season from visitors not residing within twenty (20) miles (32.16 kilometers) of the activity.

(2) The tourist activity shall be open to the general public during regular and reasonable hours, and not by appointment or reservation only.

(3) Approval shall not be granted if the tourist activity is using an illegal sign any place in the Commonwealth of Kentucky.

(4) Each tourist activity shall comply with all applicable local, state, and federal statutes and administrative regulations including those prohibiting discrimination based on race, religion, color, sex, age, disability, or national origin. Each tourist activity identified on a tourist oriented directional sign shall provide assurance of its conformance with all applicable federal, state or local laws and administrative regulations. If a tourist activity is in noncompliance of any of these laws or administrative regulations, it may be considered ineligible for participation in this program and its signs may be removed, with no return of any fees.

(5) The tourist activity shall be conducted in an appropriate building or area. The activity shall not be conducted in a building principally used as a residence unless there is a convenient, separate and well-marked entrance or the tourist activity is a bed and breakfast lodging. The building or area shall be maintained in a manner consistent with standards generally accepted for that type of business.

(6) Any tourist activity which operates on a seasonal basis shall make provisions with the department's contractor to remove or cover the tourist activity's TODS sign during the off season. The tourist activity shall in writing notify the department's contractor at least thirty (30) days before the opening or closing occurs.

(7) A TODS shall not be displayed which would misinform the traveling public or is unsightly, badly faded, or in a state of dilapidation. In these instances the business shall make arrangements for a new TODS.

(8) The department shall have no responsibility for business lost due to TODS or information panels becoming temporarily out of service.

(9) The display of the tourist activity sign on the department's TODS structure shall not be considered an endorsement or recommendation by the State of Kentucky on behalf of the tourist activity.

(10) To qualify for a "GAS" TODS sign, a business shall:
(a) Be in continuous operation at least twelve (12) hours per day, six (6) days a week, twelve (12) months a year;
(b) Provide motor vehicle fuel, oil, air and water;
(c) Have restroom facilities, drinking water, and telephone available to the traveling public; and
(d) Have an eligibility distance of three (3) miles (4.83 kilometers) or less.

(11) To qualify for a "FOOD" TODS sign, a business shall:
(a) Be in continuous operation to serve two (2) meals a day, twelve (12) hours a day, six (6) days a week, anytime the TODS sign is displayed;
(b) Provide a telephone and restroom facilities for the traveling public; and
(c) Have an eligibility distance of three (3) miles (4.83 kilometers) or less.

(12) To qualify for a "LODGING" TODS sign, a business shall:
(a) Have off-street parking and at least two (2) rooms for sleeping accommodations;
(b) Be in operation anytime the TODS sign is displayed;
(c) Have an eligibility distance of fifteen (15) miles (24.14 kilometers) or less; and
(d) Have a private restroom for each sleeping room with the exception of bed and breakfast establishments.

(13) To qualify for a "CAMPING" TODS sign, a business shall:
(a) Have a minimum of ten (10) individual campsites and parking space for each;
(b) Have modern sanitary facilities and telephone available to its guests;
(c) Be in continuous operation for the time the sign is displayed; and
(d) Have an eligibility distance of fifteen (15) miles (24.14 kilometers) or less.

(14) To qualify for a "TOURIST ATTRACTION" TODS sign, a business or activity shall:
(a) Be open a minimum of eight (8) hours a day, five (5) days a week, one (1) of which is a weekend, any time the TODS sign is displayed;
(b) Have adequate parking for the facility with a minimum of fifteen (15) spaces;
(c) Be listed on the state or national Register of Historic Sites if the tourist attraction is a historic site; and
(d) Have an eligibility distance of fifteen (15) miles (24.14 kilometers) or less.

Section 9. Priority of Eligible Tourist Activities. At an intersection with insufficient space available to accommodate all of the applicants for TODS:

(1) The first priority shall be any tourist attractions. Any motorist services shall have second priority according to sign type with preference shown in the following order:
(a) "Camping";
(b) "Lodging";
(c) "Food"; and
(d) "Fuel".

(2) Any tourist attractions, including seasonal, shall have priority if they are located in a building or district which is on the state or national Register of Historic Sites.

(3) The next tourist activity priority shall be any year-round facilities having a higher priority than any seasonal facilities.

(4) The last prioritization factor for any tourist activity shall be the distance from the intersection with priority given to the applicant which is located closest to the intersection.

Section 10. Bumping. A nonparticipating tourist activity with a higher priority established pursuant to Section 9 of this administrative regulation than one (1) which already has a tourist activity sign displayed on a fully utilized information panel may apply to have its sign displayed at the beginning of the next contract year, if it files an application by April 1. The tourist activity with the lowest priority shall have its TODS removed at the end of the contract year.

Section 11. Changes. (1) When a participation business changes ownership, a new contract shall be signed at no additional cost to the business for the remainder of the contract year.

(2) When a participating business is sold and the new owner changes its name, if the new owner wants to continue on the program, a new application and contract shall be completed. This is considered a new business and the applicant shall pay the annual fee, prorated according to time remaining in the contract year.

(3) If a participating business changes its name, a new application and contract may be completed.

(4) If a participating business changes its name only, a new application and contract shall not be required.

(5) A reinstatement fee shall be charged for the placement of a new TODS, if needed.
Section 12. Fees. (1)(a) Except as provided by in paragraph (c) of this subsection, the qualifying business shall pay to the department's contractor an annual fee of $216, in advance, for each TODS placed on the right-of-way.

(b) Except as provided in paragraph (c) of this subsection, the qualifying business shall pay to the department's contractor an annual fee of $216, in advance, for each TOD trailblazer placed on the right-of-way.

(c) If the qualifying business has a "tourist attraction" logo as set forth in 603 KAR 4:035, the annual fee for each TOD trailblazing sign or TODS from the logo to the tourist activity shall be $150.

(2) The annual fee for the first year shall accompany the initial application.

(3) The first year's annual fee may be prorated on a monthly basis with each portion of a month the TODS is in place on the information panel requiring payment of one-twelfth (1/12) of the fee.

(4) The yearly renewal fee shall be due forty-five (45) days prior to the annual renewal date.

(5) The payment of the initial or renewal fee guarantees that the TODS or TOD trailblazer sign will be displayed for one (1) contract year or portion of the first contract year as long as the business does not violate any part of its agreement with the Department of Highways' contractor and is approved by the Transportation Cabinet.

(6) If the signs for a seasonal tourist activity are removed or covered by the department's contractor, a fee of $200 shall be charged for the removal or covering of all of the TODS or TOD trailblazer signs for the specific business.

(7) If the signs for a tourist activity are removed for any reason, a fee of $200 shall be charged for the reinstallation of all of the TODS for the specific business.

(8) The fee for the reinstallation, removal, or covering of TODS shall be paid to the department's contractor within thirty (30) days of the postmarked date of the invoice.

(9) The tourist activity shall be responsible for damages to its TODS or TOD trailblazer signs caused by acts of vandalism or natural causes which require repair or replacement of the TODS or TOD trailblazer sign.

Section 13. Revocation or Suspension. The contract between the department's contractor and the tourist activity may be revoked or suspended if:

(1) The activity no longer meets the eligibility requirements set forth in this administrative regulation;

(2) The owner or responsible operator of the activity willfully makes a false, deceptive, or fraudulent statement in its application or in other information submitted for review;

(3) The owner or responsible operator of the activity or an agent thereof revises or modifies a TODS sign erected by the department or its agents;

(4) The owner or responsible operator of the business or activity has engaged in a deceptive or fraudulent business practice;

(5) An illegal billboard advertising device advertising the business is located in the state of Kentucky;

(6) Payment is not received on time or is otherwise delinquent;

(7) The owner or responsible operator of the business or activity fails to notify the department's contractor of its seasonal closing;

(8) The owner or responsible operator of the business or activity is a habitual violator of the provisions of this administrative regulation.

Section 14. Measurements. (1) Measurements taken to determine the qualifications or priority of tourist activities shall be from the juncture of the center line of the highway, measured between the center edges of the main traveled way of the route on which the sign is to be placed and the center line of the crossroad.

(2) Measurements for the qualification of tourist activities for display of TODS shall begin at the point of measurement described in subsection (1) of this section to the nearest point of vehicle travel to the exit from the crossroad to the particular tourist activity.

Section 15. TODS Contract. (1)(a) A TODS contract between a particular tourist activity and the department's contractor shall be approved by the Transportation Cabinet prior to the erection of the TODS.

(b) Each TODS and contract shall be subject to review by the Transportation Cabinet at any time.

(c) Failure to comply with any of the requirements of this administrative regulation including payment by the participating tourist activity shall be cause for the revocation of the TODS contract.

(d) If the contract is revoked for cause, the prepaid fees for the contract year or portion thereof, shall not be refunded.

(2) If the Department of Highways or its contractor determines that a tourist activity does not comply with the requirements of this administrative regulation, the Department of Highways' contractor shall notify the tourist activity in writing of the violations.

(3) If the tourist activity fails to comply with the requirements of this administrative regulation within fifteen (15) days after receiving the notification, the Department of Highways' contractor shall take immediate action to cancel the contract and remove, replace, or cover the TODS.

Section 16. Permits. The Department of Highways' contractor shall apply for an encroachment permit pursuant to 603 KAR 5:150 for each new information panel proposed to be erected or removed from the state-owned right-of-way.

Section 17. Appeal of the Department of Highways Action. (1) Any business or person aggrieved by the action taken by the Department of Highways or its contractor in administering this administrative regulation may request a formal hearing before the Commissioner of the Department of Highways.

(2) The request for the formal hearing shall:

(a) Be filed in writing with the Commissioner of the Department of Highways, 200 Metro [Traffic, 601-High] Street, Frankfort, Kentucky 40622; and

(b) Set forth the nature of the complaint and the grounds for the appeal.

(3) Upon request of a request for a hearing, the general counsel of the Transportation Cabinet shall assign the matter to a hearing examiner.

(4) The hearing and subsequent procedures shall be conducted in accordance with the provisions of KRS Chapter 13B.

Section 18. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Highway Tourist Oriented Directional Signing (TODS)" form prepared by the Kentucky Logos, Inc., February 1997 edition;

(b) "Highway TODS Program Agreement" form prepared by the Kentucky Logos, Inc., February 1997 edition;

(c) The metric edition of "Standard Alphabets for Highway Signs" published by the U.S. Department of Transportation, 1968 edition; and


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Transportation Cabinet, Department of Highways, Division of Maintenance, Permits Branch, 200 Metro [Traffic, 601-High] Street, Mail code 3-9, [1-3], Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) The material in subsection (1)(a) and (b) of this section also may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Logos, Inc., Suite 6, State National Bank Building, 305 Ann Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The telephone number is 1-800-469-5846 or (502) 227-0820. The fax number is (502) 227-7286.


MARC WILLIAMS, Commissioner
MAXWELL C. BAILEY, Secretary
APPROVED BY AGENCY: May 18, 2004
FILED WITH LRC: May 24, 2004 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2004 at 10 a.m. at the Transportation Cabinet, Conference Room.
612, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five (5) workdays prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 2004. 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: Dana Fugazzi, Staff Attorney III, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Station W-620-01, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets forth the criteria to be followed in the erection and maintenance of tourist oriented directional signs (TODS) designed to inform motorists where travel related goods and services are available.

(b) The necessity of this administrative regulation: KRS 189.37 requires the Department of Highways to establish standards for the placement of signs within the right-of-way of a public road. The Transportation Cabinet has promulgated 603 KAR 5:050, which deals with all traffic control devices by incorporating the Manual on Uniform Traffic Control Devices by reference. The Manual on Uniform Traffic Control Devices allows for the erection of TODS to provide directional information for tourist activities offering goods and services that are of significant interest to the traveling public within certain parameters, but requires each jurisdiction to establish policies for those areas not covered in the manual.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes the specific criteria to be followed in erecting and maintaining TODS. The criteria included in this administrative regulation are consistent with the guidelines set forth in the Manual on Uniform Traffic Control Devices.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will provide directional information regarding business establishments offering goods and services of interest to the traveling public making access for citizens more efficient.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the definition of "contractor year" and establishes an April 1 deadline for a nonparticipating tourist activity to apply to have its sign displayed at the beginning of the next contracting year.

(b) The necessity of the amendment to this administrative regulation: It is necessary to promulgate an amendment to this administrative regulation in order to establish the same contract years for the bumping and billing process in the TODS program and the logo program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation amends the TODS program contract dates so that it coincides with the logo program contract dates.

(d) How the amendment will assist in the effective administration of the statutes: Continuity in contract years will assist in the billing and bumping process for the cabinet and for contractors involved in the TODS and logo programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all business establishments offering goods and services in the interest of the traveling public.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: The amendment will have a positive impact by establishing the same contract years for the TODS program and the logo program, which will streamline the process and result in the ease of administration of both programs.

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

(a) Initially: No known cost.

(b) On a continuing basis: There is on going cost related to administration of the program within the cabinet and enforcement of the regulation. These amendments should not increase the current cost for these programs.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Road funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The cabinet has not increased fees and does not anticipate a need for increased funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No.

(9) TIERING: Is tiering applied?: Tiering is not applied because all businesses affected by this regulation are treated the same.

EDUCATION CABINET
Kentucky Board of Education
Department of Education

703 KAR 5:040, Statewide Assessment and Accountability Program; relating accountability [index] to A1 schools and A2-A6 programs [school-classification(A1-A6)].

RELATES TO: KRS 158.6451, 158.6453, 158.6455
STATUTORY AUTHORITY: KRS 158.6455
NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455
requires the Kentucky Board of Education to create and implement a statewide assessment program to ensure [school] accountability for student achievement of the goals set forth in KRS 158.645 and 158.6451. The purpose of this administrative regulation is to establish how data from A1 schools, and A2, A3, A4, A5, and A6 programs will be included in school district or state accountability [clarify the characteristics of A1-A6 schools and to require schools displaying these characteristics to report the appropriate classification for school accountability purposes].

Section 1. Assignment of Accountability Indices and School Classifications. (1) Accountability indices, school classifications, and related statistics for both the state and federal accountability dimensions as established in 703 KAR 5:020 shall be calculated for those schools classified as A1 schools, and for A2, A3, A6 programs if they are final programs of placement.

(2) A final program of placement shall include an A3, A5, or A6 program that enrolls at least ten (10) students in each grade in which NCLB assessments are administered and at least sixty (60) students in these grades combined, in which a student is placed for the purpose of completing the student's elementary program (primary through grade 5), middle school program (grades 6-8), or high school program (grades 9-12), and whose district requests the program be a final program of placement. Programs enrolling students that may be expected to transition back to an A1 school shall not be considered a final program of placement.

Section 2. School and District Accountability. (1) A student enrolled in an A1 school shall be counted at the membership of the A1 school and shall be attributed to the A1 school for accountability purposes as specified in 703 KAR 5:020. This shall include students who have been enrolled in an A1 school by any authority including
state agency children.

(2) A student enrolled in an A1 school and attending an A2 program shall be counted in the membership of the A1 school and shall be attributed to the A1 school for accountability purposes as specified in 703 KAR 5:120.

(3) A student enrolled in an A4 program shall not participate in the state-required assessment program and no student performance data shall be generated for the state accountability system from an A4 program.

(4) Notwithstanding any other administrative regulatory provision, individual student data resulting from the administration of state-required assessments to students enrolled in A3, A5, or A6 programs shall be assigned to A1 schools, districts or the state for accountability index purposes as follows:

(a) If an A1 school places one of its students in an A3, A5, or A6 program or if the placement is the result of local school district policies or procedures, the assessment data for that student shall be attributed to the sending A1 school and district. If the placement is an A3, A5, or A6 final program of placement, for accountability calculation purposes, the assessment data shall be attributed to the sending A1 school and district, as well as the A3, A5, or A6 final program of placement and the district in which the final program of placement is housed.

(b) If a student is placed in an A3, A5, or A6 program by a court, a governmental agency other than a Kentucky public school or Kentucky school district, an A1 school other than the student’s home A1 school, or self-placed (and accepted by the program as meeting the criteria for the program), and the student has been enrolled in a single A1 school or district for a full academic year prior to the placement in the A3, A5, or A6 program, the student’s data shall be attributed to the A1 school or district where the student was enrolled for the full academic year consistent with 703 KAR 5:150.

Section 3. State Accountability. (1) Student data from A3, A5, and A6 programs that have not been attributed to an A3, A5, or A6 final program of placement or have not been attributed to an A1 school or district shall be aggregated into a state level accountability report resulting in state and federal accountability.

(2) The Commissioner of Education shall appoint a committee of persons consisting of the Kentucky Department of Education, local school districts in which A3, A5, and A6 programs are located, and other state agencies affecting the delivery of services in A3, A5, and A6 programs for purposes of reviewing the performance of these programs in the aggregate and, if appropriate, with disaggregations of the data. Based on this review, this report shall be submitted to the Commissioner who shall then report to the Board of Education which four (4) months of the annual release of state assessment and accountability data. This report shall include findings on quality of educational and other services, adequacy of academic performance, growth, nonacademic growth, changes in population served by these programs, and recommended actions needed to improve conditions in and performance of these programs.

Section 4. Accountability for Student Nonacademic Data. (1) Nonacademic data collection procedures, including collection and verification procedures, shall apply to all schools classified as A1 and all programs classified as A2, A3, A4, A5, or A6. Any nonacademic data collected from A4 programs shall not be included in any accountability calculations for any A1 school, A3, A5, or A6 final programs of placement, or local school district.

(2) If a local board of education issues a high school diploma or a certificate under 704 KAR 3:305 to students in an A3, A5, or A6 program, the program staff shall monitor graduates to determine the status of the student for purposes of reporting transition to adult life data and shall indicate the A1 sending school to which the graduate data should be attributed for accountability purposes. However, if an accountability index and a school classification can be applied to the A3, A5, or A6 final program of placement as specified in this administrative regulation, the graduation and successful transition to adult life data shall be applied to the A3, A5, or A6 final program of placement and the district in which the final program of placement is housed.

(3) If a student is placed in a final program of placement by an

A1 school or a local district, the transition to adult life data shall be attributed for accountability index calculation purposes to the sending A1 school and district, as well as the A3, A5, or A6 final program of placement and the district in which the final program of placement is housed.

Section 5. Student Placement. (1) A student shall not be placed in an A3, A5, or A6 program by an A1 school or local district beyond the highest grade served by the sending A1 school. If a student placed in an A3, A5, or A6 program by an A1 school is promoted to a grade higher than is served by the sending A1 school, the student shall be entered into an appropriate A1 school and educationally sound procedures shall be used to determine the most appropriate means of delivering educational services to the student. This may result in the student attending an A3, A5, or A6 program, but the new and appropriate A1 school shall be considered responsible for the placement.

(2) Except for students placed in an A3, A5, or A6 program by a court, a governmental agency other than a Kentucky public school or Kentucky school district, an A1 school other than the student’s home A1 school, or self-placed (and accepted by the program as meeting the criteria for the program), a district shall not enter a newly enrolled student directly into an A3, A5, or A6 program, but shall enter the student into an appropriate A1 school and educationally sound procedures shall be used to determine the most appropriate means of delivering educational services to the student. This may mean sending the student to an A3, A5, or A6 program, but the appropriate A1 school shall be considered responsible for the placement.

(3) A district may place a student considered a danger to self or others directly into a placement other than an A1 school provided formal documentation is present. The formal documentation shall address strategies for transitioning the student into a regular A1 school or provide clear justification as to why such transition should not occur. For accountability purposes, the student’s data shall be attributed to the district that made the assignment.

Section 6. Rewards and Assistance for A2, A3, A4, A5, and A6 Programs. (1) Except for the A3, A5, and A6 final programs of placement for which accountability indices and school classifications can be calculated as specified in Section 1 of this administrative regulation, for purposes of rewards or recognition and assistance resulting from the implementation of the accountability system staff of the A2, A3, A4, A5, and A6 programs shall be attached to the central office and viewed as providing a service to the total district.

(2) If a district receives rewards or recognition under the accountability program, A2-A6 programs located within the district that are not assigned their own school classification shall also receive rewards or recognition.

(3) If under the provisions of 703 KAR 5:130 assistance is required for the district central office, this assistance shall also apply to the A2, A3, A4, A5, or A6 programs operated by the district that are not assigned their own school classification.

(4) For purposes of rewards or recognition, an A2, A3, A4, A5, or A6 program that is not assigned its own school classification and is a program serving multiple public school districts shall be eligible for rewards or recognition if more than ten (10) percent of the program’s total aggregate membership for the biennium at the accountability grades is generated from districts which have qualified for rewards or recognition. The percent of students shall be calculated from student enrollment on the first day of the district’s grade-appropriate testing windows. The amount of any reward money shall be proportionate to this percent. The principal or head administrator of the A2, A3, A4, A5, or A6 program shall decide how any rewards received shall be used for school purposes.

(5) An A2, A3, A4, A5, or A6 program that is not assigned its own school classification, but subject to assistance if more than fifty (50) percent of the aggregate membership of the program for the biennium at the accountability grades is generated from districts being required to receive assistance. The percent of students shall be calculated from student enrollment on the first day of the district’s grade-appropriate testing windows. [Definitions. (1) An “A1” school means a school under administrative control of a principal or head teacher and eligible to establish a school-based decision-making
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council. An A1 school is not a program operated by or as a part of another school.
(2) An "A2" school means a district-operated, totally vocational-technical school, where the membership is counted in other schools.
(3) An "A3" school means a district-operated, totally special education school.
(4) An "A4" school means a district-operated, totally preschool program (e.g., Headstart, Kentucky Education Reform Act (KERA) Preschool, or Parent And Child Education (PACE)).
(5) An "A5" school means an alternative school which is a district-operated and district-controlled facility with no defined attendance boundaries, that is designed to provide services to at-risk populations with unique needs. Its population composition and characteristics change frequently and are controlled by the local school district; student enrollment policies and procedures (i.e., the local district personnel have input with regard to the identification of students receiving services provided by A5 school as opposed to unconditionally accepting court ordered placements). Students enrolled in A5 schools typically include:
(a) Actual dropping out from an alternate educational environment.
(b) Potential or probable dropouts.
(c) Drug abusers.
(d) Physically abused students.
(e) Disciplinary problems students.
(f) Nontraditional students (e.g., students who have to work during the school day); or
(g) Students needing treatment (e.g., emotional or psychological).
(6) An "A6" school means a district-operated instructional program in a nondistrict-operated institution or school.
(7) An "A7" school means a school which is classified as A2, A3, A4, A5, or A6.

Section 2. Accountability indices and related statistics shall be calculated only for those schools classified as A1 schools.

Section 3. If a school district issues a high school diploma or a certificate under KAR 3:305 to students in an A2 to A6 school, the school shall keep a total of the status of the students for purposes of reporting transition to adult life, and shall indicate the A1 sending school to which the graduate does not belong.

Section 4. Nonacademic data collection procedures, including collection and verification procedures, shall apply to all schools classified as A1 through A6.

Section 5. (1) For purposes of rewards and assistance resulting from the implementation of the accountability system, staff of the A2, A3, A4, A5, and A6 programs shall be attached to the central office and viewed as providing a service to the school district.
(2) If the Kentucky Board of Education implements a district accountability program, and if the district receives rewards under the accountability program, A2 to A6 schools located within the district shall also receive rewards. If a district accountability program is not implemented, A2 to A6 schools shall receive rewards in the district where they are located. They will not receive rewards if the accountability program has been in place.
(3) If the Kentucky Board of Education implements a district accountability program, and if assistance is required for the central office, this assistance shall also apply to the A2 to A6 schools in the district.
(4) If the program is not implemented, assistance shall be given to the A2 to A6 schools if assistance would have been given to the district had a district accountability program been in place.

Section 6. (1) For purposes of rewards, an A2 to A6 school serving multiple public school districts shall be eligible for rewards if more than ten (10) percent of its total aggregate membership is generated from a school which has qualified (or would have if a district accountability program had been in place) for rewards. The amount of the reward shall be proportionate to this percent. The A2 to A6 school shall not formally participate in the decision on the disposition of the reward unless the school generates more than fifty (50) percent of its aggregate membership from the district qualifying for rewards, in which case the school principal or the head teacher shall contribute to the decision-making process.
(2) An A2 to A6 school shall be subject to assistance resulting from the performance of a district's students if more than fifty (50) percent of the aggregate membership of the school is generated from the district being required to receive assistance.

Section 7. If there is no statutory or regulatory district accountability program to implement Sections 5 and 6 of this administrative regulation, the Kentucky Department of Education shall calculate a district performance judgment on the aggregate district data for the purpose of applying the performance judgment to any A2 to A6 school that is operated by 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).

GENE WILHOIT, Commissioner HELIUM MOUNTJOY, Chairperson
APPROVED BY AGENCY: June 7, 2004
FILED WITH LRC: June 7, 2004 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on July 30, 2004, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend.
No notice 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. Written comments shall be accepted until August 2, 2004. 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: Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Agency Contact Person: Kevin M. Noland
(1) Provide a brief summary of:
(a) What this administrative regulation does: The purpose of this administrative regulation is to establish how data from A1 schools, A2 to A6 schools, and A6 programs will be included in school, district or state accountability.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide direction on how student performance data from the statewide assessment program will be attributed to educational agencies for accountability.
(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specific accountability provisions for the state's assessment and accountability programs as required by KRS 156.6453, KRS 156.6455, and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes.
This regulation provides the specifics for including students attending A1 schools and A3, A5, and A6 programs in the statewide assessment and accountability programs as required by KRS 156.6453, KRS 156.6455, and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative
regulation: This amendment provides specifics on how Kentucky is to include all students in the state assessment and accountability programs as required by the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to specify how students will now be included in Kentucky’s assessment and accountability programs.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying how students attending A1 schools and A3, A5, and A6 programs will be included in the state assessment and accountability programs.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide to schools specific for the inclusion of all students in the statewide assessment and accountability programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: local school districts and public elementary and secondary schools.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or, by the change if it is an amendment: School staff will be included in the specific for including students enrolled in A1 schools and A3, A5, and A6 programs in the state-required assessment and accountability programs.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional cost.
(b) On a continuing basis: No additional cost.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional cost.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fee.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health
Education and Training
(Amendment)

803 KAR 2:308. Personal protective equipment.

RELATES TO: KRS Chapter 338 [338.061—338.061], 29 C.F.R.
Part 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29
C.F.R. Part 1910

NECESSITY, FUNCTION, AND CONFORMITY: EO 2003-64,
effective December 16, 2003, created the Environmental and Public Protection Cabinet, abolished the Labor Cabinet, and transferred the Department of Workplace Standards, and transferred all duties, functions, responsibilities, records, equipment, staff, and support budgets to the Department of Labor, KRS 338.051(3) authorizes [and 338.061 authorize] the Kentucky Occupational Safety and Health Standards Board to adopt [and promulgate] occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may incorporate by reference established federal standards and national consensus standards [as also given to the-board]. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions. (1) "Employee" is defined in KRS 338.015.
(2) "Employer" is defined in KRS 338.015.
(3) "Established federal standard" is defined in KRS 338.015.
(4) "National consensus standard" is defined in KRS 338.015.
(5) "Standard" is defined in KRS 338.015.
(7) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky
(3) "Employee" means any person employed except those employees excluded in KRS 338.021.
(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.
(5) "Established federal standard" means any occupational safety and health standard established by any agency of the United States Government.
(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-promulgating organization.
(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".
(8) "U.S.-Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Labor Department.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) 29 C.F.R. Part 1910.132-138, Subpart I [R], "Personal Protective Equipment", revised as of July 1, 2002 [1997], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Kentucky Department of Labor [and copied at Kentucky Labor Cabinet], Division of Education and Training, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Office of the Federal Register, National Archives and Records Services, General Services Administration. [Office hours are 8 a.m. – 4:30 p.m. (ET), Monday through Friday.]

PHILIP ANDERSON, Chairman
APPROVED BY AGENCY: May 25, 2004
FILED WITH LRC: June 15, 2004 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2004 at 10 a.m. (ET) at the Kentucky Department of Labor, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regula-
tion. 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. Written comments shall be accepted until August 2, 2004. 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: David Stumbo, Health Standards Specialist, Kentucky Department of Labor, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, fax (502) 564-1892.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Stumbo

(1) Provide a brief summary of:

(a) The administrative regulation does: This ordinary administrative regulation, in Section 2, incorporates by reference the December 31, 2003, Federal Register, Volume 68, Number 250, which revokes 29 Code of Federal Regulations (C.F.R.) Part 1910.139, "Respiratory Protection for M. Tuberculosis." Additionally, this ordinary administrative regulation updates the incorporation by reference of the Code of Federal Regulations to July 1, 2003, and updates the administrative regulation to meet KRS Chapter 13A.

(b) The necessity of this administrative regulation: The Kentucky Occupational Safety and Health Program is mandated by 29 C.F.R. Part 1910.139 to be at least as effective as the federal Occupational Safety and Health Administration. As published in the December 31, 2003, Federal Register, Volume 61, Number 250, page 75780, the Occupational Safety and Health Administration (OSHA) revoked 29 C.F.R. Part 1910.139, "Respiratory Protection for M. Tuberculosis." This standard formerly provided respiratory protection for employees against inhalation of airborne M. Tuberculosis. Due to this revocation, employee respiratory protection against M. Tuberculosis is now regulated under 29 C.F.R. Part 1910.134, "Respiratory Protection." This change by OSHA provides additional protections of employee health not found under 29 C.F.R. Part 1910.139, "Respiratory Protection for M. Tuberculosis." Consequently, the Kentucky Occupational Safety and Health Program must implement this change by June 30, 2004, in order to keep the state program as equally effective as the federal program and satisfy the requirements of 29 C.F.R. Part 1953.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This ordinary administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This ordinary administrative regulation will provide enhanced protection of employee health and meet the mandate required by 29 C.F.R. 1953.

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

(a) How the amendment will change this existing administrative regulation: This amendment, in Section 2, incorporates by reference the December 31, 2003, Federal Register, Volume 68, Number 250, which revokes 29 C.F.R. 1910.139, "Respiratory Protection for M. Tuberculosis." Additionally, this ordinary administrative regulation updates the incorporation by reference of the Code of Federal Regulations to July 1, 2003, and updates the administrative regulation to meet KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: It is necessary to implement this amendment in order to comply with 29 C.F.R. 1953. 29 C.F.R. 1953 requires state adoption of any federal program change which would have an adverse impact on the "at least effective" status of the state program. The federal mandate requires state action within 6 months of the revocation of 29 C.F.R. 1910.139, "Respiratory Protection for M. Tuberculosis," as published in the December 31, 2003 Federal Register, Volume 68, Number 250.

(c) How the amendment conforms to the content of the authorizing statutes: This ordinary administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will enhance worker health throughout Kentucky. Improved protection of worker health will result from promulgation of this amendment because it will reduce the complexity of the regulatory environment regarding respiratory protection. Hereafter, affected employees and employers need only comply with 29 C.F.R. 1910.134, "Respiratory Protection," whereas previously it was necessary for affected parties to determine which of the 2 regulations, 29 C.F.R. 1910.139, "Respiratory Protection," or 29 C.F.R. 1910.139, "Respiratory Protection for M. Tuberculosis," should be followed. Affected parties also had to keep track of the differing requirements of the 2 standards. With this amendment, employees and employers will no longer need to determine which regulation to follow, nor keep track of their differing requirements. This simplification will result in increased compliance with 29 C.F.R. 1910.134, "Respiratory Protection," and increased protection of employee health.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: These amendments affect all private and public sector employers in the commonwealth engaged in general industry activities covered by KRS Chapter 338. Operations most directly affected are healthcare and correctional industries.

(c) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: As a result of this amendment, employee protection against M. Tuberculosis will be enhanced. Additional provisions of 29 C.F.R. 1910.134, "Respiratory Protection" will be afforded to all affected employees, reducing the likelihood of their contracting tuberculosis, a life-threatening disease. The general public will also benefit from this amendment since it acts to control the spread of a communicable disease.

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

(a) Initially: The "Summary of the Final Economic Analysis and Regulatory Flexibility Certification" section of the December 31, 2003, Federal Register, Volume 68, Number 250, states: "...the total (national) annualized estimated costs for this action are $11.7 million," for "an estimate of 638,000 affected employees."

(b) On a continuing basis: The "Summary of the Final Economic Analysis and Regulatory Flexibility Certification" section of the December 31, 2003, Federal Register, Volume 68, Number 250, on pages 75778-75779, states: "...the total (national) annualized estimated costs for this action are $11.7 million," for "an estimate of 638,000 affected employees."

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new; or by the change if it is an amendment: There is neither an increase in fees nor a need for increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This ordinary administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

TIERING: Is tiering applied? Tiering is not applied. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at facilities that pose higher risks to worker safety and health or at sites where the Kentucky Occupational Safety and Health Program has received referrals, worker complaints, or where a workplace fatality or an accident resulting in the hospitalization of 3 or more employees has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pub.L. 91-598, the Occupational Safety and Health Act of 1970, Section 18(c)(2).


4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This ordinary administrative regulation will not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This ordinary administrative regulation will not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

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 ordinary regulation affects any unit, part, or division of local government employees engaged in general industry work.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation. This ordinary administrative regulation affects the safety and health of all local government employees engaged in general industry work. Consequently, this ordinary administrative regulation may relate to any aspect or service of local government, but those agencies having employees who must use respiratory protection against M. Tuberculosis will be directly affected. Operations which may be directly affected include healthcare and correctional facilities.

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

Revenues (+/-):

Expenditures (+/-):

Other explanation: The "Summary of the Final Economic Analysis and Regulatory Flexibility Certification" section of the December 31, 2003, Federal Register, Volume 68, Number 250, on pages 75778-75779, provides the following data: "...the total (national) annualized estimated costs for this action are $11.7 million," for "an estimate of 638,000 affected employees."
FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Division of Tax Policy
(Rulemaker)


RELATES TO: KRS 139.210, 139.230
STATUTORY AUTHORITY: KRS 13A.310, 131.130, 139.710
NECESSITY, FUNCTION, AND CONFORMITY: To repeal those
administrative regulations which are contrary to the Streamlined
Sales Tax Act.

Section 1. The following administrative regulations are hereby
repealed:
(1) 103 KAR 25:081, Sales tax collection; bracket system; and
(2) 103 KAR 25:091, Use tax collection; bracket system.

MARK TREESH, Commissioner
APPROVED BY AGENCY: June 14, 2004
FILED WITH LRC: June 14, 2004 at 1 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public
hearing on this administrative regulation shall be held on July 21,
2004, at 10 a.m., local prevailing time, at the 200 Fair Oaks Lane,
Frankfort, Kentucky 40601. Individuals interested in attending this
hearing shall notify this agency in writing by July 14, 2004, of their
intention to attend. If no notification of intent to attend the hearing is
received by that date, the hearing may be canceled. The hearing is
open to the public. Any person who wishes to be heard will be given
an opportunity to comment on the proposed administrative
regulation. A transcript of the public hearing will not be made unless a
written request for a transcript is made. If you do not wish to be
heard at the public hearing, you may submit written comments on
the proposed administrative regulation. Written comments shall be
accepted until the close of business on August 2, 2004. 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: Edward A. Mattingly, Tax Consultant,
Department of Revenue, 200 Fair Oaks Lane, Frankfort, Kentucky
40601, phone (502) 564-6843, fax (502) 564-9565.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Edward A. Mattingly

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation
rescinds those regulations listed within this repealer.
(b) The necessity of this administrative regulation: This regulation
is necessary in order to rescind those regulations which are
contrary to the new and amended statutes adopted in HB 293, The
Streamlined Sales Tax Act, of the 2003 General Assembly.
(c) How this administrative regulation conforms to the content of
the authorizing statutes: This administrative regulation conforms to
the content of the authorizing statutes by rescinding the regulations
which are no longer applicable. These regulations are no longer
applicable because they are superseded by their related statutes
which are amended as of July 1, 2004.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This administra-
tive regulation is necessary to prevent conflicting regulations relating
to the current sales and use tax statutes.
(2) If this is an amendment to an existing administrative regu-
lation, provide a brief summary of:
(a) How the amendment will change this existing administrative:
(b) The necessity of the amendment to this administrative regu-
lation:
(c) How the amendment conforms to the content of the author-
izing statutes:
(d) How the amendment will assist in the effective administration
of the statutes:
(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this administra-
tive regulation: All Kentucky sales and use taxpayers will be affec-
ted to some extent by the Streamlined Sales Tax Act taking effect July
1, 2004. This repealer is proposed to comply with these legislative
changes regarding the bracket system used to calculate the appro-
priate amount of tax.
(4) Provide an assessment of how the above group or groups
will be impacted by either the implementation of this administration,
if new, or by the change if it is an amendment: The above groups
will be affected when charging sales tax or remitting use tax by
rounding the tax to the nearest cent instead of using the "bracket
system."
(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: There will be minimal costs to distribute any notifica-
tion of the regulatory guidelines to the various industries.
(b) On a continuing basis: There will be no added continual costs to the existing administrative responsibilities of the Department of Revenue in assisting taxpayers with their sales and use tax responsibilities.
(6) What is the source and funding to be used for the imple-
mentation and enforcement of this administrative regulation: The
Department of Revenue will use normal operating funds.
(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regula-
tion: No increase in fees or funding is necessary to implement this
administrative regulation.
(8) State whether or not this administrative regulation estab-
lishes any fees or directly or indirectly increases any fees: This ad-
mnistrative regulation does not directly or indirectly establish any
new fees, nor does it increase any existing fees.
(9) TIERING: Is tiering applied? Tiering is not necessary. Tiering is
unnecessary with this administrative regulation since the repeal is
to eliminate conflict between the statutes and the regulations. All
taxpayers are affected equally to the extent the tax changes apply to
specific businesses.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Division of Tax Policy
(Rulemaker)


RELATES TO: KRS 139.050, 139.140, 139.470, 139.472, 139.480
STATUTORY AUTHORITY: KRS 13A.310, 131.130, 139.710
NECESSITY, FUNCTION, AND CONFORMITY: To repeal those
administrative regulations which are either contrary to the Stream-
lined Sales Tax Act or redundant to the current sales and use tax
statutes.

Section 1. The following administrative regulations are hereby
repealed:
(1) 103 KAR 30:020, Prescription medicines, prosthetic devices
and physical aids;
(2) 103 KAR 30:040, Federal taxes;
(3) 103 KAR 30:050, Finance and carrying charges;
(4) 103 KAR 30:070, Freight and delivery charges; and
(5) 103 KAR 30:100, Artificial insemination of livestock.

MARK TREESH, Commissioner
APPROVED BY AGENCY: June 14, 2004
FILED WITH LRC: June 14, 2004 at 1 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public
hearing on this administrative regulation shall be held on July 23,
2004, at 10 a.m., local prevailing time, at the 200 Fair Oaks Lane,
Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by July 16, 2004, 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. Written comments shall be accepted until the close of business on August 2, 2004. 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: Edward A. Mattingly, Tax Consultant, Department of Revenue, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-6843, fax (502) 564-9565.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Edward A. Mattingly

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation rescinds those regulations listed within this repealer.
(b) The necessity of this administrative regulation: This regulation is necessary in order to rescind those regulations which are contrary or redundant to the new and amended statutes adopted in HB 293, The Streamlined Sales Tax Act, of the 2003 General Assembly.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by rescinding the regulations which are no longer necessary. These regulations are no longer required because they are contrary to or superseded by the new and amended sales tax statutes as of July 1, 2004.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to prevent conflicting and repetitive regulations relating to the current sales and use tax statutes.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative:
(b) The necessity of the amendment to this administrative regulation:
(c) How the amendment conforms to the content of the authorizing statutes:
(d) How the amendment will assist in the effective administration of the statutes:
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky sales and use taxpayers will be affected to some extent by the Streamlined Sales Tax Act taking effect July 1, 2004. This repealer is proposed to comply with these legislative changes.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative, if new, or by the change if it is an amendment: The above groups will be impacted when charged sales and use tax on "delivery charges" not previously taxed, tax not being charged on a "prosthetic device" purchased by a healthcare provider, or tax not charged on a "drug" administered by a physician.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be minimal costs to distribute any notification of the regulatory guidelines to the various industries.
(b) On a continuing basis: There will be no added continual costs to the existing administrative responsibilities of the Department of Revenue in assisting taxpayers with their sales and use tax responsibilities.
(6) What is the source and funding to be used for the implementation and enforcement of this administrative regulation: The Department of Revenue will use normal operating funds.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees or funding is necessary to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly or indirectly establish any new fees, nor does it increase any existing fees.
(9) TIERING: Is tiering applied? Tiering is not necessary. Tiering is unnecessary with this administrative regulation since the repeal is to eliminate redundancy or conflict between the statutes and the regulations. All taxpayers are affected equally to the extent the tax changes apply to specific businesses.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Division of Tax Policy
(Repealer)


RELATES TO: KRS 139.350
STATUTORY AUTHORITY: KRS 13A.310, 131.130, 139.710
NECESSITY, FUNCTION, AND CONFORMITY: To repeal an administrative regulation which is contrary and redundant to the new sales and use tax statutes, as amended by the Streamlined Sales Tax Agreement.

Section 1. 103 KAR 31:040, Repossessions and bad debts, is hereby repealed.

MARK TREESCH, Commissioner
APPROVED BY AGENCY: June 14, 2004
FILED WITH LRC: June 14, 2004 at 1 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2004, at 10 a.m., local prevailing time, at the 200 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by July 15, 2004, 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. Written comments shall be accepted until the close of business on August 2, 2004. 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: Edward A. Mattingly, Tax Consultant, Department of Revenue, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-6843, fax (502) 564-9565.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Edward A. Mattingly

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation rescinds those regulations listed within this repealer.
(b) The necessity of this administrative regulation: This regulation is necessary in order to rescind those regulations which are contrary or redundant to the new and amended statutes adopted in HB 293, The Streamlined Sales Tax Act, of the 2003 General Assembly.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by rescinding the regulations which are no longer necessary. These regulations are no longer required because they are contrary to or superseded by the new and amended sales tax statutes as of July 1, 2004.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to prevent conflicting and repetitive regulations relating to the current sales and use tax statutes.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative:
(b) The necessity of the amendment to this administrative regulation:
(c) How the amendment conforms to the content of the authorizing statutes:
(d) How the amendment will assist in the effective administration of the statutes:
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky sales and use taxpayers will be affected to some extent by the Streamlined Sales Tax Act taking effect July 1, 2004. This repealer is proposed to comply with these legislative changes.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative, if new, or by the change if it is an amendment: The above groups will be impacted when charged sales and use tax on "delivery charges" not previously taxed, tax not being charged on a "prosthetic device" purchased by a healthcare provider, or tax not charged on a "drug" administered by a physician.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be minimal costs to distribute any notification of the regulatory guidelines to the various industries.
(b) On a continuing basis: There will be no added continual costs to the existing administrative responsibilities of the Department of Revenue in assisting taxpayers with their sales and use tax responsibilities.
(6) What is the source and funding to be used for the implementation and enforcement of this administrative regulation: The Department of Revenue will use normal operating funds.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees or funding is necessary to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly or indirectly establish any new fees, nor does it increase any existing fees.
(9) TIERING: Is tiering applied? Tiering is not necessary. Tiering is unnecessary with this administrative regulation since the repeal is to eliminate redundancy or conflict between the statutes and the regulations. All taxpayers are affected equally to the extent the tax changes apply to specific businesses.
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Section 2. An alternative construction delivery method may be deemed appropriate for competitive negotiation pursuant to KRS 45A.085 upon issuance of a written determination by the chief purchasing officer that due to the nature, detail or circumstances of a project, it is not appropriate to solicit competitive bids using the conventional design-bid-build delivery method and an alternative construction delivery method is justified. The determination shall include a description of facts justifying use of an alternative construction delivery method, and shall state whether the method to be used shall be one of "construction management-at-risk," "design-build," or "construction manager-agency."

Section 3. (1) If it has been determined that it is not appropriate to solicit competitive bids using the conventional design-bid-build delivery method, action to deliver a capital construction project using a specific alternative construction delivery method shall commence by solicitation of written proposals in accordance with KRS 45A.085(2) and 200 KAR 5:307. A copy of the request for proposals shall be transmitted to the Capital Projects and Bond Oversight Committee staff.

(2) The criteria for determining the utilization of a specific alternative delivery method for a particular project shall include, but shall not be limited to, such factors as the dollar scope of the project, the anticipated schedule of the project, and the overall complexity of the project. The Finance and Administration Cabinet, in conjunction with the user agency, shall determine the appropriate project delivery method prior to the development of preliminary specifications and the issuance of any project solicitations.

(3) A solicitation of proposals for competitive negotiation shall state that:

(a) That the purchasing agency proposes to enter into competitive negotiation with responsible offerors;
(b) The date, hour, and place that written proposals shall be received;
(c) The type of alternative delivery method involved and the associated requirements;
(d) A description of the services sought and the procurement procedures to be followed;
(e) Specifications, or the location where specifications may be obtained;
(f) The specific qualitative and pricing evaluative factors, with associated scoring values or weights, to be considered in determining the proposal most advantageous to the Commonwealth, with qualifications and price to be weighted at not less than twenty-five (25) percent and fifty (50) percent respectively.
(g) The level or quantity of information required from each offeror to allow for equitable evaluation;
(h) The proposed method of award of contract;
(i) Other information as, in the opinion of the purchasing officer, may be desirable or necessary for reasonably inform potential offerors of technical, performance, and any other data and requirements of the procurement;
(j) The existence of a funding limitation, if determined to be in the best interest of the Commonwealth;
(k) The amount of the funding limit, if it is determined by the Director of the Division of Contracting and Administration that disclosure of the amount of the funding limit will promote competition and will be in the best interest of the Commonwealth;
(l) The level or amount of stipends, if any, to be provided and to whom, contingent upon funding limitations. Stipends shall only be provided if adequate funds are available over and above the required project costs.

(4) If a funding limit has been established, proposals that exceed the funding limit may be rejected.

Section 4. (1) Procedures for the manner in which proposals will be evaluated shall be established by the purchasing officer for each procurement and shall be set forth in the request for proposals. The purchasing officer may request offerors to submit written clarification or explanation of their proposals, and the proposal of any offeror who fails to respond or to request an extension of time to respond within the time requested may be rejected.

(2) Proposals shall be evaluated based upon factors stated in the request for proposals. Numerical or other appropriate rating
systems may be used. All evaluation documentation, scoring, and summary conclusions shall be in writing and made a part of the file records for the procurement.

Section 5. The Director of the Division of Contracting and Administration shall appoint an evaluation committee of scorers and nonscoring (technical) members with membership comprised of appropriate personnel from the Finance and Administration Cabinet and the user agency for which the project is being constructed. The Director of the Division of Contracting and Administration shall determine, in writing, the number of committee members based upon the financial scope and technical complexity of the subject project, with no less than four (4), nor more than seven (7) scoring members.

Section 6. Interim preproposal meetings shall be conducted with potential offerors to allow for questions and clarifications regarding project plans and specifications provided as a part of the request for proposals. A written confirmation of all information presented in these meetings shall become an official addendum to the procurement documents and provided to all potential offerors. The number of preproposal meetings shall be determined by the Director of the Division of Contracting and Administration and stated in the request for proposals.

Section 7. All written proposals received by the procurement agency in response to a solicitation shall be kept secure and unopened by the purchasing officer until the date and hour established for opening the proposals. Proposals not clearly marked as such may be opened for identification purposes, and shall be appropriately identified with reference to the particular procurement and resealed until the time for opening proposals.

Section 8. At the close of the proposal submission deadline, all proposals received shall be opened by the purchasing officer. The purchasing officer shall examine each written proposal received for general conformity with the terms of the procurement. If, after examination of the written proposals initially submitted, it is determined, in writing, that no acceptable proposal has been submitted, all proposals may be rejected and new proposals may be solicited as provided in this administrative regulation on the basis of the same, or revised terms, or the procurement may be abandoned.

Section 9. If, after solicitation of proposals to enter into competitive negotiations, only one (1) proposal responsive to the solicitation is received, the purchasing officer may commence negotiations with the sole offeror and any resulting contract entered into with that offeror shall be deemed to have been competitively negotiated and awarded in accordance with KRS 45A.085 and this administrative regulation. The terms and conditions of the contract shall not in any material respect deviate in a manner detrimental to the purchasing agency from the terms and conditions specified in the solicitation for proposals.

Section 10. The purchasing officer shall hold separate any pricing information before forwarding all conforming proposals to the appropriate, designated evaluation committee for qualitative evaluation. Pricing information shall be kept separate and secure until it is combined with the evaluation committee aggregate qualitative scoring to achieve the final score for the procurement process as set forth in the request for proposals.

Section 11. Proposals shall not be subject to public inspection until the procurement process has been completed and a contract awarded to the highest scoring, responsible offeror submitting the proposal determined to be the most advantageous to the commonwealth, based upon the pricing and qualitative evaluation factors set forth in the solicitation.

Section 12. Discussions with offerors by any member of the evaluation committee shall be conducted in accordance with predetermined rules established by the purchasing officer. Any ex part communications between offerors and members shall be documented by each member with a written summary of all discussions setting forth both the dates and the general substance of the discussions. Verbatim records of the discussion shall not be required. The written summaries shall become part of the procurement file.

Section 13. An awarded contract utilizing an alternative project delivery method shall be submitted to the Government Contract Review Committee for review in accordance with KRS 45A.690 to 45A.725.

ROBERT B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: June 14, 2004
FILED WITH LRC: June 15, 2004 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on July 26, 2004, at 9 a.m. in Room 386 Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received July 19, 2004, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 2004. Send written notification of intent to hear at the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Angela Robinson, Assistant General Counsel, Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374, Capitol Annex Building, Frankfort, Kentucky 40601, (502) 564-6680, fax (502) 564-9879.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Marisa Neal, (502) 564-0983, fax (502) 564-2613
(1) Provide a brief summary of:
(a) What this administrative regulation does: This new administrative regulation promulgates procurement standards and procedures for alternative capital construction delivery methods to be utilized by the commonwealth.
(b) The necessity of this administrative regulation: The Secretary of the Finance and Administration Cabinet is directed by KRS 45A.180 to promulgate appropriate regulations addressing the procurement of alternative capital construction delivery methods to be utilized by the commonwealth.
(c) How this administrative regulation conforms to the content of the authorizing statute: In accordance with the specific requirements of KRS 45A.180, this administrative regulation promulgates standards for how the procurement of alternative construction delivery methods will be conducted for the delivery of capital construction projects.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This new administrative regulation clarifies the standards for how the Finance and Administration Cabinet shall procure alternative construction delivery methods, as envisioned by KRS 45A.180.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: N/A
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statute: N/A
(d) How the amendment will assist in the effective administration of the statute: N/A
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all state agencies that administer capital construction programs and vendors seeking state contracts other than under the traditional design/build delivery mode.
(4) Provide an assessment of how the above group or groups
will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This new regulation will impact the procurement and administration of design and construction contracts utilizing alternative construction delivery methods and will force the offering, under statutory and regulatory standards, of appropriate alternative methods based upon specific project needs.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: $0
(b) On a continuing basis: $0
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding necessary.
(d) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increases in fees of funding will be necessary.
(e) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied: The administrative regulation directly provides for tiering through minimum, but not uniform, standards for all alternative construction delivery projects and indirectly through the tailoring of specific construction projects to specific alternative delivery methods and the resulting expertise of various affected prospective vendors.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Repealer)

401 KAR 8:441. Repeal of 401 KAR 8:440.

RELATES TO: KRS 224.10-100, 224.10-110, 40 C.F.R. 141.40.

STATUTORY AUTHORITY: KRS 224.10-100(30), 224.10-110,
40 C.F.R. 141.40

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-
100(30) and 224.10-110 authorize the cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use. The U.S. Environmental Protection Agency promulgated a new federal regulation for unregulated contaminants. However, the U.S. EPA also implements the federal regulation for the states, and Kentucky no longer has primary jurisdiction for this federal program. This administrative regulation repeals Kentucky’s current administrative regulation on unregulated contaminants since it has no effect in Kentucky.

Section 1. 401 KAR 8:440, Special testing for unregulated inorganic and synthetic organic contaminants, is hereby repealed.

LAUJANA S. WILCHER, Secretary
APPROVED BY AGENCY: May 14, 2004
FILED WITH LRC: June 4, 2004 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2004 at 1 p.m. (Eastern time) in Conference Room D-15 in the Department of Surface Mining, 32 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 14, 2004, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you request a transcript, you may be required for it. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. PARKING NOTE: Persons interested in attending the public hearing, other than those with handicap parking plates or placards, are asked to park in the "upper" parking lot on Hudson Hollow, next to the Little Lamb Preschool behind the hedge, and not in the visitor parking lot or main parking lot.

CONTACT PERSON: Jeffrey W. Pratt, Director, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey W. Pratt, Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation repeals the current administrative regulation for unregulated contaminant monitoring, 401 KAR 8:440.
(b) The necessity of this administrative regulation: The U.S. Environmental Protection Agency amended its regulation on unregulated contaminant monitoring and now administers this program for states. Therefore, there is no need for Kentucky to have such an administrative regulation. The cabinet no longer has state primacy for this program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is part of a comprehensive program for regulation and purification of water for public and semipublic use.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Since Kentucky no longer administers the program for unregulated contaminant monitoring, it is repealing this administrative regulation so that systems will not be required by Kentucky to monitor for unregulated contaminants.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: Not applicable.
(b) The necessity of the amendment to this administrative regulation: Not applicable.
(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(3) If the amendment will assist in the effective administration of the statutes: Not applicable.

(4) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: No public water systems will be affected by the repeal of this administrative regulation. Some public water systems are subject to the federal regulation on unregulated contaminant monitoring.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There are no initial costs as a result of repealing this administrative regulation.
(b) On a continuing basis: There are no continuing costs as a result of repealing this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No monies are necessary.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering is not applicable because this administrative regulation merely repeals 401 KAR 8:440.

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FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no mandate to repeal the administrative regulation.
2. State compliance standards. Not applicable.
3. Minimum or uniform standards contained in the federal mandate. Not applicable.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? Not applicable.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will indirectly affect some public water systems, many of which are owned or controlled by local governments.
3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation. This administrative regulation relates to public water systems that provide drinking water to their customers. It repeals an existing administrative regulation that regulates monitoring for unregulated contaminants. That administrative regulation is no longer applicable since the U.S. EPA will administer this program in Kentucky, to those systems that are affected by this administrative regulation.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no anticipated effect on current revenues.

Expenditures (+/-): There is no anticipated effect on current expenditures.

Other explanation: None

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department Of Public Protection
Office Of Insurance
Division Of Health Insurance Policy And Managed Care
(New Administrative Regulation)

806 KAR 17:490. Hospice Benefit requirements.

RELATES TO: KRS 304.14-130, 304.32-160, 304.38-050
STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-250(8)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) provides that the Commissioner of Insurance may promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-250(8) requires all health benefit plans to cover hospice care at least equal to the Medicare benefit. EO 2003-064, filed December 23, 2003, created the Environmental and Public Protection Cabinet. EO 2004-031, filed January 8, 2004, abolished the Department of Insurance and transferred all its duties, functions, responsibilities, records, equipment, staff and support budgets to the Office of Insurance. This administrative regulation clarifies the requirement that a health benefit plan shall provide a hospice benefit at least equal to the Medicare hospice benefit.

Section 1. Definitions. (1) "Health benefit plan" is defined in KRS 304.17A-005.
(2) "Health savings account" is defined in 26 U.S.C. 223(d).
(3) "High deductible health plan" means a health benefit plan that qualifies as a high deductible health plan as defined in 26 U.S.C. 223(c)(2).
(4) "Hospice" means an entity defined in 42 C.F.R. 418.3 and approved by Medicare or licensed pursuant to KRS Chapter 216B.
(5) "Hospice benefit" means services described in 42 C.F.R. Part 418, Subpart F if provided by a hospice.

Section 2. Application of Deductible to a Hospice Benefit. A hospice benefit provided for a person covered under a high deductible health plan with a health savings account shall be subject to deductible amounts as established in the health benefit plan.

GLENN JENNINGS, Acting Executive Director
JAMES ADAMS, Commissioner
LA JUANA S. WILCHER, Secretary

APPROVED BY AGENCY: May 26, 2004
FILED WITH LRC: May 27, 2004 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2004, 9 a.m. at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 14, 2004, 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. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 2004.

CONTACT PERSON: Melea Kelch, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, phone (502) 564-6032, fax (502) 564-1456.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melea Kelch

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation clarifies the requirement found in KRS 304.17A-250(8) that all health benefit plans cover hospice care at least equal to the Medicare benefit.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify the intent and interpretation of KRS 304.17A-250(8) to allow Kentucky citizens to obtain high deductible health plans with health savings accounts.
(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 304.2-110 provides that the commissioner of insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation clarifies the requirement found in KRS 304.17A-250(8).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the effectuation of KRS 304.17A-250(8) by clarifying this statute and allowing insurers to offer a health benefit plan that qualifies as a high deductible health plan and allows an insured to establish a health saving account.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation? N/A
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administra-
tive regulation: This administrative regulation will affect all Kentucky health insurers, wishing to offer a high deductible health plan. Additionally, this regulation should benefit Kentucky citizens without health insurance by encouraging insurers to offer less costly high deductible health plans and by permitting Kentucky citizens to take advantage of federal tax benefits by contributing to a health savings account.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Both groups should feel a very positive impact. Because the language in the statute was unclear, insurers have not been able to offer high deductible health plans. Now, Insurers will have a new product to market and Kentucky citizens have a new choice of product in the insurance market with substantial tax benefits.

(5) Provide an estimate of how much it will cost to implement this regulation:
(a) Initially: No cost.
(b) On a continuing basis. There should be no cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? The budget of the Kentucky Office of Insurance.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees.

(9) TIERING: Is tiering applied? No, the requirement regarding hospice coverage will apply to all Kentucky Health Insurers who wish to offer high deductible health plans with health saving accounts.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department Of Public Protection
Office Of Insurance
Division Of Health Insurance Policy And Managed Care
(Repealer)


RELATES TO: KRS 13A.310, 304.17A-320, 304.17A-330
STATUTORY AUTHORITY: KRS 13A.310
NECESSITY, FUNCTION, AND CONFORMITY: KRS 13A.310 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be effective. This administrative regulation repeals 806 KAR 18:080, Association Uniform Data Collection, which is no longer required because the information collected under this administrative regulation is currently collected in accordance with KRS 304.17A-320 and 806 KAR 17:240. Data reporting requirements, 806 KAR 17:240 establishes the data elements and the format for submitting annual reports to the Office of Insurance. EO 2003-064, filed December 23, 2003, created the Environmental and Public Protection Cabinet. EO 2004-031, filed January 6, 2004, abolished the Department of Insurance and transferred all its “duties, functions, responsibilities, records, equipment, staff and support budgets” to the Office of Insurance.

Section 1. 806 KAR 18:080, Association Uniform Data Collection, is hereby repealed.

GLENN JENNINGS, Acting Executive Director
JAMES ADAMS, Commissioner
LAUJANA S. WILCHER, Secretary
APPROVED BY AGENCY: May 26, 2004
FILED WITH LRC: May 27, 2004 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2004, 9 a.m. at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 14, 2004, 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. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 2004. 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: Melea Kelch, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, phone (502) 564-6032, fax: (502) 564-1456.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melea Kelch

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation repeals 806 KAR 18:080.
(b) The necessity of this administrative regulation: This administrative regulation will repeal 806 KAR 18:080 since the data collected by 806 KAR 18:080 is collected by other means.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation? This is not an amendment.
(b) The necessity of the amendment to this administrative regulation: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation should not affect any entities. It only repeals a repetitive provision.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: All entities who were required to report under 806 KAR 18:080 will not need to as the reporting requirements have been simplified.

(5) Provide an estimate of how much it will cost to implement this regulation:
(a) Initially: No cost.
(b) On a continuing basis. There should be no cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? The budget of the Kentucky Office of Insurance.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees.

(9) TIERING: Is tiering applied? No, tiering does not apply since this administrative regulation repeals 806 KAR 18:080.
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET  
Department Of Public Protection  
Office Of Insurance  
Division Of Health Insurance Policy And Managed Care  
(Repealer)

806 KAR 38:031. Repeal of 806 KAR 38:030.


STATUTORY AUTHORITY: KRS 13A.310

NECESSITY, FUNCTION, AND CONFORMITY: EO 2003-064, filed December 23, 2003, created the Environmental and Public Protection Cabinet. EO 2004-031, filed January 6, 2004, abolished the Department of Insurance and transferred all its "duties, functions, responsibilities, records, equipment, staff and support budgets" to the Office of Insurance. KRS 13A.310 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be effective. This administrative regulation repeals 806 KAR 38-030, contract filing, approval, which is no longer required because the requirements are duplicated in 806 KAR 14:007, Rate and form filing for health insurers, which establishes the requirements for form filings.

Section 1. 806 KAR 38:030, Contract filing, approval is hereby repealed.

GLENN JENNINGS, Acting Executive Director  
JAMES ADAMS, Commissioner  
LAIJANNA S. WILCHER, Secretary

APPROVED BY AGENCY: May 26, 2004

FILED WITH LRC: May 27, 2004 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2004, 9 a.m. at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 14, 2004, 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. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments will be accepted until August 2, 2004. 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: Melea Kelch, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, phone (502) 564-8032, fax (502) 564-1456.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melea Kelch  
(1) Provide a brief summary of:  
(a) What this administrative regulation does: This administrative regulation repeals 806 KAR 38:030.  
(b) The necessity of this administrative regulation: This administrative regulation will repeal 806 KAR 38:030 since the necessary data collected by 806 KAR 38:030 is collected by 806 KAR 14:007 or other means.  
(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 13A.310 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be effective. This administrative regulation is no longer necessary and therefore the office wishes to repeal this administrative regulation.  
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will remove an administrative regulation that is no longer needed.  
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:  
(a) How the amendment will change this existing administrative regulation? This is not an amendment.  
(b) The necessity of the amendment to this administrative regulation: N/A  
(c) How the amendment conforms to the content of the authorizing statutes: N/A  
(d) How the amendment will assist in the effective administration of the statutes: N/A  
(3) List the type and number of individuals, businesses, organizations, state or local governments affected by this administrative regulation: This administrative regulation should not affect any entities. It only repeals a repetitive provision.  
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: All entities who were required to report under 806 KAR 38:030 will not need to as the reporting requirements have been simplified.  
(5) Provide an estimate of how much it will cost to implement this regulation:  
(a) Initially: No cost.  
(b) On a continuing basis: There should be no cost on a continuing basis.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET  
Office of Housing, Buildings and Construction  
Office of State Fire Marshal  
(1) Licensing of electrical contractors, electricians, and master electricians pursuant to KRS 227A.060.

815 KAR 35:060. Licensing of electrical contractors, electricians, and master electricians pursuant to KRS 227A.060.

RELATES TO: KRS 227A.010, 227A.060, 227A.080, 227A.100

STATUTORY AUTHORITY: KRS 227A. 040(1)(8), KRS 227A.060, 227A.100(9)

NECESSITY, FUNCTION AND CONFORMITY: KRS Chapter 227A.060 requires the Office of Housing, Buildings and Construction to promulgate administrative regulations to establish a process for the licensing of electrical contractors, electricians, and master electricians. This administrative regulation establishes the eligibility requirements and application procedures for the licensing of electrical contractors, electricians, and master electricians.

Section 1. Application Procedure. An applicant for licensure pursuant to KRS 227A.080 shall:

(1) Complete an application as required by Section 2 of this administrative regulation;  
(2) Pay the application fee required by Section 3 of this administrative regulation;  
(3) Provide verifiable evidence of experience and training as specified in Section 4 of this administrative regulation; and  
(4) Provide evidence of passage of the examination required by Section 5 of this administrative regulation.

Section 2. Application Requirements. The applicant shall complete an application form which shall include the following information:

(1) Applicant's name;  
(2) Applicant’s home address;  
(3) Applicant’s business address;  
(4) Applicant's home and business telephone numbers;  
(5) Applicant's date of birth;
may appeal the decision of the Office of Housing, Buildings and Construction to the Electrical Advisory Board. The applicant shall submit written notice of the appeal to the Office of Housing, Buildings and Construction within ten (10) days of receiving notice that the license application has been denied.

(2) The appeal shall be conducted pursuant to KRS Chapter 13B by a hearing officer appointed by the Electrical Advisory Board. The hearing officer shall submit findings of fact, conclusions of law and a recommended order to the Electrical Advisory Board, which may adopt it, amend it or substitute its own decision based upon the evidence.

Section 7. Proof of Insurance. (1) Applicants for an electrical contractor's license shall provide proof of compliance with liability insurance requirements by providing an insurance certificate showing general liability insurance coverage of at least $500,000 issued by an authorized Kentucky insurer or other insurer certified by the Kentucky Department of Insurance.

(2) The applicant shall provide proof of workers' compensation insurance by providing:

(a) An insurance certificate from an authorized Kentucky insurer or other workers' compensation coverage provider; or

(b) A letter certifying that the applicant is not required to obtain workers' compensation coverage.

(3) Electrical contractors shall require their liability and workers compensation insurers to provide notice to the Office of Housing, Buildings and Construction if:

(a) A policy is cancelled, terminated, or nonrenewed; or

(b) The policy limits are lowered.

(4) Electrical contractors shall advise the Office of Housing, Buildings and Construction of any change in their insurance coverage, including cancellation or termination of any policy or any change in the insurer providing the coverage.

Section 8. Renewal Requirements. (1) Licenses shall be valid for one (1) year and shall be renewed on or before the last day of the licensee's birth month. For electrical contractor licenses issued to corporations, partnerships or business entities without a birth month, the renewal month shall be the month the license is issued.

(2) The Office of Housing, Buildings and Construction may issue an initial license to an applicant for a period of up to twenty-three (23) months and may charge a pro rata renewal fee to reflect the added term of the initial license. The pro rata renewal fee shall be refundable.

(3) An initial license shall not be for a term of longer than one (1) year plus sufficient months to reach the applicant's next birth month or renewal month.

Section 9. Inactive License Status. (1) An applicant may request a license be placed in inactive status. A licensee shall not perform any electrical work requiring a license if the license is inactive.

(2) An electrical contractor licensee in inactive status shall not be required to maintain liability insurance or provide proof to the Office of Housing, Buildings and Construction of compliance with workers' compensation laws.

(3) Certified electrical inspectors may be licensed as an electrical contractor, master electrician or electrician, but shall maintain that license as inactive while having an active electrical inspector certification.

(4) Performing electrical work which requires a license while holding an inactive license shall be grounds for revocation or suspension of all electrical licenses and certifications held by the licensee.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form SFM-EC-2, "Electrical Contractor's License Application (June, 2004 Edition)", Office of Housing, Buildings and Construction; and


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Housing, Buildings and
VOLUME 31, NUMBER 1 – JULY 1, 2004

Construction, Electrical Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK YORK, Deputy Secretary
As authorized by LaJuana Wilcher, Secretary

FLOYD VAN COOK, Executive Director

FRANK L. DEMPSY, General Counsel
APPROVED BY AGENCY: June 8, 2004
FILED WITH LRC: June 15, 2004 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2004, at 9 a.m., EDT, in the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 2004 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. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 2004. 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: Frank L. Dempsey, Office of General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0365, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Frank L. Dempsey
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the procedures and requirements for the licensing of electrical contractors, electricians and master electricians under the grandfathering provisions of KRS 227A.060.
(b) The necessity of this administrative regulation: This administrative regulation establishes the eligibility requirements and application procedures for the licensing of electrical contractors, electricians, and master electricians for the issuance of licenses as established in KRS 227A.060.
(c) How this administrative regulation conforms to the content of the authorizing statutes: It sets the standards and procedures that are to be followed in implementing KRS 227A.010 - 227A.140, for the licensing of electrical contractors, electricians and master electricians.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It sets forth the standards and procedures authorized by the statute in implementation of the requirements for licensing of electrical contractors, electricians and master electricians.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: Not applicable. This is a new regulation.
(b) The necessity of the amendment to this regulation:
(c) How the amendment conforms to the content of the authorizing statute:
(d) How the amendment will assist in the effective administration of the statutes.
(3) List the type and number of individuals, businesses, organizations, state and local governments affected by this administrative regulation: Every business or individual currently acting as an electrician or electrical contractor will be affected by this administrative regulation. To date the Office of Housing, Buildings and Construction has received approximately 25,000 applications for grandfathered electrical licenses. While it is likely that most of the current participants in the electrical industry have taken advantage of the grandfathering opportunity, there will doubtless be many additional applicants. This administrative regulation will also affect newly-trained members of the electrical trade.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative, if new, or by the change if it is an amendment: Businesses and individuals working in the electrical industry will be required to be licensed as electrical contractors, master electricians and/or electricians. They will be required to provide proof that they meet the statutory qualifications each of the license categories.
(5) Provide an estimate of how much it will cost to implement this administrative regulation: Costs to administer issuing licenses are expected to range from $100,000 to $150,000 per year.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding will be from license fees.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Since this is a new statutory initiative, this administrative regulation sets the license application and renewal fees as well as the reinstatement and late renewal fees required in the statute.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes electrical contractor, master electrician, and electrician license application fees, license renewal fees, reinstatement fees and late renewal fees.
(9) TIERING: Is tiering applied? Tiering is applied. Different examinations are required for electrical contractor, master electrician and electrician license applicants. This relates the different type of knowledge required to hold the electrical contractor license. Also, a higher level of electrical knowledge is required to be qualified for the master electrician license. The tests were chosen and tiered on that basis. Tiering was also applied to the fee structure. Inactive license renewal fees are set at 50% of active renewal fees. This was done because Inactive renewals do not require the same level of administrative activity as regular renewals. Since the administrative cost to the office is lower, it was determined that the fee should be lower.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Certificate of Need
(Announcement)

900 KAR 5:020. State Health Plan for facilities and services.

RELATES TO: KRS 216B.010-216B.130
STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(27)(199), 216B.040(2)(a)2a, EO 2004-444
NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-444, effective May 11, 2004, reorganized the Cabinet for Health and Family Services and placed the Office of Certificate of Need under the Cabinet for Health and Family Services. KRS 216B.040(2)(a)2a requires the cabinet to promulgate an administrative regulation, updated annually, to establish [KRS 216B.015(19)] requires the Cabinet for Health Services to oversee development and annual updating of the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The 2004-2006 [2003-update to the 2001-2003] State Health Plan shall be used to:
(1) Review a certificate of need application pursuant to KRS 216B.040; and
(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(28)(29)(e) and 216B.061(1)(d).

Section 2. [Updating of Inventories and Need Analysis—(1) The cabinet shall update the inventory of licensed or certificate of need approved health services and health facilities and the need analysis established in this State Health Plan on a periodic basis to reflect any changes in inventory or need projections for health services and health facilities. The most current update shall be used in making]
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Certificate of Need [Cabinet for Health Services], 275 East Main Street, HS1E-D, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES W. HOLLSINGER, Jr. M.D., Secretary
JOHN GRAY, Executive Director
APPROVED BY AGENCY: June 2, 2004
FILED WITH LRC: June 4, 2004 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this regulation will be held on July 21, 2004, at 9 a.m. in the Cabinet for Health and Family Services' Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by July 14, 2004. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. 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 up until the close of business August 2, 2004. Send written notice of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jill Brown, Office of Legal Services, Cabinet for Health and Family Services, 275 East Main Street, 5 West, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John Gray
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation incorporates by reference the 2004-2006 State Health Plan.
(b) The necessity of this administrative regulation: KRS 216B.015(26) requires that the State Health Plan be prepared triennially and updated annually. This administrative regulation incorporates the 2004-2006 State Health Plan by reference.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The preparation and promulgation of the State Health Plan is required by KRS Chapter 216B.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: As stated above, the preparation and promulgation of the State Health Plan is required by KRS Chapter 216B.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment will replace the 2003 Update to the 2001-2003 State Health Plan with the 2004-2006 State Health Plan.
(b) The necessity of the amendment to this administrative regulation: KRS 216B.015(26) requires that the State Health Plan be prepared triennially. The last triennial State Health Plan was prepared in 2001, so a new triennial State Health Plan is required for 2004.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment carries out the requirement of KRS 216B.015(26) that the State Health Plan be prepared triennially.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide an updated State Health Plan for purposes of certificate of need review.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administra-
The June meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, June 8, 2004, at 10:30 a.m. in Room 149 of the Capitol Annex. Representative Tanya Pullin Co-Chair, called the meeting to order, and the roll call was taken. The minutes of the May 11, 2004 meeting were approved.

Present were:

Members: Representative Tanya Pullin, Co-Chair; Senator Damon Thayer, Co-Chair; Senators Richard Roeding, and Gary Tapp; Representatives James Bruce, Jimmie Lee, and Jon David Reinhardt.

LRC Staff: Dave Nicholas, Donna Little, Donna Kemper, Sarah Amburgey, Laura Milam, Karen Howard and Jennifer Harrison.

Guests: Tim Phelps, Diana Barber, Carl Rolls, Richard Casey, Kentucky Higher Education Assistance Authority; Brenda Allen, Educational Professional Standards Board; Richard Carroll, Board of Accountancy; Bea Collins, Beverly A. McCawley, Cheryl Lalonde-Mooney, Dena Moore, Martha Preston, Londa Stalkebeck, Jan Rowland, Regina Webb, Board of Hairdressers and Cosmetologists; James J. Grawe, Emma Lou Hartlage, Board of Embalmers and Funeral Directors; Brenda Cook, Jennifer Franklin, Kristen M. Webb, Board of Licensure for Massage Therapy; Tom Bennett, Ellen Benzing, Sherry Kefauver, Department for Fish and Wildlife; Sean Allen, Father E. Ashcraft, Millie Ellis, John Lyons, Environmental and Public Protection Cabinet; Chris Curran, John Lile, Steve Lynn, Morgain Sprague, Justice and Public Safety Cabinet; Kevin Nolan, Jody Wilcher, Education Cabinet; Frank Dempsey, Office of Housing, Buildings and Construction; Kathy Adams, Virginia Carrington, Elizabeth Caywood, Carla Combs, Karen Doyle, Shirley Eldridge, Lisa Wise, Cabinet for Health and Family Services; Byran Alvey, Kentucky Farm Bureau Federation; Art Bradshaw, National Cosmetology Association of Kentucky; Connie Bradshaw, Salon Education Services; Greg Brotzge, AIA Kentucky.

The Administrative Regulation Review Subcommittee met on Tuesday, June 8, 2004, and submits this report:

Other Business:

Co-Chair Pullin stated that the Subcommittee had drafted a resolution in memory of Ronald Reagan, forty-fifth President of the United States, upon his passing. After the resolution was read in its entirety, Representative Bruce made a motion, seconded by Co-Chair Thayer, that the resolution be adopted. Without objection, the resolution was adopted.

Co-Chair Thayer stated that it was appropriate for the Subcommittee to offer this resolution because during his administrations President Reagan fought against onerous and intrusive federal regulations which stifled small business and industry. Co-Chair Thayer was proud of the Subcommittee’s history of finding state regulations deficient for those same reasons. He was proud to sign this resolution because it honored the President who made America feel good about being American again, who fought and ultimately won the war against communism, and who taught him why he was a Republican. He signed the resolution as a Ronald Reagan Republican and as a Ronald Reagan American.

Justice and Public Safety Cabinet: Department of State Police: Criminal History Record Information System

502 KAR 30:090. Dissemination of criminal history record information. Morgain Sprague, Legal Representative, and Darin Moore, Strategic Planning Branch, represented the Department.

At its May 11, 2004 meeting, the Subcommittee approved this administrative regulation as amended and requested additional information about delays in the criminal background check process.

Ms. Sprague stated that she had information for the Subcommittee regarding their concern for the lengthy delays in receiving criminal record background checks from the Department. Even though the Criminal Records and Identification Branch was operating at only half staff due to the personnel hiring freeze, the Branch was able to complete state background checks the same day the request was received. The delay occurred in obtaining the federal background checks from the Federal Bureau of Investigation (FBI). The FBI’s processing time ranged from six (6) to eight (8) weeks and could be doubled if the submitted fingerprint card did not comply with the federal quality standards. While the Department could do very little to quicken the FBI’s processing time, the Department was planning on mailing out informational letters with proposals to help those needing checks to minimize delays. For example, if two fingerprint cards were submitted at the time of the background check request, the Department could send one immediately to the FBI which would shorten the process by two (2) weeks. Additionally, if the cards initially complied with federal fingerprint quality standards, that would prevent the six (6) to eight (8) week delay that occurred if a card was rejected by the FBI due to insufficient quality. The Department was willing to assist in the fingerprinting process by providing the use of a live scan machine in Frankfort and had plans to make more available across the state.

In response to questions by Co-Chair Pullin, Ms. Sprague stated that the Kentucky State Police Commissioner did consider the open positions in the Criminal Records and Identification Branch to be essential. He had requested the Department of Personnel to declare them so which would enable the Department to fill them during the hiring freeze, but the Department of Personnel had not authorized that request.

In response to questions by Representative Lee, Ms. Sprague stated that the Department of Personnel had indicated to the Department in some fashion that it would not classify those positions as essential. However, the open positions were not the main factor in the background check delays. The main factor was the delay by the FBI in performing the national background checks.

Senator Roeding made a motion, which was seconded by Co-Chair Thayer, for the Subcommittee to send a letter to the federal government expressing concern regarding the delays in obtaining federal background checks and requesting information on how to expedite the process. Without objection, it was so ordered.

Administrative regulations reviewed by the Subcommittee:

Kentucky Higher Education Assistance Authority: KHEAA Grant Programs

11 KAR 5:034. CAP grant student eligibility. Diana Barber, Assistant General Counsel, and Tim Phelps, Student Aid Branch Manager, represented the Authority. A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to correct statutory citations and a cross-reference to another administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

Robert C. Byrd Honors Scholarship Program

11 KAR 18:010. Robert C. Byrd Honors Scholarship Program. A motion was made and seconded to approve the following amendments: (1) to amend the RELATION TO paragraph and Section 1 to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 and 7 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Education Professional Standards Board: Teaching Certificates

16 KAR 2:010. Kentucky teaching certificates. Brenda Allen, General Counsel, represented the Board. In response to questions by Representative Bruce, Ms. Allen stated that an outside entity, Educational Testing Services, performed the teacher certification testing and it established the $500 testing fee. The federal No Child Left Behind Act and the Board’s own statutes and administrative regulations required testing a teacher to demonstrate subject matter competency before being certified. However, this administrative regulation established an
experimental option in which a teacher could obtain certification in an additional area without testing, if the teacher had sufficient education and teaching experience in that area.

In response to questions by Senator Roeding, Ms. Allen stated that the Board informed teachers of regulatory changes through the Board's website and by having their leadership staff attend the monthly educational cooperatives of school superintendents. The Board amended this administrative regulation to establish an experimental option and an environmental educational endorsement. The experimental option allowed teachers to add an endorsement to their current certification so they could be certified in an additional subject area. The environmental educational endorsement created a new endorsement for that increasingly popular subject area.

In response to questions by Representative Reinhardt, Ms. Allen stated that this administrative regulation incorporated by reference the application for the experimental option. In general, to obtain the certification, a teacher would need a college major or substantial college course work, teaching experience, and professional development in that area.

Representative Lee stated that he was in favor of this administrative regulation because it ensured that teachers were proficient in the subjects they were teaching in the classroom.

Ms. Moore seconded and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION AND CONFORMITY paragraph and Sections 2, 3, 4, 5, 6, and 9 to comply with the drafting and format requirements of KRS Chapter 13A. With agreement of the agency, the amendments were approved, with Representative Bruce voting not to approve the administrative regulation.

Certification Procedures
16 KAR 4:020. Certification requirements for teachers of exceptional children. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION AND CONFORMITY paragraph and Sections 1, 2, 4, 5, 6, and 10 to comply with the drafting and format requirements of KRS Chapter 13A. With agreement of the agency, the amendments were approved, with Representative Bruce voting not to approve the administrative regulation.

Assessment
16 KAR 6:010. Written examination prerequisites for teacher certification. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION AND CONFORMITY paragraph and Sections 1, 2, 4, 5, 6, and 10 to comply with the drafting and format requirements of KRS Chapter 13A. With agreement of the agency, the amendments were approved, with Representative Bruce voting not to approve the administrative regulation.

Advanced Certification and Rank
16 KAR 8:030. Continuing education option for certificate renewal and rank change. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION AND CONFORMITY paragraph and Sections 1, 2, and 4 to comply with the drafting and format requirements of KRS Chapter 13A. With agreement of the agency, the amendments were approved, with Representative Bruce voting not to approve the administrative regulation.

General Government Cabinet: Board of Accountancy
201 KAR 1:041. Repeal of 201 KAR 1:040, 201 KAR 1:045 and 201 KAR 1:130. Richard Carroll, Executive Director, represented the Board.

Board of Hairdressers and Cosmetologists
201 KAR 12:250. School equipment for esthetics course. Dena Moore, Executive Secretary, and Cheryl Lalande-Mooney, General Counsel, represented the Board. Jan Rowland, Lenda Stakelbeck, Connie Bradshaw, Art Bradshaw, and Regina Webb, appeared in favor of this administrative regulation.

An amendment was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 12:260. License fees, examination fees, renewal fees, restoration fees and miscellaneous fees. In response to questions by Representative Lee, Ms. Moore stated that this administrative regulation did not increase existing fees. Due to current budget constraints, the Board had not notified each licensee of the proposed increases with a mass mailing. However, the Board had notified the professional organizations representing the licensees. Generally, the feedback from the professional organizations had been positive and no one had requested a public hearing or submitted written comments regarding the fee increases.

Representative Lee stated that he believed it was important to notify all affected parties of a fee increase before the public hearing so they would have a meaningful opportunity to participate in the hearing.

Subcommittee Staff stated that KRS 13A.255 only required an agency to provide notice of a new or increased fee to each state association, organization, or other representative body. It did not require individual notice.

In response to questions by Senator Roeding, Ms. Moore stated that this administrative regulation increased all of the Board's fees to the maximum amount allowed by statute. The least expensive fee increase was an eight (8) dollar increase for cosmetologists which made up the majority of the Board's licensees. The fee increases would generate an extra $300,000.00 for the Board. Currently, the Board was operating at a deficit of $280,000.00. The Board had not increased fees in twenty-four (24) years. The Board planned to use the additional funds to offset their deficit, to provide additional staff to conduct salon inspections for consumer safety, and to upgrade their technology so it would be sufficient to handle their database of 19,000 licensees.

In response to questions by Senator Roeding, Ms. Moore stated that this administrative regulation increased the licensure renewal fees for cosmetologists by eight (8) dollars and for apprentices by twelve (12) dollars.

Ms. Rowland stated that as an owner of six (6) hair design schools, she was in favor of the fee increases. Additionally, she had several signed petitions from the industry supporting the increases. Currently, Kentucky had the lowest fees in the nation as the average hairdresser fee in other states was between seventy-five (75) and 150 dollars. The Board's lack of funds was negatively impacting the entire industry. Because the Board had decreased their licensure testing dates, students were delayed in beginning employment. The Board also provided inadequate technical support to their licensees due to insufficient technology.

In response to questions by Co-Chair Pullin, Mr. Bradshaw stated that he was co-owner of Gala Education Services and was a representative of the National Cosmetology Association of Kentucky. Approximately five (5) percent of Kentucky cosmetologists and apprentice cosmetologists participated in his association. Additionally, Ms. Moore stated that about one other ten (10) percent of cosmetologists participated in other professional associations. Therefore, about fifteen (15) percent of the industry received notice of the fee increases through the professional associations.

In response to questions by Co-Chair Thayer, Ms. Stakelbeck stated that she was a cosmetologist and a salon and spa owner in Louisville. The fee increases would help the consumers because it would remedy the current shortage of licensees in Louisville due to the reduced testing schedule. Until a student was licensed, the student could not work on customers and could not generate income and tax revenue. Ms. Moore added that the Board could resume a full testing schedule with the fee increases.

In response to a question by Co-Chair Pullin, Ms. Moore stated that the Board had not considered a lesser fee increase for cosmetologists because the Board had determined several years ago that the proposed increase was necessary to provide for the Board's needs.

In response to questions by Representative Reinhardt, Ms. Stakelbeck stated that the proposed fee increase would not be a hardship for cosmetologists in smaller salons because it was only an eight (8) dollar increase for the year. Ms. Moore added that the fee increases would enable the Board to resume their full testing sched-
ule of seven days a month. With that schedule, there would be a maximum delay of thirty (30) days for licensure.

In response to questions by Representative Lee, Ms. Moore stated that the Board was proposing the maximum cosmetologist fee allowed by statute because the Board had previously determined that fee to be the minimum amount necessary to operate the Board properly. To increase the fee further, a statutory change would be required.

Ms. Bradshaw stated that she was a co-owner of a salon and also provided continuing education classes and training videos to hairstylists, mostly to those in rural areas. She was in favor of the proposed cosmetologist renewal fee increase and knew from conducting a survey that so were many of her students. Most students surveyed wanted increased services from the Board, such as more communication and more salon inspections, which the Board could provide only with greater funding. The students agreed that the fee increase was reasonable and would have accepted an even higher one.

Mr. Bradshaw stated that through his work in the association and in educational services, he repeatedly heard licensees requesting better support and more services from the Board. He favored the fee increases because the Board could not do more without them.

In response to a question by Representative Reinhardt, Ms. Moore stated that the proposed fee increases would sustain the Board's operation without further increases for ten (10) years.

Ms. Stakelbeck stated that more licensees than those involved in professional associations were aware of the proposed fee increases. She had heard the increases discussed several times in continuing education classes.

Ms. Rowland stated that the twenty (20) dollar licensure renewal fee paid by cosmetologists was cheaper than the forty (40) dollars paid by barbers.

Ms. Webb stated that she was a new Board member and also was a cosmetologist and salon owner. She favored the fee increases because they would enable the Board to conduct sufficient salon inspections to ensure that salons were operated properly and that consumers were protected.

In response to a question by Co-Chair Thayer, Ms. Stakelbeck stated that the increased cosmetologist fees would not generate higher costs for consumers because the increase was not significant enough to make a difference. By a show of hands, the other salon owners attending the Subcommittee meeting agreed.

Co-Chair Pullin stated that she disapproved of the fee increases for cosmetologists and apprentice cosmetologists. She did not want to increase fees for the small salons in her district because it would be a hardship for them. Additionally, none of them had expressed approval of the fee increases to her.

Representative Reinhardt stated that he disapproved of the fee increases for cosmetologists and apprentice cosmetologists for the same reasons as Co-Chair Pullin.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION AND CONFORMITY paragraphs to cite 2004 Ky. Acts ch. 96, sec. 5, which grants authority for this administrative regulation; and (2) to amend Sections 1 to 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Embalmers and Funeral Directors

201 KAR 15:120. Requirements for applicants holding a license in another state. Jim Grawe, Assistant Attorney General, and Emma Lou Hartlage, Executive Secretary, represented the Board.

Board of Licensure for Massage Therapy

201 KAR 42:020 & E. Fees. Kristen Webb, Director of Occupations and Professions, Barbara Cook, Board member, and Cheryl Lalonde-Money, Assistant Attorney General, represented the Board.

In response to a question by Co-Chair Pullin, Ms. Webb stated that this administrative regulation established new fees for the newly created Board.

A motion was made and seconded to approve the following amendments: to amend Section 2 to comply with the statutory provisions of KRS 309.357. Without objection, and with agreement of the agency, the amendments were approved.
A motion was made and seconded to approve the following amendments: to amend the agency notation, the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Standards of Safety**
815 KAR 10:050. Kentucky Standards of Safety. A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 3 and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Plumbing**
815 KAR 20:020. Parts or materials list. A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to explain the changes made by the recent executive orders; and (2) to amend Sections 1, 4, and 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 20:050. Soil, waste and vent systems. A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to explain the changes made by the recent executive orders and to comply with KRS 13A.220(4)(f); and (2) to amend Sections 1, 30, and 35 to comply with the drafting requirements of KRS 13A.222. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 20:110. Traps and clean-outs. A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 11, 12, and 13 to reference changes made by the recent executive orders to the Department. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 20:191. Minimum fixture requirements. A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to explain the changes made by the recent executive orders and to comply with KRS 13A.220(4)(f); (2) to amend Section 1 to correct the cross-reference to the Kentucky Building Code; and (3) to amend Sections 11, 13, 15, 16, and 17 to comply with the drafting requirements of KRS 13A.222. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 20:195. Medical gas piping installations. A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to explain the changes made by the recent executive orders and to comply with KRS 13A.220(4)(f); and (2) to amend Section 3 to comply with the drafting requirements of KRS 13A.225. Without objection, and with agreement of the agency, the amendments were approved.

**Cabinet For Health And Family Services:**

922 KAR 2:500. Family Alternatives Diversion or "FAD". Karen Doyle, Virginia Carrington, and Mike Grimes represented the Department.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 to 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Child Welfare**
922 KAR 1:310. Standards for child-placing agencies. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend Section 4 to delete the requirement that a prospective foster or adoptive home have access to a "faith-based organization" due to vagueness and constitutional concerns; and (3) to amend Sections 1, 2, 4, 5, 6, 8, 10 to 13, and 23 to comply with the drafting requirements of KRS Chapter 13A.
and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The Subcommittee and the promulgating administrative agencies agreed to defer consideration of the following administrative regulations to the next meeting of the Subcommittee: Environmental And Public Protection Cabinet: Department for Environmental Protection: Water Quality
- 401 KAR 5:002. Definitions for 401 KAR Chapter 5.
- 401 KAR 5:026. Designation of uses of surface waters.
- 401 KAR 5:031. Surface water standards.
Department for Natural Resources: General Provisions
- 405 KAR 7:001. Definitions for 405 KAR Chapter 7.
Permits
- 405 KAR 8:001. Definitions for 405 KAR Chapter 8.
Bond and Insurance Requirements
Inspection and Enforcement
- 405 KAR 12:001. Definitions for 405 KAR Chapter 12.
Performance Standards for Surface Mining Activities
- 405 KAR 16:001. Definitions for 405 KAR Chapter 16.
Performance Standards for Underground Mining Activities
Special Performance Standards
Areas Unsuitable for Mining
Justice And Public Safety Cabinet: Kentucky Law Enforcement Council
- 503 KAR 1:140. Peace officer professional standards.

Cabinet For Health And Family Services: Department for Medicaid Services: Medicaid Services
- 907 KAR 1:022 & 4. Nursing facility and intermediate care facility for an individual with mental retardation or a developmental disability level of care criteria.

The Subcommittee adjourned at 12:20 a.m. until July 13, 2004 at 10:30 a.m.
CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates ............................................................................................................. A - 2

The Locator Index lists all administrative regulations published in VOLUME 31 of the Administrative Register from July, 2004 through June, 2005. 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 30 are those administrative regulations that were originally published in VOLUME 30 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2004 bound Volumes were published.

KRS Index .............................................................................................................................................. A - 6

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 31 of the Administrative Register.

Subject Index ......................................................................................................................................... A - 7

The Subject Index is a general index of administrative regulations published in VOLUME 31 of the Administrative Register, and is mainly broken down by agency.
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<td>(Note: Emergency regulations expire 170 days from publication, or 170 days from publication plus number of days of requested extension; or upon replacement or repeal, whichever occurs first)</td>
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| **ORDINARY ADMINISTRATIVE REGULATIONS:** |                   |               |                   |                   |               |
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| Amended           | 2311              | (See 31 Ky.R.)| Amended           | 301 KAR 1:058     |               |
| 11 KAR 18:010     | 1698              |               | Amended           | 301 KAR 1:058     |               |
| Amended           | 2312              | (See 31 Ky.R.)| Amended           | 301 KAR 1:058     |               |
| 16 KAR 2:010      |                   |               |                   |                   |               |
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| 16 KAR 4:020      |                   |               |                   |                   |               |
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| 16 KAR 6:010      |                   |               |                   |                   |               |
| Amended           | 2321              | (See 31 Ky.R.)| Amended           |                   |               |
| 16 KAR 8:030      |                   |               |                   |                   |               |
| Amended           | 2326              | (See 31 Ky.R.)| Amended           |                   |               |
| 31 KAR 3:010      |                   |               |                   |                   |               |
| Amended           | 2171              | (See 31 Ky.R.)| Amended           |                   |               |
| 200 KAR 2:006     |                   |               |                   |                   |               |
| Amended           | 2172              | (See 31 Ky.R.)| Amended           |                   |               |
| 200 KAR 3:045     |                   |               |                   |                   |               |
| Amended           | 2328              | (See 31 Ky.R.)| Amended           |                   |               |
| 200 KAR 5:360     |                   |               |                   |                   |               |
| Died*             | 2241              | 5-24-04       | Amended           |                   |               |
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| 201 KAR 12:200    | 2118              | 5-16-04       | Amended           |                   |               |
| Amended           |                   |               |                   |                   |               |
| 201 KAR 12:250    | 2414              | (See 31 Ky.R.)| Amended           |                   |               |
| 201 KAR 12:260    | 2415              | (See 31 Ky.R.)| Amended           |                   |               |
| 201 KAR 15:120    | 2487              |               |                   |                   |               |
| Amended           |                   |               |                   |                   |               |

The administrative regulations listed under VOLUME 30 are those administrative regulations that were originally published in Volume 30 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2004 bound volumes were published.
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(Note: Emergency regulations expire 170 days from publication; or 170 days from publication plus number of days of requested extension; or upon replacement or repeal, whichever occurs first)

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