



1 ENERGY AND ENVIRONMENTAL CABINET

2 Department of Environmental Protection

3 Division of Water

4 (Amendment)

5 401 KAR 8:300. Lead and copper.

6 RELATES TO: 40 C.F.R. 141.42, 141.43, 141.80-141.91, 141.154, 42 U.S.C. 300f-300j-  
7 26[~~EO 2009-538~~]

8 STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-110(2), 40 C.F.R. 141.43,  
9 141.80-141.91, 42 U.S.C. 300f-300j-26[~~EO 2009-538~~]

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) and 224.10-  
11 110(2) require the cabinet to promulgate administrative regulations for the regulation and control  
12 of the purification of water for public and semipublic use. [~~EO 2009-538, effective June 12,~~  
13 ~~2009, establishes the new Energy and Environment Cabinet.~~]This administrative regulation  
14 limits [~~bans~~]lead in drinking water facilities and establishes[~~provides~~] standards for lead and  
15 copper in drinking water.

16 Section 1. A public water system shall meet the requirements for control of lead  
17 corrosivity and copper as established in:

18 (1) 40 C.F.R. 141.42, 141.43, 141.82, and 141.91;[~~and~~]

19 (2) 40 C.F.R. 141.80, 141.81, 141.83 through 141.90, and 141.154; and

20 (3) 42 U.S.C. § 300g-6.

401 KAR 8:300 "Lead and copper" approved for promulgation:

7/9/14

Date



LEONARD K. Peters, Secretary  
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28, 2014 at 6:00 p.m. Eastern Time at the Department for Environmental Protection, Room 301D, 300 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 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. 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 September 2, 2014. 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: Carole J. Catalfo, Internal Policy Analyst, Division of Water, 200 Fair Oaks Lane, 4<sup>th</sup> Floor, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 8:300

Contact Person: Peter Goodmann, Director

(1) Provide a brief summary of:

- (a) What this administrative regulation does: This administrative regulation establishes analytical methods, monitoring requirements, action levels, and lower lead levels for public water systems to control amounts of lead and copper in public drinking water. The proposed amendment incorporates the federal Reduction of Lead in Drinking Water Act of 2011 (42 U.S.C. §300g-6) which reduced allowable lead levels in plumbing materials used for drinking water distribution and became effective January 4, 2014.
- (b) **The necessity of this administrative regulation:** This administrative regulation limits the amount of lead and copper in drinking water which is essential to protect public health. The proposed amendment is required by 42 U.S.C. §300g-6 (b) and (c) in order to maintain Kentucky's primary authority and federal funding to administer its Safe Drinking Water Program.
- (c) **How this administrative regulation conforms to the content of the authorizing statutes:** KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. The proposed amendment incorporates the federal limits placed on lead in plumbing materials used for drinking water distribution.
- (d) **How this administrative regulation currently assists or will assist in the effective administration of the statutes:** This administrative regulation limits lead and copper amounts in drinking water which is essential to protect public health. The proposed amendment incorporates and conforms to federal limits placed on lead in plumbing materials used for drinking water distribution.

(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 references 42 U.S.C. §300g-6 (the Reduction of Lead in Drinking Water Act of 2011) which reduced allowable lead levels in plumbing materials used for drinking water distribution, and became effective January 4, 2014. The substantive requirements of the existing regulations remain unchanged.
- (b) The necessity of the amendment to this administrative regulation: The proposed amendment is required by 42 U.S.C. §300g-6 (b) and (c) in order to maintain Kentucky's primary authority and federal funding to administer its Safe Drinking Water Program.
- (c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. The proposed amendment incorporates and conforms to the federal limits placed on lead in plumbing materials used for drinking water distribution.
- (d) How the amendment will assist in the effective administration of the statutes: This administrative regulation limits lead and copper amounts in drinking water which is essential

to protect public health. The proposed amendment incorporates the federal limits on lead contained in plumbing materials for drinking water distribution which became effective January 4, 2014 and results in clear and consistent state and federal regulations.

(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 450 public water systems which are often owned by city governments or organized under county governments. Other districts may, in some cases, have a public water system.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The substantive requirements of the existing regulations remain unchanged. Effective January 4, 2014, federal law reduced the allowable amounts of lead in plumbing materials used for drinking water distribution, and prohibited the sale and installation of non-conforming drinking water plumbing materials. Public water systems will be required to use materials that meet the lower lead content plumbing standards when installing new, or making repairs to existing, drinking water distribution lines.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs of complying with this administrative regulation have increased new plumbing construction and plumbing replacement costs for drinking water lines by approximately 30%. Effective January 4, 2014, manufacturers and vendors were to replace all non-conforming products with those that meet the federal Reduction of Lead in Drinking Water Act requirements. These new products are the only ones that can now be used for drinking water distribution lines.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Public water systems will benefit from clear and consistent state and federal regulations. The proposed amendment is no more stringent than the federal requirements.

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

(a) Initially: Costs of implementation will remain the same. The requirements of this administrative regulation remain unchanged from regulations currently in place.

(b) On a continuing basis: Costs of implementation will remain the same. The requirements of this administrative regulation remain unchanged from regulations currently in place.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Funding to administer Kentucky's drinking water program is a combination of state general funds and federal funds to administer the Safe Drinking Water Act. The proposed amendment is required by 42 U.S.C. §300g-6 (b) and (c) in order to maintain Kentucky's primary authority and federal funding to administer its Safe Drinking Water 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: An increase in fees will not be necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish fees or directly or indirectly increase fees.

(9) TIERING: Is tiering applied? (Explain why or why not)

Yes. The proposed change to this administrative regulation applies only to public water systems that are subject to the Safe Drinking Water Act and Reduction of Lead in Water Act. However, non-conforming plumbing materials are no longer commercially available and can no longer be used in any system distributing or delivering water for human consumption, including those located in private homes. The Reduction of Lead in Water Act does not require that all existing lines be replaced with conforming plumbing materials, but requires that materials used for any new construction or repairs to existing drinking water lines meet the lower lead content requirements after January 1, 2014.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 401 KAR 8:300  
Contact Person: Peter Goodmann, Director  
Phone Number: (502) 564-3410

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?  
This administrative regulation applies to public water systems which are often owned by city governments or organized under county governments. Other districts may, in some cases, have a public water system.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.
  - (e) KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. The Safe Drinking Water Act (42 U.S.C. §300f through §300j-26) and 40 C.F.R. 141.42, 141.43, and 141 Subpart I, Sections 141.80 through 141.91 establish analytical methods, monitoring requirements and action levels for public water systems to follow for the control of lead and copper. The Reduction of Lead in Drinking Water Act of 2011 (42 U.S.C. § 300g-6) established limits on lead contained in drinking water plumbing materials. The proposed amendment is required by 42 U.S.C. §300g-6 (b) and (c) in order to maintain Kentucky's primary authority and federal funding to administer its Safe Drinking Water Program.
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
  - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue for local governments for the first year.
  - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for local governments in subsequent years.
  - (c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation incorporates the federal Reduction of Lead in Drinking Water Act of 2011 and will not increase administration costs. The proposed amendment is required by 42 U.S.C. §300g-6 (b) and (c) in order to maintain Kentucky's primary authority and federal funding to administer its Safe Drinking Water Program.
  - (d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation incorporates the federal Reduction of Lead in Drinking

Water Act of 2011 and will not increase administration costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): No change

Expenditures (+/-): Increase

Other Explanation:

The amendment to this administrative regulation incorporates the federal Reduction of Lead in Drinking Water Act of 2011 and will not increase administration costs. The proposed amendment is required by 42 U.S.C. §300g-6 (b) and (c) in order to maintain Kentucky's primary authority and federal funding to administer its Safe Drinking Water Program. The cost of some plumbing devices such as fixtures, valves, and meters have risen, however, effective January 4, 2014, only products that meet the federal Reduction of Lead in Drinking Water Act requirements are available in the marketplace.

## FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation #: 401 KAR 8:300

Contact Person: Peter Goodmann, Director

1. Federal statute or regulation constituting the federal mandate.

The Safe Drinking Water Act (42 U.S.C. §300f through §300j-26), which includes the Reduction of Lead in Drinking Water Act (42 U.S.C. §300g-6), and 40 C.F.R. 141.42, 141.43, and 141 Subpart I, Sections 141.80 through 141.91.

2. State compliance standards.

KRS 224.10-100(28) and 224.10-110

3. Minimum or uniform standards contained in the federal mandate.

140 C.F.R. 141.42, 141.43, and 141 Subpart I, Sections 141.80 through 141.91 establish analytical methods, monitoring requirements and action levels for public water systems to follow for the control of lead and copper. 42 U.S.C. §300g-6 establishes the minimum requirements for plumbing materials used in drinking water distribution lines and systems. The proposed amendment is required by 42 U.S.C. §300g-6 (b) and (c) in order to maintain Kentucky's primary authority and federal funding to administer its Safe Drinking Water Program.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate?

No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

N/A.