Robertson

Administrative Register of kentucky

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Public Hearings

The State Fire Marshal's Office, the Department of Personnel and the Department of Education have scheduled public hearings on proposed regulations. Persons with an interest in the subject matter of these regulations are invited to appear and testify, or to submit comments in writing to the issuing agency.

Fire Marshal's Hearings

Hearings will be held at 10 a.m. EST November 1, 1974 in Room G-2, Capital Plaza Tower, Frankfort, Kentucky, on seven proposed regulations of the State Fire Marshal's Office, all published in the October issue of the Administrative Register:

(806 KAR 50:010) — General construction requirements.

(806 KAR 50:020) — Construction to accommodate the physically handicapped.

(806 KAR 50:050) — LP Gas license denial, revocation or suspension.

(806 KAR 50:060) — LP Gas license; financial responsibility.

(806 KAR 50:070) — LP Gas, standby usage requirements.

(806 KAR 50:080) — Flammable liquids, self-service stations.

(806 KAR 50:100) — Fire Department aid.

Personnel Department Hearings

The Department of Personnel will hold hearings at 9:30 a.m. EST November 8, 1974 in Room 336, Capitol Annex, Frankfort, Kentucky, on regulations published in this issue pertaining to personnel rules:

(101 KAR 1:010) — Definitions; (101 KAR 1:020) — General Provisions; (101 KAR 1:030) — Personnel Board procedures; (101 KAR 1:040) — Classification plan; (101 KAR 1:050) — Compensation plan; (101 KAR 1:060) —Applications and examinations; (101 KAR 1:070) — Registers; (101 KAR 1:080) — Certification and selection of eligibles; (101 KAR 1:090) — Types of appointments; (101 KAR 1:100) — Probationary period; (101 KAR 1:110) — Promotion, transfer, demotion and detail to special duty; (101 KAR 1:120) — Separation and disciplinary action; (101 KAR 1:130) — Appeals, and (101 KAR 1:140) — Service regulations.

Education Department Hearing

A public hearing will be held at 10 a.m. EST November 7, 1974 in the State Board of Education Room, 17th floor, Capital Plaza Tower, Frankfort, Kentucky on proposed regulation (704 KAR 5:050), dealing with public school programs for kindergartens and nursery schools. This regulation was published in the October Register.

This is an official publication of the Commonwealth of Kentucky, Legislative Research Commission, giving public notice of all proposed regulations filed by administrative agencies of the Commonwealth pursuant to the authority of Kentucky Revised Statutes 13.082.

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

The **Administrative Register** is the monthly advance sheets service for the 1975 Edition of KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.

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Subcommittee Approves 47 Regulations

The Administrative Regulation Review Subcommittee approved 47 proposed regulations, all of which became effective on October 2, 1974, the date of the Subcommittee meeting.

Ten proposed regulations were returned to the issuing agencies for further clarification. (See Minutes of the Subcommittee meeting in this issue.)

Two other regulations were withdrawn by the Department of Labor in order to give affirmative consideration to comments it received on the 30th day following publication in the September 1 issue of the Register. These were later resubmitted with amendments and are republished in this issue.

The approved regulations, all published in the September **Register**, include those issued by the following administrative agencies:

Higher Education Assistance Authority, 11 KAR 1:010; Executive Department for Finance and Administration, 200 KAR 1:010; Department of Fish and Wildlife Resources, 301 KAR 1:010 through 1:040, 301 KAR 2:010 and 2:020, 301 KAR 3:010 and 3:020, and 301 KAR 4:010.

Department of Transportation, 601 KAR 13:010, 602 KAR 1:040, and 603 KAR 5:010 and 5:020; Department of Education, 702 KAR 2:010 through 2:100, 703 KAR 1:010 and 1:050, 703 KAR 3:010 through 3:040, 704 KAR 1:010, 704 KAR 2:010, and 705 KAR 1:010.

Kentucky Board of Tax Appeals, 802 KAR 1:010; Department of Labor, 803 KAR 1:010, 1:020 and 1:050, and 803 KAR 4:010; Alcoholic Beverage Control Board, 804 KAR 1:010 through 1:060, and 804 KAR 3:010 and 3:020.

Review Subcommittee To Meet November 13

The next meeting of the Administrative Regulation Review Subcommittee will be at 10 a.m. EST on November 13, 1974 in Room 307 at the State Capitol. The meeting is open to the public.

Administrative Register of kentucky

The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, Room 300, State Capitol, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: $24 per volume of 12 issues, beginning in August and ending with the July issue of the subsequent year.

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Amended Regulations

In order to show the effect of amendments, original regulations are reprinted with the new matter underscored and deleted material enclosed within brackets.

LEGISLATIVE RESEARCH COMMISSION
1 KAR 1:010
(Proposed Amendment)

RELATES TO: KRS Chapter 13
PURSUANT TO: KRS 13.090
AMENDS: 1 KAR 1:010
NECESSITY AND FUNCTION: KRS 13.090 requires the Legislative Research Commission to prescribe rules governing the manner and form in which regulations shall be prepared. This proposed regulation is to assure uniformity of all proposed regulations submitted for publication in the Administrative Register.

Section 1. Subject to the exceptions set forth in KRS 13.080, the regulations required to be filed to be effective include every regulatory document, promulgated by an agency of the Commonwealth, which is intended to have general future applicability and legal effect and will be relied upon by the agency as authority for, or invoked or used in the discharge of, any of its functions or activities. An agency may incorporate by reference material, the publication of which would be unduly cumbersome, bulky or expensive. The regulation incorporating this material by reference shall include a summary of the subject matter, the date of incorporation by reference and information on how the material may be obtained. The material shall be regulatory only in the form existing at the date of incorporation by reference. The complete text of the material incorporated by reference shall be forwarded to the Legislative Research Commission at the time the proposed regulation incorporating the material is forwarded.

Section 2. Each proposed regulation forwarded to the Legislative Research Commission and each duplicate shall be typewritten or mechanically reproduced on a separate sheet of white paper size 8 1/2 x 11 inches. The Cabinet and Department of the administrative body shall be listed at the top of each page. A space at least two (2) inches square in the upper right hand corner shall be left clear for the Legislative Research Commission's stamp showing the date and time of receipt of the proposed regulation. Each proposed regulation shall include in the upper left hand corner the statute number to which the regulation relates or which will be affected by the regulation, and a citation of the statutory authority pursuant to which it was adopted. Beneath these citations shall be a brief statement which sets forth the necessity for issuing the regulation and a summary of the functions intended to be implemented by the regulation. A proposed regulation affecting an existing regulation shall set forth[, beneath the statement of necessity and function,] the number of the regulation being amended, superseded or repealed as the case may be. No regulation may be amended by reference to a section only. The proposed amendment shall contain the full text of the regulation being amended. Each proposed regulation shall bear the date of adoption. The original copy shall be signed by the proper authority of the adopting administrative body and by an attorney, officially representing the agency, certifying that he has examined and approved the proposed regulation as to form and legality. Each proposed regulation shall state the place and manner in which interested persons may submit their views or request a hearing pursuant to KRS 13.085(4).

Section 3. In proposed regulations amending a regulation that has become effective after July 1, 1974, the new wording shall be underlined and the deleted wording shall be placed in brackets. Generally the new wording should precede the bracketed wording but there may be exceptions for the sake of clarity. [The number of the regulation being amended shall appear immediately above the text of the amended regulation.] Regulations repromulgated between July 1, 1974 and July 1, 1975 are new regulations and exempt from this requirement.

Section 4. The Administrative Register shall be published the first day of each month and shall include all proposed regulations received by the Legislative Research Commission prior to the fifteenth [twentieth] day of the preceding month. When the fifteenth [twentieth] day falls on a Saturday, Sunday, or holiday the deadline is the working day which immediately precedes the Saturday, Sunday, or holiday.

Section 5. The administrative body shall immediately upon receipt of a request for a public hearing pursuant to KRS 13.085, notify in writing the Administrative Regulations Compiler of the date, time and place of the scheduled hearing. Following completion of the hearing, the administrative body shall promptly forward to the Legislative Research Commission a copy of the regulation accompanied by a statement indicating any changes in the original wording, a summary of any comments submitted at the hearing, and a statement of affirmative consideration as required by KRS 13.085(4). Upon receipt of these documents, the proposed regulation will be submitted to the Administrative Regulations Review Subcommittee. Proposed regulations for which no hearing is requested will be submitted to the Administrative Regulations Review Subcommittee by the Legislative Research Commission thirty (30) days following publication.

Section 6. The Administrative Regulations Compiler shall codify prior to publication all regulations received by the Legislative Research Commission. The numbering within the body of the regulation shall be the responsibility of the promulgating body. However, the Compiler retains the authority to divide or renumber a regulation if necessary for clarity. The following formula shall be employed by the administrative body in the numbering of each regulation. Each section shall begin with the word "Section" followed by an arabic number. Subsections shall be designated by an arabic number in parentheses.

JACKSON W. WHITE, Director

ADOPTED: October 3, 1974
RECEIVED BY LRC: October 4, 1974 at 10:06 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Director, Legislative Research Commission, State Capitol, Frankfort, Kentucky 40601.

(The two regulations which follow were returned to the issuing agency by the Administrative Regulation Review Subcommittee. The issuing agency amended them to comply with the Subcommittee's objections and resubmitted the amended regulations to the Legislative Research Commission, whereupon they became effective immediately.)

DEPARTMENT OF LAW
Attorney General
40 KAR 1:010
(As Amended)

RELATES TO: KRS 15.020
PURSUANT TO: KRS 15.180 and 13.082
SUPERSEDES: DL-RG-1
EFFECTIVE: September 24, 1974
NECESSITY AND FUNCTION: KRS 15.020 requires the Attorney General to furnish written opinions and KRS 15.025 sets out the conditions for furnishing opinions. This proposed regulation is to assure uniformity, clarity and completeness in the request for the opinion so that the Attorney General may perform this function with all the necessary information available at the time the opinion is rendered.

Section 1. An official opinion of the Attorney General is one rendered in writing pursuant to the provisions of Chapter 15 and related sections of the Kentucky Revised Statutes, or a regulation promulgated pursuant thereto. Said opinions will be kept on file in the office of the Attorney General in accordance with the provisions of KRS 15.070 (2), and will be subject to public inspection, publication and dissemination.

Section 2. In order that this office might more expeditiously and correctly advise the various departments, boards, commissions, agencies and local officials of the Commonwealth, who from time to time submit questions for its consideration, all requests for opinions in the future will be in writing and will include a full and complete statement of the facts giving rise to the question, and reference to the relevant provisions of the Kentucky Revised Statutes where known.

Section 3. Questions submitted by departments, boards, agencies and commissions of the Commonwealth, having house or contract counsel, will also submit references to the appropriate constitutional and statutory provisions, cases and departmental regulations [and the conclusions of law arrived at by counsel].

Section 4. Commonwealth, county and city attorneys and city prosecutors will also cite the appropriate constitutional and statutory provisions, case law and departmental regulations [and such conclusions of law as may have been arrived at].

ED W. HANCOCK, Attorney General

ADOPTED: July 17, 1974
RECEIVED BY LRC: July 19, 1974 at 11:56 a.m.
RETURNED TO AGENCY: September 11, 1974
RECEIVED BY LRC: September 24, 1974 at 10:43 a.m.

DEPARTMENT OF LAW
Attorney General
40 KAR 1:020
(As Amended)

RELATES TO: KRS 15.025
PURSUANT TO: KRS 15.180 and 13.082
SUPERSEDES: DL-RG-2
EFFECTIVE: September 24, 1974
NECESSITY AND FUNCTION: KRS 15.025 sets out the conditions under which the Attorney General may furnish opinions. This proposed regulation is to assure uniformity and clarity as to who may receive opinions and on what subjects and further provides when the Attorney General will not render

opinions.

Section 1. Official opinions may be rendered pursuant to KRS 15.025(4) to persons concerning questions involving their eligibility for public office and their election rights, duties and liabilities.

Section 2. Official opinions may be rendered to persons concerning questions involving licenses and taxation.

Section 3. Official opinions may be rendered to persons, including attorneys, concerning the official acts and conduct of public officials, provided the legal question involves an actual, current factual situation and is broad enough to be of interest to the general public, the Bar, or other officials in similar positions.

Section 4. Official opinions will [not] be rendered under Sections 1, 2 and 3 only [above] in response to questions relating [not related] to current factual situations; they will not be rendered in response to moot, hypothetical, or abstract questions, nor will they be rendered in response to questions involving matters being litigated or questions submitted in contemplation of litigation. [, nor will they be rendered in response to questions being or about to be litigated.]

Section 5. Official opinions will not be rendered to persons unless the subject matter of such request meets the requirements of either 1, 2 or 3.

[Section 6. Regulation DL-RG-3 is rescinded.]

ED W. HANCOCK, Attorney General
ADOPTED: July 17, 1974
RECEIVED BY LRC: July 19, 1974 at 11:54 a.m.
RETURNED TO AGENCY: September 11, 1974
RECEIVED BY LRC: September 24, 1974 at 10:43 a.m.

DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
301 KAR 1:040
(Proposed Amendment)

RELATES TO: KRS 150.010, 150.025, 150.175 and 150.620
PURSUANT TO: KRS 13.082
AMENDS: 301 KAR 1:040
NECESSITY AND FUNCTION: This amendment is necessary for the following reasons: add underwater spearing, thereby combining KFWR-F-146 with this regulation; add "scuba diving" which is also in this category; delete the provision of "controlled" lakes not owned by the department and thereby should not be regulated by them in this instance; and to remove unnecessary language.

Section 1. [The Commissioner of the Department of Fish and Wildlife Resources, with the concurrence of the Department of Fish and Wildlife Resources Commission does hereby prohibit] Skin or scuba diving [(the use of air breathing apparatus while swimming underwater)] is prohibited in all lakes owned [and/or controlled] by the Department of Fish and Wildlife Resources, except as stated in Sections 2 and 3.

Section 2. Skin or scuba diving will be permitted in salvage operations upon receipt of written permission by the diver from the Regional Director or the local conservation officer assigned to the specific body of water in which the diving is to take place.

Section 3. Skin or scuba diving is permitted anytime without prior authorization in cases of emergency involving the possibility of saving human life or in the recovery of a victim of drowning.

Section 4. Underwater spearing of rough fish with hand held spear or mechanically propelled spear is legal throughout the year in lakes 1,000 acres in size or larger as measured at normal or summer pool level. All participants in this type of sport must be submerged in the water in which spearing takes place. Only rough fish may be taken and an appropriate fishing license is required. The daily limit is fifteen (15) fish.

Section 5. KFWR-F-146 is hereby repealed.

DR. ROBERT C. WEBB, Chairman
Department of Fish and Wildlife Resources Commission

ARNOLD L. MITCHELL, Comissioner

DONALD G. HARTMAN
Assistant to the Secretary
ADOPTED: October 10, 1974
RECEIVED BY LRC: October 11, 1974 at 9:15 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Commissioner, Department of Fish and Wildlife Resources, Capital Plaza Tower, Frankfort, Kentucky 40601.

(The regulation below was amended to correct an omission from the statement of necessity and function and was approved for filing on October 2, 1974 by the Administrative Regulation Review Subcommittee.)

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Administration and Finance
702 KAR 2:100
(As Amended)

RELATES TO: KRS 156.022
PURSUANT TO: KRS 13.082, 156.020, 156.070, 156.100 and 156.130
SUPERSEDES: SBE 27.120
EFFECTIVE: October 2, 1974
NECESSITY AND FUNCTION: Defines authority relating to the acquisition of property not covered by Public Law 152 and other laws to avoid dual departmental operations on the same or similar functions.

Section 1. The Division of Surplus Property is authorized to screen, request, acquire, transport, warehouse, inventory, transfer, retransfer, recapture, revert, and dispose of excess and surplus property not covered by Public Law 152, as amended. This includes personal, real and related personal property, and will be governed by the same procedures and on the same basis of application as other properties handled by the Division.

Section 2. State Board of Education regulations used for procedures in acquiring, utilizing, and disposing of donated property shall govern the procedures used by the Division on these transfers except that:
(1) Federal or state laws or regulations governing the particular type of transfer shall be implemented.
(2) There shall be no restriction as to the time of use or as to the ownership after the property has been properly transferred if there are no federal or state laws or regulations involved.
(3) That when fees or service charges have not been paid, the Division may implement the same procedures in the collection or recapture of the property involved.

Section 3. When the Division must pay a small part of the original acquisition cost for surplus or other property covered or not covered by Public Law 152, as amended, authority is hereby granted to add this cost to the applicable service charge.

Section 4. All programs governed or administered, directly or indirectly, by the Department of Education that are eligible to receive federal excess or surplus property shall, by cooperative agreements or other methods approved by the Superintendent of Public Instruction, engage the services of the Division of Surplus Property to handle their total requirements.

LYMAN V. GINGER
Superintendent of Public Instruction
ADOPTED: August 7, 1974
RECEIVED BY LRC: August 19, 1974 at 10:28 a.m.

(The two regulations which follow, published originally in the September issue [1 Ky.R.49], are proposed to be amended as a result of comments received and adopted by the issuing agency. The agency's Statement of Affirmative Consideration is a public record on file with the Legislative Research Commission.)

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
(803 KAR 1:030)
(Proposed Amendment)

RELATES TO: KRS 337.505 through 337.550
PURSUANT TO: KRS 337.520(1) and 13.082
SUPERSEDES: LAB-3
NECESSITY AND FUNCTION: KRS 337.520(1) grants the commissioner the authority to make and revise such rules and regulations as he may deem appropriate to carry out the provisions and purposes of KRS 337.505 to 337.550. The function of this regulation is to set up procedures for any interested person requesting a hearing to be held for the purpose of making or revising a prevailing wage determination.

Section 1. For purposes of KRS 337.505 through 337.550 "any interested person" shall mean:
(1) Any public authority in the locality where the hearing is held.
(2) Any contractor eligible by law to bid on public works construction.
(3) Any association or group representing contractors eligible by law to bid on public works construction.
(4) Any labor organization representing a class, trade or group of workers within the locality where the hearing is held, which class, trade or group will be affected by the prevailing wage determination of the Commissioner.
(5) Any class, trade, or group of non-union workers in the

locality which will be affected by the prevailing wage determination of the Commissioner.

Section 2. Any interested person may request a hearing for the purpose of making or revising a prevailing wage determination by notifying the Commissioner in writing stating the locality he wants a hearing held in. The Commissioner or his authorized representative will conduct said hearing within a reasonable time. The Commissioner in determining what rates of wages prevail shall consider the criteria set forth in KRS 337.520(3)(a), (b), and (c).

Section 3. Upon completion of the aforementioned hearing, the Commissioner or his authorized representative shall announce to those present that any interested person who wishes a copy of the Commissioner's determination shall notify the Commissioner or the Department of Labor in writing within ten (10) days of the completion of said hearing.

Section 4. Upon completion of the prevailing wage determination, the Commissioner shall immediately send copies of said determination to all those interested persons requesting copies pursuant to Section 3.

GEORGE R. WAGONER, Deputy Commissioner, for
JAMES R. YOCOM, Commissioner of Labor
ADOPTED: October 3, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: October 17, 1974 at 10:43 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
(803 KAR 1:040)
(Proposed Amendment)

RELATES TO: KRS 337.505 through 337.550
PURSUANT TO: KRS 337.520(1) and 13.082
SUPERSEDES: LAB 4
NECESSITY AND FUNCTION: KRS 337.522(2) provides that a public authority or any interested person may request and shall be granted an additional hearing solely for the purpose of a review of the Commissioner's determination. The purpose of this regulation is to set up the procedure for requesting such a review.

Section 1. Any public authority or any interested person may request a hearing by the prevailing wage review board to review the Commissioner's determination. The Board shall conduct a hearing for this review in the locality only under the following circumstances: The request for review is communicated by any interested person to the permanent members of the Board in writing (in care of the Commissioner) within thirty (30) days from the date a prevailing wage has been determined by the Commissioner in the locality. Notice of the hearing shall be given in accordance with the requirements of KRS 337.522(3) and the hearing shall be conducted in the locality.

Section 2. The public authority or authorities in the locality shall advise the Commissioner and the permanent members of the Board the name of the member chosen by the public authority or authorities at least ten (10) days prior to the date set for the hearing. In the event that there are more than one (1) public authority requesting a review of the prevailing wage schedule and there is disagreement among the public authorities upon the appointment of a Board member, or the requesting interested person is not a public authority, then the public authority member of the Board shall be appointed by the County Judge of the locality where the hearing is to be held.

Section 3. Any interested person desiring to subpoena witnesses to the Board hearing shall file with the Commissioner not later than seven (7) days prior to the date set for the hearing, a list of the names and addresses of the persons he desires to be subpoenaed to attend and testify. The subpoenas shall be issued by one (1) of the permanent members of the Board. The duty and costs of serving or obtaining service of subpoenas, attending the hearing and enforcement shall be that of the requesting interested person. A permanent board member may issue a subpoena at any time if, in his discretion, an emergency warrants issuance thereof.

Section 4. Prior to or at each hearing the Board shall designate its Chairman for said hearing from one (1) of the two (2) permanent members of the Board. The Chairman shall preside and shall rule upon all procedural matters, including but not limited to admissibility of evidence, issuance and/or quashing of subpoenas, order of proof, etc.

Section 5. The Board shall maintain and provide at all hearings a written transcript of the proceeding before it, the cost of which shall be borne by the Department of Labor.

Section 6. All decisions of the Board shall be in writing and signed by the majority members of the Board agreeing thereto within sixty (60) days. Any dissent shall also be in writing and signed by the members so dissenting within sixty (60) days.

Section 7. All communication sent prior to a hearing addressed to the Board or a member thereof may be sent in care of the Commissioner of Labor who shall transmit said communication to the Board.

Section 8. Costs of issuing and serving subpoenas, provided in Section 3, shall include prepaid round-trip travel expense from the witness's home or place of service to the hearing site at the rate of twelve cents (12¢) per mile, plus the prepayment of twenty dollars ($20) for each day or fraction thereof for attendance at the hearing. These sums shall be paid by the requesting interested person to the witness at the time of service of the subpoena.

GEORGE R. WAGONER, Deputy Commissioner, for
JAMES R. YOCOM, Commissioner of Labor
ADOPTED: October 3, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: October 17, 1974 at 10:43 a.m.

How To Cite

Cite all material in the Administrative Register of Kentucky by Volume number and page number. Example: Volume 1, Kentucky Register, page 318. (Short form: 1 Ky.R.318).

Cite portions of the 1975 KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE by Title, Chapter and Regulation number, as follows:

601 KAR 1:010

meaning Regulation 010 of Chapter 1 of Title 601. The 600-series of Titles indicates that the issuing authority is the Department of Transportation. Title 601 is the Bureau of Vehicle Regulation. Chapter 1 relates to Motor Carriers and Regulation 010 deals with the maximum length of such vehicles on specified highways.

Page 1

U. S. POSTAL SERVICE
STATEMENT OF OWNERSHIP, MANAGEMENT AND CIRCULATION
(Act of August 12, 1970: Section 3685, Title 39, United States Code)

SEE INSTRUCTIONS ON PAGE 2 (REVERSE)

1. TITLE OF PUBLICATION: ADMINISTRATIVE REGISTER of Kentucky
2. DATE OF FILING: September 20, 1974
3. FREQUENCY OF ISSUE: Monthly
4. LOCATION OF KNOWN OFFICE OF PUBLICATION *(Street, city, county, state, ZIP code) (Not printers)*: Room 300, State Capitol, Frankfort, Kentucky 40601
5. LOCATION OF THE HEADQUARTERS OR GENERAL BUSINESS OFFICES OF THE PUBLISHERS *(Not printers)*: Room 300, State Capitol, Frankfort, Kentucky 40601
6. NAMES AND ADDRESSES OF PUBLISHER, EDITOR, AND MANAGING EDITOR
PUBLISHER *(Name and address)*: Legislative Research Commission, Room 300, State Capitol, Frankfort, Kentucky 40601
EDITOR *(Name and address)*: E. Hugh Morris, Director: Publications, Room 300, State Captiol, Frankfort, Ky. 40601
MANAGER EDITOR *(Name and address)*: None
7. OWNER *(If owned by a corporation, its name and address must be stated and also immediately thereunder the names and addresses of stockholders owning or holding 1 percent or more of total amount of stock. If not owned by a corporation, the names and addresses of the individual owners must be given. If owned by a partnership or other unincorporated firm, its name and address, as well as that of each individual must be given.)*

NAME	ADDRESS
Commonwealth of Kentucky Legislative Research Commission	Room 300, State Capitol, Frankfort, Ky. 40601

8. KNOWN BONDHOLDERS, MORTGAGEES, AND OTHER SECURITY HOLDERS OWNING OR HOLDING 1 PERCENT OR MORE OF TOTAL AMOUNT OF BONDS, MORTGAGES OR OTHER SECURITIES *(If there are none, so state)*

NAME	ADDRESS
None	

9. FOR OPTIONAL COMPLETION BY PUBLISHERS MAILING AT THE REGULAR RATES (Section 132.121, Postal Service Manual)

39 U. S. C. 3626 provides in pertinent part: "No person who would have been entitled to mail matter under former section 4359 of this title shall mail such matter at the rates provided under this subsection unless he files annually with the Postal Service a written request for permission to mail matter at such rates."

In accordance with the provisions of this statute, I hereby request permission to mail the publication named in Item 1 at the reduced postage rates presently authorized by 39 U. S. C. 3626.

(Signature and title of editor, publisher, business manager, or owner)
E. Hugh Morris Director: Publications, Legislative Research Commission

10. FOR COMPLETION BY NONPROFIT ORGANIZATIONS AUTHORIZED TO MAIL AT SPECIAL RATES *(Section 132.122, Postal Manual)*
(Check one)
Not Applicable
The purpose, function, and nonprofit status of this organization and the exempt status for Federal income tax purposes: ☐ Have not changed during preceding 12 months ☐ Have changed during preceding 12 months *(If changed, publisher must submit explanation of change with this statement.)*

11. EXTENT AND NATURE OF CIRCULATION	AVERAGE NO. COPIES EACH ISSUE DURING PRECEDING 12 MONTHS	ACTUAL NUMBER OF COPIES OF SINGLE ISSUE PUBLISHED NEAREST TO FILING DATE
A. TOTAL NO. COPIES PRINTED *(Net Press Run)*	1,650	1,800
B. PAID CIRCULATION 1. SALES THROUGH DEALERS AND CARRIERS, STREET VENDORS AND COUNTER SALES	0	0
2. MAIL SUBSCRIPTIONS	1,182	1,242
C. TOTAL PAID CIRCULATION	1,182	1,242
D. FREE DISTRIBUTION BY MAIL, CARRIER OR OTHER MEANS 1. SAMPLES, COMPLIMENTARY, AND OTHER FREE COPIES	6	9
2. COPIES DISTRIBUTED TO NEWS AGENTS, BUT NOT SOLD	0	0
E. TOTAL DISTRIBUTION *(Sum of C and D)*	1,188	1,251
F. OFFICE USE, LEFT-OVER, UNACCOUNTED, SPOILED AFTER PRINTING	462	549
G. TOTAL *(Sum of E & F—should equal net press run shown in A)*	1,650	1,800

I certify that the statements made by me above are correct and complete. *(Signature of editor, publisher, business manager, or owner)*
E. Hugh Morris

PS Form 3526 July 1971

Emergency Regulations

WENDELL H. FORD, GOVERNOR
Executive Order 74-729
September 23, 1974

EMERGENCY REGULATION
Department of Fish and Wildlife Resources

WHEREAS, The Department of Fish and Wildlife Resources finds that it is impossible to comply with normal filing procedures under Chapter 13 of the Kentucky Revised Statutes for administrative regulations in order to meet the deadline for hunting seasons for waterfowl due to the federal jurisdiction in setting season limits for all waterfowl.

THEREFORE, pursuant to the authority vested in me by Section 13.085 of the Kentucky Revised Statutes as amended by Section 2 of Senate Bill 172 of the 1974 General Assembly, I, Wendell H. Ford, Governor of the Commonwealth of Kentucky, hereby acknowledge that the declaration of an emergency by the Department of Fish and Wildlife Resources exists and submit the attached regulation with the Legislative Research Commission. This is done with the intent that the Department shall process the regulation through the normal process for filing administrative regulations within 120 days if it desires that the regulation become permanent.

WENDELL H. FORD, Governor
THELMA L. STOVALL, Secretary of State

DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
301 KAR 2:022E

RELATES TO: KRS 150.025, 150.305, 150.330, 150.340 and 150.360
PURSUANT TO: KRS 13.082
SUPERSEDES: KFWR-HS-MW-24
EFFECTIVE: September 23, 1974
EXPIRES: January 21, 1974
NECESSITY AND FUNCTION: This regulation pertains to the bag limits, possession limits and seasons for the taking of waterfowl. In accordance with KRS 150.015, this regulation is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource for the purpose of furnishing sport and recreation for present and future residents of the state. The framework of this regulation falls within the seasons and bag limits dictated by the U.S. Fish and Wildlife Service. The function of this regulation is to provide for the prudent taking of migratory birds within reasonable limits based upon an adequate supply.

Section 1. Seasons:

Ducks, Coots and Mergansers: Noon (prevailing time) November 20 through November 28, 1974; Noon (prevailing time) December 11 through January 20, 1975.

Geese: November 12 through January 20, 1975.

Rails (Sora and Virginia): November 21 through January 20, 1975.

Gallinules: November 21 through January 20, 1975.

Section 2. Limits.
(1) Ducks: (a) Bag Limits. A point system bag limit is in effect. Point values for species and sexes taken are as follows (either sex unless specified):

Species	Points Each
Canvas back and redhead	100
Hen mallard, black duck, woodduck and hooded merganser	90
Drake mallard, ringneck and mottled duck	35
All other species of ducks	15
Coots; but limited to 15 daily and 30 in possession	0

(b) The daily bag limit is reached when the point value of the last duck taken, added to the total of the point values of the other ducks already taken during that day, reaches or exceeds one hundred (100) points. The maximum number of points possible is one hundred and ninety-five (195).
(c) Possession Limits. The possession limit is the maximum number of ducks of those species and sexes which could have legally been taken in two (2) days. The maximum number of points possible for the possession limit is three hundred and ninety (390).
(2) Geese: (a) Bag Limits. Five (5) (only one (1) Canada or two (2) white-fronted or one (1) of each; except in Hickman, Fulton, Ballard and Carlisle Counties where the daily bag limit may include two (2) Canada or two (2) white-fronted or one (1) of each).
(b) Possession Limits. Five (5) (any combination of Canada, blues, snows or white-fronted geese, not to exceed more than two (2) Canada and two (2) white-fronted; except in Hickman, Fulton, Ballard and Carlisle Counties where the possession limit is any combination of the above species not to include more than four (4) Canada and white-fronted in the aggregate, of which not more than two (2) may be white-fronted geese).
(3) Others.

Species	Bag Limit	Possession Limit
Coots	15	30
Rails (Sora and Virginia)	25 (singly or in the aggregate)	25 (singly or in the aggregate)
Gallinules	15	30

Section 3. Geese Shipping and Transporting Restrictions. Geese taken may not be transported, shipped, or delivered for transportation or shipment by common carrier, the postal service, or by any person except as the personal baggage of the hunter taking the birds.

Section 4. Shooting Hours. The basic shooting hours for ducks, geese, coots, mergansers, rails and gallinules shall be one-half (1/2) hour before sunrise to sunset (prevailing time); except for opening day of both parts of the duck season (excluding geese) which opens at noon prevailing time. The shooting hours for ducks and geese on Ballard County Wildlife Management Area shall be one-half (1/2) hour before sunrise to twelve (12) o'clock noon prevailing time.

Section 5. Shot Restrictions. Only shot no larger than No. 2 (#2) is allowed for waterfowl hunting.

Section 6. Methods of Taking. Migratory game birds and waterfowl may be taken only by the aid of dogs, livestock, artificial decoys, with longbow and arrow, or with shotgun (not larger than ten (10) gauge and incapable of holding more than three (3) shells) fired from the shoulder, and by means of falconry, with the aid and use of bird calls, except recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds. One (1) fully feathered wing or head must remain attached to all waterfowl species for identification purposes.

Section 7. Wildlife Management Areas Open to Waterfowl Hunting. (1) Ballard County Wildlife Management Area, located in Ballard County, Kentucky, and described as follows: bounded on the north by the Turner Landing Road, on the west by the Ohio River, on the south by the Terrell Landing Road, on the east by refuge sign markers and visible yellow paint markers on tree line; a tract of land known as the Rudy and Haydon tracts bounded on the south by the Turner Landing Road, on the east by refuge sign markers and visible yellow paint markers on tree line, on the north by Kentucky Highway 473, then running south along the east bank of Mitchell Lake to the Turner Landing Road; also, open on the north side of the refuge proper a tract of land north of the Clark Line Road including Shelby Lake and west to the Ohio River and continuing north to yellow signs:
(a) Species and Seasons:

Species	Seasons
Ducks, coots and Mergansers	December 12 through January 20, 1975 (excluding Sundays and Christmas Day)
Geese	December 2 through January 20, 1975 (excluding Sundays and Christmas Day)

(b) There will be an eight (8) shell limit per hunter on the Ballard County Wildlife Management Area when hunting geese. This does not apply when hunting ducks from pothole blinds or pits as separated from goose hunting areas. Shooting ducks is prohibited in goose hunting areas and shooting geese in duck areas is prohibited. The barrel and magazine of all guns will be checked for ammunition before the hunter enters the check station. No shot larger than No. 2 (#2) will be allowed for hunting waterfowl. Any hunter on the management area under the age of eighteen (18) must be accompanied by an adult. Any person whose transportation to and from pits and blinds is furnished by the Department of Fish and Wildlife Resources must have his gun encased.

(c) Miller Tract, located in Ballard County, Kentucky, and consisting of 300 acres, more or less south of the Terrell Landing Road and marked with yellow signs reading "Wildlife Management Area for Public Hunting" is open to waterfowl hunting during the regular statewide season. Pits and blinds must be one hundred (100) yards apart and one hundred (100) yards from Terrell Landing Road. Both ducks and geese may be taken by hunters occupying a pit or blind. Shooting hours conform to statewide regulations.
(2) Land Between the Lakes Wildlife Management Area, located in Lyon and Trigg Counties and described as follows: Waterfowl hunting is permitted on Kentucky Lake below elevation 359' and at higher elevations within twenty-five (25) yards of the 359' elevation, Kentucky-Tennessee state line to Barkley Canal in all bays is open to hunting, except Duncan, Smith and Pisgah Bays which are indicated by signs as being

closed to hunting. No permits are required. The remainder of Kentucky Lake is open to waterfowl hunting in conformance with statewide regulations.

(3) Lake Barkley Wildlife Management Area. Refuge areas are as follows and will be closed to fishing, boating and hunting or molesting of waterfowl as designated by posted signs:

(a) Refuge area on the west side of the main channel between river mile 51 (Hayes Landing Light) and river mile 57.3 (Crooked Creek Light) as designated by signs. Closed from November 1, 1974 through February 15, 1975.

(b) Refuge area surrounded by levee located between river mile 68.4 and river mile 70.4. Closed from October 1, 1974 through February 28, 1975.

(c) Open Hunting Areas. Hunting will be permitted on the remainder of Lake Barkley with the exception of recreation areas and access points which will be closed and designated by posted signs at the entrance of said areas. Waterfowl hunting along the western shore of the lake will be confined to those areas below the 359' contour, and those areas within twenty-five (25) yards of the 359' elevation.

(d) Permanent blinds or pits must be registered on a permit issued by the Corps of Engineers. Applicants for blind or pit permits must show a Kentucky hunting license to the registration clerk before a permit will be issued. Registration will be conducted at the Lake Barkley Resource Manager's Office located at Barkley Dam off U.S. Highway 641-62 from October 1 through December 31, 1974, during weekdays only and excluding federal holidays, from 8:00 a.m. to 3:00 p.m. A permit will be issued for each permanent blind or pit and only one permit will be issued per hunter. All pits and blinds must be one hundred (100) yards apart and two hundred (200) yards from any refuge as designated by signs.

(4) Barren Lake Wildlife Management Area, located in Barren, Allen and Monroe Counties and including all lands and waters owned and operated by the Department of the Army, Corps of Engineers, including those under license to the Kentucky Department of Fish and Wildlife Resources as marked by red painted steel boundary posts, excluding all recreation, park and refuge areas, is open to duck hunting only. Lands under license to the Department are open to hunting for all other wildlife species (except geese) during the regular statewide seasons:

(a) Refuge area is as follows, and will be closed to all waterfowl hunting during the regular statewide season as designated by posted signs: Starting at the Narrows Boat Ramp, thence northwest to a point directly opposite the boat ramp across Skaggs Creek, thence following the shoreline, and including all embayments, to Peninsula Boat Dock, thence east across the water to Bailey's Point Boat Ramp, thence following the shoreline southeast past Hix Subdivision around an embayment to a point of land directly opposite the State Park Boat Ramp, thence southeast across the water to the State Park Boat Ramp, thence north across the mouth of Peter Creek to a point of land directly opposite the State Park Boat Ramp, thence following the shoreline north and including all embayments to the Narrows Boat Ramp. Crippled or dead waterfowl downed by hunters and falling within the waterfowl refuge, may be retrieved, but without the aid or presence of a gun. Unloaded guns may be carried by boat while motoring through the refuge, except when pursuing or picking up downed waterfowl.

(b) Permanent blinds or pits must be registered and a blind permit issued by the Corps of Engineers. Registration will be conducted at the Barren Lake Resource Manager's Office located near the dam off Kentucky Highway 252, from October 1 through December 31, 1974, during weekdays only, excluding federal holidays, from 7:30 a.m. to 4:00 p.m. A permit will be issued for each permanent blind or pit and only one permit will be issued per hunter. All pits and blinds must be one hundred (100) yards apart. Permanent pits and blinds must be removed no later than thirty (30) days after the close of the waterfowl season or they become the property of the Department of Fish and Wildlife Resources.

(5) Nolin, Rough, Green and Buckhorn Wildlife Management Areas, including all lands and waters owned and operated by the Department of the Army, Corps of Engineers, including those under license to the Kentucky Department of Fish and Wildlife Resources, and excluding all recreation and park areas, are open to all waterfowl hunting during the regular statewide season. Permanent blinds or pits must be registered and a blind permit issued by the Corps of Engineers. Registration will be conducted at each of the Resource Manager's offices located at or near the dam sites, from October 1 through December 31, 1974, during weekdays only, excluding federal holidays, from 7:30 a.m. to 4:00 p.m. A permit will be issued for each permanent blind or pit and only one permit will be issued per hunter. All pits and blinds must be one hundred (100) yards apart. Permanent pits and blinds must be removed no later than thirty (30) days after the close of the waterfowl season or they become the property of the Department of Fish and Wildlife Resources.

Section 8. Wildlife Management Areas Closed to All Waterfowl Huntings: (1) Sauerheber Unit of the Sloughs Wildlife Management Area, located in Henderson County, and described as follows, will be closed to all hunting, fishing, boating and trespassing except by authorized persons during the period October 15, 1974 through March 15, 1975; bounded on the north by Kentucky Highway 268 and including all state-owned lands to the south, within the area designated by yellow signs.

(2) Central Kentucky Wildlife Management Area, located in Madison County, will be closed to all waterfowl hunting.

(3) Dewey Lake Wildlife Management Area, located in Floyd County, will be closed to all waterfowl hunting.

(4) Grayson Wildlife Management Area, located in Carter and Elliott Counties, will be closed to all waterfowl hunting.

Section 9. This regulation will not be valid after January 20, 1975.

Dr. ROBERT C. WEBB, Chairman
Department of Fish and Wildlife Resources Commission
ARNOLD L. MITCHELL, Commissioner

ADOPTED: August 19, 1974
RECEIVED BY LRC: September 23, 1974 at 11:37 a.m.

Administrative Regulations Review Subcommittee Minutes

October 2, 1974

The Administrative Regulations Review Subcommittee held its fourth meeting on Wednesday, October 2, 1974, at 10:00 a.m. in Room 327 of the State Capitol.

Present were:

Members: Senator Michael R. Moloney, Chairman; and Representative James Davis.

LRC Staff: Phillip R. Patton, Hugh Morris, Mabel Robertson, Gary Luhr, and Susan Martin.

Press: Bill Bradford and Livingston Taylor.

Guests: J. T. Cox, Department of Fish and Wildlife; Charles E. McCoy, Department of Labor; Earl M. Cornett, Department of Labor; Perry Lewis, Department of Transportation; Mack Morgan, Kentucky Retail Federation, Inc., and Clifford E. Smith, Jr., attorney.

The meeting was called to order by Chairman Moloney. He said that Representative Richard Lewis contacted him saying he had prior commitments and would not be able to attend the meeting.

The Chairman said at the last meeting on September 11, 1974, two regulations were returned to the Attorney General's Office and they have now been re-written in accordance with the committees objections and filed to become effective upon receipt.

Regulation No. 11 KAR 1:010, Higher Education, student incentive grants, was filed.

Regulation No. 200 KAR 1:010, Finance, public records was filed.

Regulations No. 201 KAR 3:010, Auctioneers, apprenticeship-principal examination, 201 KAR 3:020, Auctioneers, apprenticeship-residence requirement, 201 KAR 3:030, Auctioneers, reciprocity with Indiana, 201 KAR 3:040, Auctioneers, military duty, 201 KAR 3:050, Auctioneers, accounting, and 201 KAR 3:060, Auctioneers, sale of real estate, were returned for the reasons that there does not appear to be any grant of authority in Chapter 330 of the Kentucky Revised Statutes for the Board of Auctioneers to issue administrative regulations.

Regulations No. 301 KAR 1:010, Fish and Wildlife, boat docks, concessions, 301 KAR 1:020, Fish and Wildlife, snagging, 301 KAR 1:030, Fish and Wildlife, Tennessee River, closing hours, 301 KAR 1:040, Fish and Wildlife, skin diving, 301 KAR 2:010, Fish and Wildlife, steel traps, 301 KAR 2:020, Fish and Wildlife, use of devices, 301 KAR 3:010, Fish and Wildlife, prohibited acts, 301 KAR 3:020, Fish and Wildlife, license fees, and 301 KAR 4:010, Fish and Wildlife, districts, were filed.

Regulation No. 601 KAR 13:010, Vehicle Regulation-driver improvement, medical review board, was filed.

Regulation No. 602 KAR 1:030, Aeronautics, intrastate operation, was returned to the Department of Transportation for the reason that the provisions of the regulation which state that "insofar as they do not conflict with the laws of Kentucky or the regulations of this Department" appear to be contrary to the provisions of KRS 183.080.

Regulation No. 602 KAR 1:040, Aeronautics, insurance requirements, was filed.

Regulations No. 603 KAR 5:010, Highways, limited access, and 603 KAR 5:020, Highways, pedestrian traffic, were filed.

Regulations No. 702 KAR 2:010, Education-Surplus Property, eligibility, 702 KAR 2:020, Education-Surplus Property, authority, 702 KAR 2:030, Education-Surplus Property-eligibles, 702 KAR 2:040, Education-Surplus Property, federal surplus, 702 KAR 2:050, Education-Surplus Property, federal surplus cont'd, 702 KAR 2:060, Education-Surplus Property, nonfederal excess, 702 KAR 2:070, Education-Surplus Property, acquisition, 702 KAR 2:080, Education-Surplus Property, charges, accounting, 702 KAR 2:090, Education-Surplus Property, director, and 702 KAR 2:100, Education-Surplus Property, other property, were filed.

Regulation No. 703 KAR 1:010, Education, food service, local responsibilities, was filed.

Regulation No. 703 KAR 1:050, Education, food service, lunch and breakfast, was filed.

Regulations No. 703 KAR 2:020, Education, calendar, 703 KAR 2:030, Education, census, and 703 KAR 2:040, Education,

experimental schools, were returned with the request of the committee that regulations 703 KAR 2:020 and 703 KAR 2:030 be amended in such a manner as to refer to the existence of 703 KAR 2:040.

Regulations No. 703 KAR 3:010, Education, guidance personnel, 703 KAR 3:020, Education, guidance counselor, 703 KAR 3:030, Education, counselor units, 703 KAR 3:040, Education, federal funds, 704 KAR 1:010, Education, handicapped, hearing programs, 704 KAR 2:010, Education, instructional materials, and 705 KAR 1:010, Education, vocational education, were filed.

Regulation No. 802 KAR 1:010, Board of Tax Appeals, procedure, was filed.

Regulations No. 803 KAR 1:010, Labor, apprenticeship programs, and 803 KAR 1:020, Labor, employment of apprentices, were filed.

Mr. Charles McCoy, Department of Labor, appeared before the subcommittee and stated that he had received a telephone call on September 30, 1974, from Mr. Clifford Smith, Jr., Attorney, regarding Regulations No. 803 KAR 1:030, Labor, prevailing wage hearing, and 803 KAR 1:040, Labor, prevailing wage review. Mr. McCoy said his department is giving affirmative consideration to Mr. Smith's request and, therefore, the regulations were not before the subcommittee.

Regulations No. 803 KAR 1:050, Labor, contractors' records, and 803 KAR 4:010, Labor, elevator safety, were filed.

Regulations No. 804 KAR 1:010, A.B.C., advertising, inside signs, 804 KAR 1:020, A.B.C., advertising, outside signs, 804 KAR 1:030, A.B.C., advertising, prohibited statements, 804 KAR 1:040, A.B.C., advertising, novelties, 804 KAR 1:050, A.B.C., advertising, particular brands, 804 KAR 1:060, A.B.C., advertising, solicitation, 804 KAR 3:010, A.B.C., fair trade, minimum cost price, and 804 KAR 3:020, A.B.C., fair trade, minimum retail, were filed.

Hugh Morris of the LRC staff recommended that the deadline for receipt of proposed regulations be advanced from the 20th to the 15th of each month in light of December holidays and the large volume of repromulgated regulations expected early next year. The subcommittee concurred with his recommendation and requested he inform the Legislative Research Commission at their October meeting.

The meeting adjourned at 11:30 a.m.

Proposed Regulations

SECRETARY OF THE CABINET
Department of Personnel
(101 KAR 1:010)

RELATES TO: KRS 18.110
PURSUANT TO: KRS 13.082 and 18.170
SUPERSEDES: PER-1
NECESSITY AND FUNCTION: KRS 18.170 requires the State Personnel Board to adopt comprehensive rules consistent with the provisions of KRS Chapter 18. This rule is necessary to define key terms used in the rules which are not defined in KRS Chapter 18 (18.110).

Section 1. The following words and phrases when used in these rules have the following meanings unless otherwise clearly indicated in the context:

(1) "Act," "The Act," "Merit System Act" means House Bill 199 approved by the Governor March 17, 1960, and House Bill 120 approved by the Governor on February 22, 1972 (and other amendments adopted since the original Act);

(2) "Personnel Officer" means that employee of each agency immediately responsible for the personnel administration of the agency;

(3) "Probation" means the first six (6) months of service following appointment, promotion, re-employment, or reinstatement, except a reinstatement ordered by the Board, to any position which requires special observation and evaluation of an employee's work and which must be passed successfully before status may be conferred;

(4) "Public Hearing" means a meeting of the Board open to the public, held after at least five (5) calendar days notice has been given thereof, at which any interested party may appear and be heard;

(5) "Public Notice" means a written notice on a bulletin board accessible to the public during business hours and other publicity as may be deemed necessary to assure responsible notice to those concerned. A copy of such notice shall be filed with the Secretary of State as a public record.

PROPOSED: September 13, 1974

PHILIP TALIAFERRO, Chairman
CATTIE LOU MILLER, Secretary
Kentucky Personnel Board

JAMES O. KING, Secretary
RECEIVED BY LRC: September 27, 1974 at 3:19 p.m.

PUBLIC HEARING: A public hearing on the foregoing regulation will be held in the Department of Personnel Conference Room, Room 336, New Capitol Annex, Frankfort, Kentucky, on the 8th day of November, 1974, at 9:30 a.m. Persons having an interest in the subject matter of the proposed regulation are invited to attend and present testimony or submit their comments in writing to: Commissioner, Kentucky Department of Personnel, New Capitol Annex, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Department of Personnel
(101 KAR 1:020)

RELATES TO: KRS 18.120, 18.170, 18.190, 18.210, 18.220, 18.260, 18.300, 18.310, 18.320
PURSUANT TO: KRS 13.082, 18.170 and 18.210
SUPERSEDES: PER-2
NECESSITY AND FUNCTION: KRS 18.170 requires the State Personnel Board to adopt comprehensive rules consistent with KRS Chapter 18. KRS 18.210 requires the Commissioner of Personnel to prepare and submit such rules to the Board as relate to the classified service. This rule is to assure an avenue for public and employee participation in rule development and amendment and to allow cooperation with other jurisdictions in administering the rules.

Section 1. Rules. Any officer, employee or citizen who feels that these rules are working or are apt to work an unnecessary hardship on him, or that the efficiency of the state service can be improved by amendment to these rules may appear before the Board at any of its regular meetings and shall have the right to be heard upon the matter, provided that the request to be heard on such matter must be filed in writing with the Commissioner at least seven (7) days prior to the Board meeting.

Section 2. Cooperation With Other Merit Systems. The Commissioner may cooperate with the governmental agencies of other jurisdictions whose merit systems operate in conformity with standards comparable to those contained in these rules. The Commissioner may announce and administer joint examinations and establish joint lists from which eligibles shall be certified for appointment in accordance with the provisions of these rules.

PROPOSED: September 13, 1974

PHILIP TALIAFERRO, Chairman
CATTIE LOU MILLER, Secretary
Kentucky Personnel Board

JAMES O. KING, Secretary
RECEIVED BY LRC: September 27, 1974 at 3:19 p.m.

PUBLIC HEARING: A public hearing on the foregoing regulation will be held in the Department of Personnel Conference Room, Room 336, New Capitol Annex, Frankfort, Kentucky, on the 8th day of November, 1974, at 9:30 a.m. Persons having an interest in the subject matter of the proposed regulation are invited to attend and present testimony or submit their comments in writing to: Commissioner, Kentucky Department of Personnel, New Capitol Annex, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Department of Personnel
(101 KAR 1:030)

RELATES TO: KRS 18.160
PURSUANT TO: KRS 13.082, 18.160 and 18.170
SUPERSEDES: PER-4-2
NECESSITY AND FUNCTION: KRS 18.160 establishes the State Personnel Board and sets forth the procedures for operation of the Board. KRS 18.170 further expands on the duties of the Board. This rule is to assure compliance with these statutes and to define specific methods of compliance.

Section 1. Regular Meetings. Regular meetings of the Board shall be held on the second Friday of each month. The Chairman or the Commissioner may provide the time, date, and place of any meeting when deemed necessary and give due notice in writing of the change to the Board members, the Commissioner, and the several appointing authorities.

Section 2. Chairman. At the regular meeting in January of each year, the Board shall elect one member to act as Chairman for a term of one (1) year, or until a successor is duly elected. If the office of Chairman is vacated because of death or resignation, or in any other manner, before the expiration of his term as Chairman, the Board shall elect his successor at the next meeting who shall serve for the unexpired term.

Section 3. Rules of Order. Meetings of the Board may be informal, subject to such rules of order as may be promulgated by the Chairman.

Section 4. Minutes. The Commissioner shall attend all meetings of the Board, act as its secretary, and record its official actions in the minutes. The time and place of each meeting of the Board, names of the Board members present, all official acts of the Board, the votes of each Board member except when the acts are unanimous, and when requested a Board member's dissent with his reasons shall be recorded in the minutes. The Commissioner shall cause the minutes to be transcribed and presented for approval or amendment at the next regular meeting. The minutes or a true copy thereof certified by a majority of the Board shall be open to public inspection.

Section 5. Reports of Commissioner. The Commissioner shall report in writing to the Board:

(1) In advance, any new or revised job specification or

grade change for each administrative, professional, or supervisory position;

(2) Monthly, the name, classification, grade, salary and department of each disciplined employee and of each employee granted a qualification waiver or exceptional salary increase;

(3) Educational background, and prior experience of each new administrative, professional or supervisory employee in the Department of Personnel, or in agency personnel offices;

(4) Within thirty (30) days, any information concerning personnel or related matters requested in writing by the Board;

(5) Semi-annually, (April and October) the name, classification, grade, salary, and department of each provisional, seasonal, temporary, or emergency employee.

PROPOSED: September 13, 1974

PHILIP TALIAFERRO, Chairman
CATTIE LOU MILLER, Secretary
Kentucky Personnel Board

JAMES O. KING, Secretary
RECEIVED BY LRC: September 27, 1974 at 3:20 p.m.

PUBLIC HEARING: A public hearing on the foregoing regulation will be held in the Department of Personnel Conference Room, Room 336, New Capitol Annex, Frankfort, Kentucky, on the 8th day of November, 1974, at 9:30 a.m. Persons having an interest in the subject matter of the proposed regulation are invited to attend and present testimony or submit their comments in writing to: Commissioner, Kentucky Department of Personnel, New Capitol Annex, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Department of Personnel
(101 KAR 1:040)

RELATES TO: KRS 18.110, 18.170, 18.210, 18.220, 18.240
PURSUANT TO: KRS 13.082, 18.170 and 18.210
SUPERSEDES: PER-5-1
NECESSITY AND FUNCTION: KRS 18.210 requires the Commissioner of Personnel to prepare and submit to the Board rules which provide for a position classification plan for all positions in the classified service so that the same qualifications may reasonably be required for and the same schedule of pay equitably applied to all positions in the same class. This rule is to assure uniformity and equity in administering the plan, in accordance with requirements of the statutes.

Section 1. Preparation of Plan. The Commissioner shall, after consultation with the appointing authorities, prepare and recommend to the Board a comprehensive classification plan. The Board shall present the plan to the Governor, through the Commissioner of the Executive Department for Finance and Administration, for his adoption. The plan shall be based on investigation and analysis of all the duties and responsibilities assigned to each position, and each position shall be allocated to its proper class in the classification plan after consultation with appointing authorities. When complete, the classification plan shall include for each class of position an appropriate title, description of duties and responsibilities, and the required education, experience and other qualifications.

Section 2. Allocations of Positions. (1) Every position shall be allocated to the appropriate class by the Commissioner who shall consult with appointing authorities and take their recommendations into consideration in making the decision. Every position shall be placed in a specific class before final administrative action can be taken on appointments, transfers, promotions, changes in pay-grade status, or payment of salary involving the position. Such allocations become effective only after written approval of the Commissioner.

(2) The Commissioner of the Executive Department for Finance and Administration may review and approve all proposed position establishments, allocations, and reallocations on the basis of the availability of funds.

(3) Those positions which are sufficiently similar as to duties performed, scope of discretion and responsibility, minimum requirements of training, experience, or skill, and which merit approximately equal pay shall be allocated to the same class.

(4) The Commissioner shall allocate new positions to classes upon receipt of the prescribed forms of statements of duties, responsibilities and requirements of such positions from the appointing authority.

(5) The Commissioner shall change the classification of existing positions when a material and permanent change in the duties or responsibilities of a position occurs. This type of action is known as reclassification. In all cases of reclassification, the employee within a position at the time it is reclassified, shall be entitled to serve therein with the corresponding status he had before the position was reclassified, providing he meets the qualification requirements for the class to which his position is reclassified.

(6) The Commissioner shall change the allocation of existing positions when it is determined that the position is incorrectly allocated, and that there has been no substantial change in duties from those in effect when the position was immediately previously classified. This type of action is known as reallocation. In all cases of reallocation, the employee within the class of position when it is reallocated shall be entitled to serve therein with the corresponding status that he had before the position was reallocated.

(7) Any employee affected by the allocation of his position to a class shall, after filing with the Commissioner a written request for reconsideration thereof in such manner and form as the Commissioner may prescribe, be given a reasonable opportunity to be heard thereon.

Section 3. Interpretation of Class Specifications. (1) Class specifications are descriptive and explanatory and are not restrictive. They are designed to indicate the kinds of positions which should be allocated to the several classes as determined by their duties or responsibilities and shall not be construed as describing what the duties or responsibilities of any position shall be. The use of an individual expression or illustration as to duties or responsibilities shall not be regarded as excluding assignment of others not mentioned which are of similar kind or quality. The language of class specifications is not to be construed as limiting or modifying the authority which appointing authorities have to take from, add to, eliminate entirely, or otherwise change the duties and responsibilities, to assign duties or delegate responsibility to employees, or direct and control their work.

(2) In determining the class to which any position shall be allocated, the specification for each class shall be considered as a whole and be construed as a general description of the kinds of work characteristics of positions which shall be allocated to the class and not as limiting the authority to prescribe or alter the duties of any position.

(3) Minimum qualifications are comprehensive statements of the minimum background as to education, experience, and other qualifications which will be required in all cases as evidence of an appointee's ability to perform the work properly. Although not expressed, such qualifications as should properly be required of all persons applying for or holding any position such as good physical condition, freedom from disabling defects, honesty, sobriety, and industry are to be considered as being required.

Section 4. Title of Position. The class title of a position shall be used to designate such position in all budget estimates, payrolls and other official records, documents, vouchers, and communications in connection with all personnel processes. For purposes of internal administration or for any other purposes not involving the personnel processes, any abbreviation or code symbol may be used in lieu of the class title in such instances and any other office title desired by the appointing authority may be used alone to designate the position for purposes not involving personnel processes.

Section 5. Official Copy of Class Specifications. (1) The Department of Personnel shall maintain a master set of all approved class specifications. Such specifications shall constitute the official class specifications in the classification plan. The copies of the specification for each class shall indicate the date of adoption or the last revision of the specification for such class.

(2) The Department of Personnel shall provide each appointing authority with a set of the class specifications of those classes to which positions in his department are allocated and such other classes as it sees fit. Such class specifications in the Department of Personnel or office of the appointing authorities shall be open for inspection by the appointing authorities and the employees or the public under reasonable conditions during business hours.

PROPOSED: September 13, 1974

PHILIP TALIAFERRO, Chairman
CATTIE LOU MILLER, Secretary
Kentucky Personnel Board

JAMES O. KING, Secretary
RECEIVED BY LRC: September 27, 1974 at 3:20 p.m.

PUBLIC HEARING: A public hearing on the foregoing regulation will be held in the Department of Personnel Conference Room, Room 336, New Capitol Annex, Frankfort, Kentucky, on the 8th day of November, 1974, at 9:30 a.m. Persons having an interest in the subject matter of the proposed regulation are invited to attend and present testimony or submit their comments in writing to: Commissioner, Kentucky Department of Personnel, New Capitol Annex, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Department of Personnel
(101 KAR 1:050)

RELATES TO: KRS 18.170, 18.190, 18.210 and 18.240
PURSUANT TO: KRS 13.082, 18.170 and 18.210
SUPERSEDES: PER-6-4
NECESSITY AND FUNCTION: KRS 18.210 requires the Commissioner of Personnel to prepare and submit to the Board rules which provide for a pay plan for all employees in the classified service, taking into account such factors as the relative level of duties and responsibilities of various classes, rates paid for comparable positions elsewhere, and the state's financial resources. This rule is to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements.

Section 1. Preparation, Approval, and Amendment of the Plan. After consultation with appointing authorities and the Commissioner of the Executive Department for Finance and Administration, the Commissioner shall prepare and recommend to the Board a compensation plan for all classes of position. The Board shall present the plan, through the Commissioner of the Executive Department for Finance and Administration, to the Governor for his approval. The plan shall provide salary ranges for the various classes, with the salaries consistent with the functions outlined in the classification plan. Such salary ranges shall include minimum, intervening, maximum, and longevity rates of pay for each class. Each class of position in the classification plan shall be assigned to a salary range in the compensation plan.

Section 2. Entrance Salary. Initial appointments to state service shall be made at the minimum of the pay range for the class unless:

(1) The Commissioner determines that it is not possible to recruit qualified employees at the established entrance salary in a specific area, in which case, he may, at the request of the appointing authority, authorize the recruitment for a class of position at a higher step of the range, provided that all other employees in the same class of position in the same agency in the same locality are adjusted in salary to the same step.

(2) (a) The Commissioner authorizes the appointment of a qualified applicant at the second or third step of the range, provided that any such exception is based on the outstanding and unusual character of the employee's experience, education and ability over and above the minimum qualifications specified for the class, provided that all other employees possessing similar qualifications in the same class of position in the same agency in the same locality are adjusted in salary to the same step.

(b) An agency head signs the personnel action form appointing a college graduate applicant, who is not appointed under 101 KAR 1:050, Section 2(2)(a) and who has an undergraduate average of 3.25 on a four (4) point scale, or equivalent, or better, and has submitted an official college transcript to the Department of Personnel before the effective date of his appointment.

Section 3. Re-Entrance to State Service. Appointing authorities, with the approval of the Commissioner, may place re-employed, reinstated and probationarily appointed former employees at a salary determined by one (1) of the following methods:

(1) The same class:

(a) Request the same salary that was paid at the time of separation if such salary is within the current salary range;

(b) Request a salary relative to that which was paid employee at time of separation (original salary plus increases resulting from a change of salary range) if such salary is within the current salary range;

(c) Request a lower salary within the current salary range which falls in one (1) of the steps within the salary range;

(d) Request a salary in accordance with the standards used for making new appointments.

(2) A higher class:

(a) Request the same salary that was paid at the time of separation if such salary is within the higher salary range;

(b) Request a salary relative to that which was paid the employee at time of separation (original salary plus increases resulting from a change of salary range) if such salary is within the higher salary range;

(c) Request a salary in accordance with the standards used for making new appointments.

(3) A lower class:

(a) Request the same salary that was paid at the time of separation if such salary is within the lower salary range;

(b) Request a salary relative to that which was paid the employee at the time of separation (original salary plus increases resulting from the change of salary range) if such salary is within the lower salary range;

(c) Request a salary in accordance with the standards used for making new appointments.

Section 4. Salary Adjustments. (1) Change in Salary Range. Whenever a new or different salary range is made applicable to a class of position, persons employed in positions of that class at the effective date of the adjustment shall have their salary placed at least at the minimum salary step of the new range. An adjustment may be made to the salary step of the new range corresponding to that step which an employee held under the range formerly applicable to his class of position. In fixing salaries on an adjustment, an appointing authority shall afford equitable treatment to all employees affected by the adjustment. Salary adjustments resulting from different salary ranges being made applicable to a class of position shall not affect an employee's normal anniversary increment date.

(2) An employee who is promoted may have his salary raised to the lowest step of the salary range for the class of his new position which will provide an increase over the salary received prior to promotion.

(3) An employee who is demoted shall have his salary reduced to at least the maximum rate of the new class; however, if an employee whose performance is satisfactory is demoted through no fault of his own as a result of the reallocation of his position to a lower class and his salary is above the maximum, he may retain the salary he received before the reallocation, but he shall not receive salary advancements so long as he remains in a position with a maximum rate no higher than this salary.

(4) Transfer. An employee who is transferred to the same class of position shall be paid the same salary that he received prior to transfer.

(5) Reclassification. An employee who is advanced to a higher pay grade through a reclassification of his position shall have his salary raised to the lowest step of the salary range for the class which will provide an increase over the salary received prior to the advancement.

(6) Reallocation. An employee who is advanced to a higher pay grade through a reallocation of his position shall have his salary raised to the lowest step of the salary range for the class which will provide an increase over the salary received prior to the advancement.

(7) Detail to Special Duty. An employee who is approved for detail to special duty as provided by 101 KAR 1:110, Section 4, may have his salary raised to the lowest step of the salary range for the class of the new position which will provide an increase over the salary received prior to the detailed assignment.

(8) Salary Reduction. Employees who are transferred back to their old class, after completion of a detail assignment or unsatisfactory probationary period following a promotion, shall have their salary reduced to the salary rate received prior to the detail assignment or promotion.

Section 5. Salary Advancements. (1) All salary advancements shall be based upon quality and quantity of work giving due consideration to length of service, and shall correspond with the steps of the approved salary range, and shall, in the classified service, be limited to employees having status.

(2) Employees shall be eligible and may be given consideration by the appointing authority for a one-step salary advancement at the beginning of any month following the successful completion of the probationary period. Thereafter, an employee shall be eligible and given consideration by the appointing authority for a one-step salary advancement at the beginning of any month following completion of twelve (12) months continuous satisfactory service since last receiving an increase in salary. The service may be temporary, provisional, or probationary.

(3) Any permanent full-time employee who has served continuously for one (1) year immediately preceding the recommendation and who has not received an outstanding merit advancement within twenty-four (24) months, and who has not received more than one (1) outstanding merit advancement in his present grade, is eligible for a one-step outstanding merit salary advancement in his present grade in addition to any other salary advancements to which he might be entitled if:

(a) His acts or ideas have resulted in significant financial savings to the Commonwealth, or to a significant improvement in service to its citizens, or;

(b) His job performance is outstanding. The appointing agency must submit written justification to the Commissioner and the personnel action form must be approved by the agency head and the Commissioner to be effective. In a fiscal year, an agency with sufficient budgeted funds may grant as many outstanding merit salary advancements as ten (10) percent of the number of its employees at the close of the prior fiscal year.

(4) Subject to the approval of the Commissioner, any permanent, full-time employee who, after his probationary period, satisfactorily completes 260 classroom hours of job-related instruction, is eligible for an educational achievement one-step salary advancement.

(5) New increment anniversary dates will be established when:

(a) An employee first enters on duty. Increment anniversary date will be the first of the month if the employee enters on duty the first work day of the month. For employees entering on duty after the first work day of the month, the anniversary date shall be the first day of the following month;

(b) An employee receives an increase in salary as a result of a promotion;

(c) An employee going on leave without pay, shall result in a postponement of employee's receiving an increment one (1) full month for each full or partial month he is on leave.

(6) Increment anniversary dates will not change when:

(a) An employee's position class receives a new or different salary range;

(b) An employee receives a salary adjustment as a result of his position being reallocated or reclassified;

(c) An employee is transferred from one department to another in the same salary grade and at the same rate of pay;

(d) An employee receives a demotion to a position of a lower class or his position receives a lower classification;

(e) An employee is approved for detail to special duty as provided by 101 KAR 1:110, Section 4;

(f) An employee receives a outstanding merit salary advancement under 101 KAR 1:050, Section 5(3), or an

educational achievement salary advancement under 101 KAR 1:050, Section 5(4);

(g) An employee receives an adjusted increment based on the fact that the employee had not received the maximum number of salary advancements permitted.

(7) An employee who has not received the maximum number of salary advancements permitted by the time limits set forth may be given additional salary advancements at the beginning of any month provided his salary is not advanced to a step of the salary range higher than he would have reached had he received all salary advancements permitted.

(8) No employee shall have his salary advanced to a point above the maximum of the salary range applicable to the class of his position except as provided by 101 KAR 1:050, Section 5(3)(4), and 101 KAR 1:050, Section 6.

Section 6. Longevity Increases. (1) All salary advancements with the longevity plan shall be based upon quality and quantity of work, giving due consideration to length of service, and shall correspond with the steps of the approved salary range, and shall, in the classified service, be limited to employees having status.

(2) An employee shall be eligible and considered for advancement to the first longevity step after completion of twelve (12) months of satisfactory service at the salary rate preceding the first longevity step and seven (7) years of total state service.

(3) An employee shall be eligible and considered for advancement to the second longevity step after completion of twelve (12) months of satisfactory service at the salary rate preceding the second longevity step and nine (9) years of total state service.

(4) An employee shall be eligible and considered for advancement to the third longevity step after completion of twelve (12) months of satisfactory service at the salary rate preceding the third longevity step and eleven (11) years of total state service.

(5) Requirements as to total service. Service requirements for advancement to the longevity steps require satisfactory service. The service does not have to be continuous. Absences of leave without pay, except approved educational leave, in excess of thirty (30) working days shall be deducted in computing total service. Re-employed persons who have been dismissed for cause from state service shall not receive credit for service prior to the dismissal.

(6) The longevity steps may be used for promotions, demotions, and changes in pay grade, provided the employee possesses the total service required for advancement to the longevity step.

Section 7. Paid Overtime. Overtime for which pay is authorized shall have the approval of the Commissioner of Personnel and the Commissioner of the Executive Department for Finance and Administration.

Section 8. Maintenance and Maintenance Allowance. In each case where an employee or the employee and his family are provided with full or part maintenance, consisting of one (1) or more meals per day, lodging or living quarters, and domestic or other personal services, such compensation in kind shall be treated as part payment and its value shall be deducted from the appropriate salary rate in accordance with the schedule promulgated by the Commissioner after consultation with appointing authorities and the Commissioner of the Executive Department for Finance and Administration.

PROPOSED: September 13, 1974

PHILIP TALIAFERRO, Chairman
CATTIE LOU MILLER, Secretary
Kentucky Personnel Board

JAMES O. KING, Secretary

RECEIVED BY LRC: September 27, 1974 at 3:21 p.m.

PUBLIC HEARING: A public hearing on the foregoing regulation will be held in the Department of Personnel Conference Room, Room 336, New Capitol Annex, Frankfort, Kentucky, on the 8th day of November, 1974, at 9:30 a.m. Persons having an interest in the subject matter of the proposed regulation are invited to attend and present testimony or submit their comments in writing to: Commissioner, Kentucky Department of Personnel, New Capitol Annex, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Department of Personnel
(101 KAR 1:060)

RELATES TO: KRS 18.190, 18.210, 18.250
PURSUANT TO: KRS 13.082, 18.170, 18.190, 18.210, and 18.212
SUPERSEDES: PER-7-3
NECESSITY AND FUNCTION: KRS 18.170 requires the Personnel Board to adopt comprehensive rules consistent with the provisions of KRS Chapter 18. KRS 18.190 requires the Commissioner of Personnel to prepare and recommend to the Personnel Board rules relating to competitive examinations. KRS 18.210 requires the Commissioner to prepare and submit to the Board rules which provide for open competitive exams to test the relative fitness of applicants; and for the rejection of candidates or eligibles who fail to meet reasonable requirements of the Commissioner. This rule is necessary to implement these statutory requirements and to assure uniformity in administering exams.

Section 1. Notices of Examinations. Examinations for entrance to the classified service shall be conducted on an open-competitive basis. For those classes in which there is expected to be a considerable and recurring need of eligibles, the Commissioner shall establish a recruitment program which shall be both positive and continuous. Under such plan, applications may be accepted at any time and examinations held whenever and wherever the Commissioner deems it desirable for the service. Eligibles will be listed in rank order irrespective of dates on which the examination was taken. Notice of examinations shall be posted in important centers throughout the Commonwealth; and copies shall be sent to public officials, Employment Service offices, newspapers, educational institutions, professional and vocational societies, and such other individuals and organizations as the Commissioner may deem expedient. The public notice of examination shall specify the title and salary range of the class positions; typical duties to be performed; the minimum qualifications required; the final date on which application will be received; the relative weights to be assigned to different parts of the examination; and all pertinent information and requirements.

Section 2. Minimum Qualifications for Filing. Open-competitive examinations shall be open to all applicants who are citizens of the United States and who are residents of the Commonwealth of Kentucky, and who meet the standards or requirements fixed by the Commissioner with regard to education, experience, age physical condition, and such other factors as may be held to relate to the ability of the candidate to perform with reasonable efficiency the duties of the position. The citizenship and residence requirements may be waived by the Commissioner.

Section 3. Filing Applications. All applications shall be made on forms prescribed by the Commissioner and must be filed with him on or prior to the closing date specified in the announcement or postmarked before midnight of that date. For those classes for which there is to be continuous recruitment, a statement shall be included in the announcement to the effect that applications will be received until further notice. Such application may require information concerning personal characteristics, education, experience, references, and other pertinent information. When the nature of the work is such that age limits are necessary, the Commissioner after consultation with the appointing authority may recommend to the Board the age limits, which limits, if approved by the Board, shall be stated in the examination announcement. All applications shall be signed and the truth of the statements contained therein certified by such signatures. Applicants must meet the minimum qualifications specified in announcements as to education and experience, but in no case shall admittance to the examinations constitute assurance of a passing grade in education and experience.

Section 4. Disqualification of Applicants. The Commissioner may refuse to examine an applicant, or, after examination, may disqualify such applicant or remove his name from a register or refuse to certify any eligible on a register or may consult with the appointing authority in taking steps to remove such person already appointed if:

(1) It is found that he does not meet any one of the preliminary requirements established for the examination for the class of position;

(2) He is so disabled as to render him unfit for the performance of the duties of the class;

(3) He is addicted to the use of narcotics or the habitual use of intoxicating liquors to excess;

(4) He has made a false statement of material fact in his application;

(5) He has used or attempted to use political pressure or bribery to secure an advantage in the examination;

(6) He has directly or indirectly obtained information regarding the examination to which, as an applicant, he was not entitled;

(7) He has failed to submit his application correctly or within the prescribed time limits;

(8) He has taken part in the compilation, administration, or correction of the examination for which he is an applicant;

(9) He has previously been dismissed from a position in the state service for cause or has resigned while charges for dismissal for cause were pending;

(10) He has been convicted of a felony or misdemeanor involving infamous, criminal, or notoriously disgraceful conduct;

(11) He has otherwise wilfully violated the provisions of the Act or these rules.

Section 5. Advance Examinations. Any applicant who does not meet minimum requirements as to training and experience but who will meet these requirements as a result of the completion of further educational work which he has scheduled for the six (6) months immediately following the closing date for receipt of applications, may be allowed to take the examination. A successful applicant taking the examination under this provision shall have his or her name entered on the register in the same manner as other successful applicants, and his or her name may be certified for appointment if he furnishes the Commissioner with administratively acceptable evidence of the successful completion of the required academic work at the time of appointment. Failure to complete the qualifying training within the six (6) months period allocated

shall necessitate the removal of the applicant's name from the register.

Section 6. Character of Examinations. Examinations shall be practical in nature, constructed to reveal the capacity of the candidate for the particular class of position for which he is competing and his general background and related knowledge, and shall be rated impartially. The Commissioner may use a rating of education and experience and any test of capacity, knowledge, manual skill, character, personal traits, or physical fitness which in his judgment serves the need to discover the relative fitness of applicants.

Section 7. Conduct of Examinations. (1) Examinations shall be conducted in as many places in the Commonwealth as are found convenient for applicants and practicable for administration.
(2) The Commissioner may designate monitors in various parts of the Commonwealth to take charge locally of examinations under instructions prescribed by him, provide for the compensation of such monitors, and make arrangements for the use of public buildings in which to conduct the examinations.
(3) When practicable, the identity of persons taking competitive assembled tests shall be concealed from the examiners by use of identification numbers.
(4) An applicant shall be allowed to take examinations for not more than fifteen (15) classifications in a calendar year. This limit may be exceeded on approval of the Commissioner when he or she deems it justified in the public interest.

Section 8. Rating Examinations. In any examination the minimum rating or standing through which eligibility on a register may be earned shall be determined by the Commissioner. Such final rating shall be based upon a weighted average of the various parts of the total examination. All applications for the same class of position shall be accorded uniform and equal treatment in all phases of the examination procedure.

Section 9. Rating Education and Experience. (1) When the rating of education and experience forms a part of the total examination, the Commissioner shall determine a procedure for the evaluation of the education and experience qualifications of the applicants. The formula used in appraisal shall give due regard to recency and quality as well as quantity, of experience and the pertinency of the education.
(2) Prior to certification from the register, the Commissioner shall investigate the candidate's educational record form. The Commissioner may investigate the candidate's work history. If the results of this investigation bring out information affecting the rating of education and experience, the Commissioner may rate the candidate accordingly or make the necessary revision of the rating and so notify the candidate.

Section 10. Oral Examinations. When an oral examination forms a part of the total examination for a position, the Commissioner shall appoint one (1) or more oral examination boards as needed. An oral examination board shall consist of three (3) or more members who shall be known to be interested in the improvement of public administration and in the selection of efficient government personnel of whom one (1) shall be technically familiar with the character of work in the position for which the applicants will be examined. Whenever practicable, all candidates for the same class of position who qualify for the oral examination shall be rated by the same oral examination board. A member of an oral examination board shall disclose each instance in which he knows the applicant personally and may refrain from rating such applicant.

Section 11. Notice of Examination Results. Each competitor shall be notified by mail of his final rating as soon as the rating of the examination has been completed and the register established. Eligibles shall be entitled to information concerning their relative position on the register upon request and presentation of proper identification.

Section 12. Adjustment of Errors. A manifest error in the rating of an examination, if called to the attention of the Commissioner within thirty (30) days after receipt by the applicant of the notice of examination results, shall be corrected by the Commissioner provided, however, that such correction shall not invalidate any certification and appointment previously made.

Section 13. Special Examinations. Except in the case of a manifest error in the examining of an applicant, no applicant shall be given a special examination unless the Board by formal recorded action finds that the applicant's failure to take or complete an examination was due to circumstances entirely beyond the control of the applicant. The Board's findings and recommendations shall be recorded in its minutes. No claim for a special examination shall be allowed unless it is filed in writing with the Board within fifteen (15) days after the date of the original examination. Any special examination shall be constructed on a pattern similar to, and as extensive as, the original examination. Any such special examination shall not invalidate any certification or appointment previously made.

Section 14. Examination Records. The Commissioner shall be responsible for the maintenance of all records pertinent to examination programs. Applications and other necessary examination records shall be kept during the life of the register.

PROPOSED: September 13, 1974

PHILIP TALIAFERRO, Chairman
CATTIE LOU MILLER, Secretary
Kentucky Personnel Board

JAMES O. KING, Secretary
RECEIVED BY LRC: September 27, 1974 at 3:21 p.m.

PUBLIC HEARING: A public hearing on the foregoing regulation will be held in the Department of Personnel Conference Room, Room 336, New Capitol Annex, Frankfort, Kentucky, on the 8th day of November, 1974, at 9:30 a.m. Persons having an interest in the subject matter of the proposed regulation are invited to attend and present testimony or submit their comments in writing to: Commissioner, Kentucky Department of Personnel, New Capitol Annex, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Department of Personnel
(101 KAR 1:070)

RELATES TO: KRS 18.110, 18.190, 18.210, 18.250
PURSUANT TO: KRS 13.082, 18.190 and 18.210
SUPERSEDES: PER-8-2
NECESSITY AND FUNCTION: KRS 18.170 requires the Personnel Board to adopt comprehensive rules consistent with the provisions of KRS Chapter 18. KRS 18.190 requires the Commissioner of Personnel to prepare and recommend to the Personnel Board rules which provide for the manner of completing appointments and promotions; and for creation of eligible lists with successful candidates ranked according to their rating on the examination. KRS 18.210 requires the Commissioner to prepare and submit to the Board rules which provide for the establishment of eligible lists for appointment, upon which lists shall be placed the names of successful candidates in the order of their relative rank on exams; and for the rejection of candidates or eligibles who do not meet reasonable selection requirements of the Commissioner. This rule is necessary to comply with these statutory requirements.

Section 1. Responsibility for Maintenance of Registers. It shall be the duty of the appointing authorities to notify the Commissioner as far in advance as possible of vacancies which may occur in the agencies. The Commissioner shall be responsible for the establishment and maintenance of appropriate registers for all positions and for the determination of the adequacy of existing registers.

Section 2. Open-Competitive Registers. After each open-competitive examination, the Commissioner shall prepare a register of persons with passing grades. The names of such persons shall be placed on the register in the order of their final ratings, starting with the highest.

Section 3. Use of Related Registers. If a vacancy exists in a class of position for which there is no appropriate register, the Commissioner may prepare a register for the class from one (1) or more existing related registers. The Commissioner shall select registers from classes for which the minimum qualifications are comparable to or higher than those required for the class in which the vacancy exists. The Commissioner may, if appropriate, re-rate training and experience on the basis of the minimum qualifications required for the class in which the vacancy exists.

Section 4. Duration of Registers. (1) A register shall expire automatically at the end of two (2) years from the time of its establishment unless the register is extended by action of the Board for a period not to exceed one (1) additional year.
(2) The life of registers for classes for which continuous recruitment and examination is conducted shall be indefinite but may be terminated by the Commissioner. The names of eligibles shall be added to and removed from such registers on a continuous basis. Normally, the name of an eligible shall not remain on a register for a class in the continuous program for longer than two (2) years from the date of its entry on the register. Whenever the name of an eligible is removed from a register, the eligible shall be notified.
(3) When a register becomes so depleted that the preparation of usable certificates for a major portion of the imminent vacancies of the class is impracticable, the register will be considered exhausted. The register which has become exhausted shall be considered expired upon the administration of a superseding examination and the establishment of a register on the basis of that examination. When a register becomes exhausted, the Commissioner shall send to each eligible remaining on such register a notification prior to the administration of a superseding examination.

Section 5. Replenishment of Registers. If the Commissioner determines that a register, although not exhausted, is inadequate for the filling of anticipated vacancies, he may announce an open competitive examination for the purpose of replenishing such register. At the time of the announcement of such examination, all eligibles remaining on the register shall be notified of the action and shall be advised that they

may take the examination, if they so desire, for the purpose of improving their respective ranks and that the taking of the examination shall in no way jeopardize their original rating.

Section 6. Removal of Names from the Register. (1) Reasons for Removal. The Commissioner may, on receipt of authoritative information, remove the name of an eligible from a register:

(a) For any of the causes stipulated in 101 KAR 1:060, Section 4;
(b) If the eligible cannot be located by postal authorities;
(c) If the eligible responds that he no longer desires consideration for a position in that class;
(d) If the eligible declines an offer of probationary appointment to the class for which the register was established;
(e) If it is shown, through agency objection or investigation, that the eligible is not qualified or is unsuitable for appointment to the class for which the register is established;
(f) If the eligible fails to reply within a period of five (5) calendar days to the written request of the appointing authority for an interview, or within forty-eight (48) hours to a telegraphic request, or does not report for such an interview within a reasonable time, or fails to appear for an interview which he has scheduled with the appointing authority;
(g) If the eligible accepts an appointment and fails to present himself for duty at the time and place agreed to without giving reasons for the delay satisfactory to the appointing authority;
(h) If the eligible indicates he is not available for appointment or does not wish to be considered for appointment.

(2) The names of eligibles who have been considered for a probationary appointment three (3) times by any one (1) or more appointing authorities and have not been offered employment may be removed if it is determined they would not be suited to the type of work found in the class for which the register is established.

(3) When the Personnel Department is authoritatively notified that an eligible has accepted a bona fide offer of probationary appointment to any position, effective on a specified date, his name may be removed from the register for all classes for which the maximum salary is the same or less than that of the class to which he has been appointed.

(4) Notifications. Whenever an eligibles's name is removed from a register for reasons cited in 101 KAR 1:070, Section 6(1)(2), the Commissioner shall notify the eligible of this action and the reasons therefor, together with his right of appeal. An eligible's name shall be restored to the register upon presentation of reasons satisfactory to the Commissioner or in accordance with the decision of the Board upon appeal.

(5) Whenever an eligible notifies the Department of Personnel in writing that he is unavailable for employment or employment consideration, the Department may remove the name of that eligible from the appropriate register without further notification to the person.

Section 7. Re-employment List. Any employee with status who has been laid off in accordance with 101 KAR 1:120, Section 2, shall be entitled to have his name placed on a re-employment list for the class of position from which laid off, provided he so requests in writing. The order in which such names are arranged on each re-employment list shall be determined by the Commissioner, who shall give consideration to qualifications, performance appraisals, conduct, and seniority in service. The name of an employee with status, who has been dismissed for reasons found to be insufficient by the Board after hearing the appeal, may be placed on the re-employment list at the discretion of the Board. Eligibility to remain on the re-employment list shall expire one (1) year from the effective date of the layoff or separation.

Section 8. Promotion Register. After each competitive promotional examination held in accordance with 101 KAR 1:110, Section 1, the Commissioner shall prepare a list of persons with passing grades arranged in the order of ratings received, starting with the highest.

PROPOSED: September 13, 1974

PHILIP TALIAFERRO, Chairman
CATTIE LOU MILLER, Secretary
Kentucky Personnel Board

JAMES O. KING, Secretary
RECEIVED BY LRC: September 27, 1974 at 3:22 p.m.

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SECRETARY OF THE CABINET
Department of Personnel
(101 KAR 1:080)

RELATES TO: KRS 18.170, 18.190, 18.210 and 18.240
PURSUANT TO: KRS 13.082, 18.170, 18.190 and 18.210
SUPERSEDES: PER-9-2
NECESSITY AND FUNCTION: KRS 18.170 requires the Personnel Board to adopt comprehensive rules consistent with KRS Chapter 18. KRS 18.190 requires the Commissioner of Personnel to prepare and recommend to the Personnel Board rules which provide for the manner of completing appointments and promotions, including multiple and simultaneous certifications. KRS 18.210 requires the Commissioner to prepare and submit to the Board rules which provide for establishment of eligible lists for appointment, and for consideration for appointment of persons whose scores are included in the three (3) highest scores on the exam. This rule is necessary to comply with these statutory requirements.

Section 1. Request for Certification of Eligibles. To fill a vacancy by selection of an eligible from a register established on the basis of an open-competitive examination, the appointing authority shall submit a request for certification to the Commissioner upon a prescribed form. This requisition may be for one (1) or more positions in the same class, in the same locality, and shall indicate the number and identity of positions to be filled and the title of the class to which they have been allocated and specify all other pertinent information which the appointing authority and the Commissioner deem necessary. The appointing authority shall make such request as far in advance as possible of the date the employee is to begin work.

Section 2. Certification of Eligibles. Upon receipt of a requisition, the Commissioner shall certify and submit in writing to the appointing authority the names of available persons eligible for the appointment. If one (1) position is involved, he shall certify and submit from the register for that class the names of the persons whose scores are included in the highest three (3) scores earned on the examination, providing the Commissioner shall fix a reasonable maximum number of eligibles certified. If more than one (1) vacancy is involved, either in one (1) or more agencies, the Commissioner shall certify sufficient additional names for the agencies' consideration in filling the total number of vacancies by procedures to retain orderly consideration of eligibles; however, each appointment must be made from the eligibles with the three (3) highest scores. Scores shall be considered in whole numbers. If the register, established as a result of the open-competitive examination for a specific class, is exhausted, the Commissioner shall certify and submit names in accordance with the above procedure in accordance with 101 KAR 1:070, Section 3. The life of a certificate during which action may be taken shall be thirty (30) days from the date of issue unless otherwise specified on the certification. Any appointment made from such certificate during that time shall not be subject to any change in the condition of the register taking place during that period.

Section 3. Availability. An eligible may at any time during the life of a register have himself listed as available or not available for appointment to a position of that class in any locality or localities in the state, subject to the area-certification policies, by filing notice to such effect with the Commissioner.

Section 4. Selective Certification. (1) The appointing authority may specify in writing requirements of particular experience, education, or skill when he deems such requirements necessary for a position. If, after investigation of the duties and responsibilities of the position, the Commissioner finds the particular experience, education, or skill essential for successful performance he may certify in order of rank on the register the names of those persons who possess those qualifications specified. If, in certifying the names of such eligibles, the Commissioner finds there are fewer than three (3) such eligibles, he shall complete the certificate by adding, after the names of such eligibles, the names of other eligibles available, for the appointment in the order of their respective rank on the register.

(2) The appointing authority may specify in writing exceptional requirements of particular physical characteristics when he deems such requirements necessary for a position. If, after investigation of the duties and responsibilities of the position, the Commissioner finds the exceptional requirement of the characteristic essential for successful performance, he may certify in order of rank on the register the names of those persons who possess the qualifications specified. If, in certifying the names of such eligibles, the Commissioner finds there are fewer than three (3) such eligibles, he shall complete the certificate by adding, after the names of such eligibles, the names of other eligibles available for the appointment in the order of their respective rank on the register.

(3) In filling a position in a unit serving a limited area, the appointing authority may request in writing the certification of eligibles who are residents of the county or area served by that unit. Upon receipt of such a request, the Commissioner may certify the names of the highest available eligibles who are residents of that county or area first. If, in certifying the names of such eligibles for a vacancy in a unit serving a limited area, the Commissioner finds there are

fewer than three (3) such eligibles, he shall complete the certificate by adding, after the names of such eligibles, the names of other eligibles available for the appointment in the order of their respective rank on the register.

Section 5. Selection. (1) Written inquiry as to availability must be sent to each eligible certified for appointment unless it is impractical to do so, except that evidence of having sent a written notice to each eligible reported as having failed to reply to the inquiry or unavailable for appointment must be submitted with a report of action on a certification.

(2) In making appointments from the open-competitive register, the appointing authority shall select for each position a person whose score is included in the three (3) highest scores, exclusive of the names of those persons:

(a) Who decline appointment or request that they not be considered for appointment;

(b) Who fail to reply within a period of five (5) calendar days to the written request of the appointing authority for an interview, or within forty-eight (48) hours to a telegraphic request, or who do not arrange to report for such an interview within a reasonable time, or who fail to appear for an interview which they have arranged with the appointing authority;

(c) Who accept an appointment and fail to present themselves for duty at the time and place agreed to without giving reasons for the delay satisfactory to the appointing authority;

(d) To whom the appointing authority offers an objection in writing based on 101 KAR 1:060, Section 4, which objection is sustained by the Commissioner.

(3) The final selection by the appointing authority shall be reported in writing to the Commissioner. At the same time, the appointing authority shall indicate the disposition of the other names listed on the certificate and shall certify to the Commissioner the non-availability of any eligibles passed over for that reason.

(4) If, in the exercise of his choice, the appointing authority passes over the name of an eligible on a register in connection with three (3) separate appointments which he has made from the register, written request may be made of the Commissioner that the name of such eligible be omitted from any subsequent certifications from the same register to the same appointing authority. This request must contain sufficient evidence to indicate the eligible's unsuitable characteristics for an appointment in the class for which the register was established. If the Commissioner approves such request, either the name of such eligible shall not thereafter be certified to him from that register for other vacancies in that class, or his name will be removed from this register.

Section 6. Certification of Names from the Re-employment List. Any employee with status, who has been placed in a layoff category, shall have first priority for consideration in filling any vacancy in a covered position for which he is qualified in any department in any geographic area. A status employee in the layoff category must indicate in writing to the Department of Personnel that he desires re-employment. No examination shall be required for re-employment in the same job classification from which he was laid off. If a laid-off employee with status desires re-employment in job classifications other than the classification in which he was laid off, he must meet the requirements and pass the required examinations for the job classifications in which he seeks re-employment. If more than one laid-off employee with status seeks re-employment in any job classification, the Department of Personnel shall certify all qualified laid-off employees. No vacancy can be filled from the competitive register until after qualified laid-off employees with status, who are seeking to fill the vacancy , have been given full consideration. Written objections to the re-employment of a laid-off employee with status must be approved by the Department of Personnel before names from the competitive register can be certified to an appointing authority for consideration.

Section 7. Certification from the Promotion Register. Whenever a vacancy is to be filled from a register established as a result of a competitive examination, the Commissioner shall certify the names of eligibles in accordance with 101 KAR 1:080, Section 2.

Section 8. Certification for Temporary Appointment. Whenever the services to be rendered by an appointee are for a temporary period, not to exceed six (6) months, the Commissioner shall certify the names of those eligibles who have indicated their availability for temporary services in accordance with 101 KAR 1:080, Section 2.

PROPOSED: September 13, 1974

PHILIP TALIAFERRO, Chairman
CATTIE LOU MILLER, Secretary
Kentucky Personnel Board

JAMES O. KING, Secretary

RECEIVED BY LRC: September 27, 1974 at 3:22 p.m.

PUBLIC HEARING: A public hearing on the foregoing regulation will be held in the Department of Personnel Conference Room, Room 336, New Capitol Annex, Frankfort, Kentucky, on the 8th day of November, 1974, at 9:30 a.m. Persons having an interest in the subject matter of the proposed regulation are invited to attend and present testimony or submit their comments in writing to: Commissioner, Kentucky Department of Personnel, New Capitol Annex, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Department of Personnel
(101 KAR 1:090)

RELATES TO: KRS 18.110, 18.140, 18.210 and 18.250
PURSUANT TO: KRS 13.082, 18.170, 18.190 and 18.210
SUPERSEDES: PER-10-1
NECESSITY AND FUNCTION: KRS 18.170 requires the Personnel Board to adopt comprehensive rules consistent with KRS Chapter 18. KRS 18.190 requires the Commissioner of Personnel to prepare and recommend to the Board rules which provide for the manner of the completing appointments and promotions. KRS 18.210 requires the Commissioner to prepare and submit to the Board rules which provide for various types of appointments, such as probationary, emergency, provisional, reinstatement, and for such other rules, not inconsistent with KRS Chapter 18, as may be proper and necessary. This rule is necessary to comply with these statutory requirements.

Section 1. Filling of Vacancies. All vacancies in the classified service which are not filled by transfer, promotion, or demotion, shall be filled by probationary appointment, re-employment, reinstatement, temporary appointment, emergency appointment or provisional appointment.

Section 2. Probationary Appointment. The appointment to a permanent position in the classified service through certification in accordance with 101 KAR 1:080 from an open competitive register shall constitute probationary appointment.

Section 3. Provisional Appointment. When a vacancy is to be filled in a position of a class for which there are less than three (3) eligibles available for certification, the appointing authority, with the prior approval of the Commissioner, may make a provisional appointment to fill the position. A provisional appointee must be certified by the Commissioner as meeting at least the minimum qualifications established for the class of position. No such provisional appointment shall be continued longer than six (6) months nor shall successive provisional appointments of the same person be made to the same position.

Section 4. Emergency Appointment. The appointment of an employee without regard to the examination requirements of these Rules to any position by reason of a governmental emergency shall constitute an emergency appointment. An emergency appointment may not exceed thirty (30) working days in duration and is non-renewable. Emergency appointments shall have the prior consent of the Commissioner.

Section 5. Temporary Appointments. The appointment of a person to a temporary position shall constitute a temporary appointment. Such appointments shall be subject to the prior approval of the Commissioner and shall be made from a register unless there are less than three (3) available for certification. Each appointee appointed in the absence of three (3) available eligibles must be certified by the Commissioner as meeting at least the minimum qualifications established for the class. Such appointment shall be for a specified period of time not to exceed six (6) months and shall not be renewable.

Section 6. Re-Employment. An employee with status who has been laid off by reasons of lack of funds or work, curtailment of program, abolishment of position or organization unit, or material change in duties or organization, and through no fault of his own, may request that his name be placed on a re-employment list for the class in accordance with 101 KAR 1:070, Section 7. The name of an employee with status, who has been dismissed for reasons found to be insufficient by the Board after hearing the appeal, may be placed on the re-employment list at the discretion of the Board. In either case, eligibility to remain on the re-employment list shall expire one (1) year from the effective date of the layoff or separation. The appointment of a person from such list shall constitute re-employment. A person so re-employed shall be subject to the successful completion of a probationary period in accordance with 101 KAR 1:100.

Section 7. Reinstatement. (1) An employee with permanent status who has resigned or been laid off through no fault of his own may be reinstated to any class of position for which he is qualified with the same or lower entrance rate of pay within five (5) years from the effective date of his separation. Such reinstatement shall be made only with the prior approval of the Commissioner and shall be subject to the successful completion of a probationary period in accordance with 101 KAR 1:100. The Commissioner's approval of a reinstatement shall include a finding that the candidate meets the current qualifications for the class. If the reinstatement is to a different class series the applicant must pass the appropriate examination prior to reinstatement. Age and education requirements may be waived by the Commissioner upon recommendation of the appointing authority for reinstatement.

(2) An employee with status who has been dismissed for reasons found by the Board, after hearing the employee's appeal, to be political, religious, or ethnic reasons shall be

reinstated to his former position or a position of like status and pay, without loss of pay for the period of his separation.

Section 8. Seasonal Appointment. The appointment of a person to a position which recurs on a seasonal basis may be made of any applicant meeting the established minimum qualifications. Such appointments shall be subject to the prior approval of the Commissioner and shall be made only after the seasonal recurring needs have been established by the appointing authority.

Section 9. Unclassified Service. Appointing officers may fill positions in the unclassified service in the manner in which positions in the classified service are filled.

PROPOSED: September 13, 1974

PHILIP TALIAFERRO, Chairman
CATTIE LOU MILLER, Secretary
Kentucky Personnel Board

JAMES O. KING, Secretary

RECEIVED BY LRC: September 27, 1974 at 3:23 p.m.

PUBLIC HEARING: A public hearing on the foregoing regulation will be held in the Department of Personnel Conference Room, Room 336, New Capitol Annex, Frankfort, Kentucky, on the 8th day of November, 1974, at 9:30 a.m. Persons having an interest in the subject matter of the proposed regulation are invited to attend and present testimony or submit their comments in writing to: Commissioner, Kentucky Department of Personnel, New Capitol Annex, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Department of Personnel
(101 KAR 1:100)

RELATES TO: KRS 18.110, 18.210, 18.250
PURSUANT TO: KRS 13.082, 18.170, 18.190 and 18.210
SUPERSEDES: PER-11
NECESSITY AND FUNCTION: KRS 18.170 requires the Personnel Board to adopt comprehensive rules consistent with KRS Chapter 18. KRS 18.190 requires the Commissioner of Personnel to prepare and recommend to the Board rules which provide for the manner of completing appointments and promotions. KRS 18.210 requires the Commissioner to prepare and submit to the Board rules which provide for a period of probation not to exceed one (1) year before appointment or promotion may be made complete, and during which the probationer may be dismissed or demoted. This rule is necessary to comply with these statutory requirements.

Section 1. Nature, Duration, and Purpose. The first six (6) months of service in a position to which an employee has been probationally appointed, promoted, re-employed, or reinstated under the provisions of these Rules shall constitute a probationary period. An exception being that when the Board finds, after an appeal, that the separation of an employee was taken by the appointing authority for political, religious, or ethnic reason and orders the employee reinstated, a new probationary period will not be required. The Commissioner, with the approval of the Board, may fix a longer length for the probationary period providing it applies to all positions of a class or classes, but in no case shall the probationary period exceed a twelve (12) month period. Provisional service in a class immediately prior to probationary appointment to the class shall be credited toward the probationary period. The probationary period shall be an essential part of the examination process and shall be utilized for the most effective adjustment of a new employee and for the elimination of any employee whose performance does not meet the required standard of performance.

Section 2. Conditions Preliminary to Permanent Status. It shall be the responsibility of the personnel officer to obtain for the appointing authority a statement in writing from the proper official to the effect that the services of each employee appointed for a probationary period have or have not been performed satisfactorily during such a period and is or is not recommended to be retained in the service. The appointing authority shall, within thirty (30) days prior to the expiration of an employee's probationary period, notify the Commissioner in writing whether the probationary employee is recommended for permanent status. Upon successful completion of an employee's probationary period, the appointing authority shall notify the employee and the Commissioner in writing that status has been conferred.

Section 3. Separation During the Probationary Period. (1) If at any time during the probationary period, the appointing authority determines that the services of the employee have been unsatisfactory, an employee may be separated from his position without the right of appeal or hearing. The appointing authority shall notify the employee in writing at least ten (10) working days prior to the effective date of separation of the reasons for separation and such notification shall be delivered to the employee personally on a date within the probationary period or shall be postmarked on a date within the probationary period. The reasons for the separation shall be submitted in writing to the Commissioner after which they shall be filed for permanent record. After the probationer has been separated, his name may be replaced on the eligible list by the Commissioner if he determines such action to be in the best interest of the service, but he shall not again be certified from that list to the agency from which separated unless the agency requests such certification.

(2) When an employee has been promoted but fails to successfully complete the probationary period, he will revert to a position of his former class. If there is no vacancy in a position of the former class, the rules pertaining to layoffs shall apply.

PROPOSED: September 13, 1974

PHILIP TALIAFERRO, Chairman
CATTIE LOU MILLER, Secretary
Kentucky Personnel Board

JAMES O. KING, Secretary

RECEIVED BY LRC: September 27, 1974 at 3:23 p.m.

PUBLIC HEARING: A public hearing on the foregoing regulation will be held in the Department of Personnel Conference Room, Room 336, New Capitol Annex, Frankfort, Kentucky, on the 8th day of November, 1974, at 9:30 a.m. Persons having an interest in the subject matter of the proposed regulation are invited to attend and present testimony or submit their comments in writing to: Commissioner, Kentucky Department of Personnel, New Capitol Annex, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Department of Personnel
(101 KAR 1:110)

RELATES TO: KRS 18.110, 18.190, 18.210, 18.220, 18.270
PURSUANT TO: KRS 13.082, 18.170, 18.190, and 18.210
SUPERSEDES: PER-12-2
NECESSITY AND FUNCTION: KRS 18.190 requires the Personnel Board to adopt comprehensive rules consistent with KRS Chapter 18. KRS 18.190 requires the Commissioner of Personnel to prepare and recommend to the Board rules which provide for the manner of completing appointments and promotions. KRS 18.210 requires the Commissioner to prepare and submit to the Board rules which provide for promotions and transfers; and for discharge and reduction in rank. This rule is necessary to comply with these statutory requirements.

Section 1. Promotion. (1) Vacancies in the classified service shall be filled by promotion whenever practicable and in the best interest of the service. Promotions shall be based upon merit and shall be made in accordance with the procedures established in these rules.

(2) A promotion is the filling of a vacancy by the advancement of an employee with status from a position having a lower minimum salary. Promotions may be made on either a competitive or non-competitive basis at the discretion of the Commissioner after consultation with the appointing authority. An employee who is promoted shall be required to serve a probationary period as provided in 101 KAR 1:100. Serving a probationary period upon promotion shall not affect the employee's status in the lower class of position. Appropriate consideration will be given to the qualifications, performance appraisals, conduct, and seniority of applicants for promotion.

(3) To fill a vacancy by competitive promotion, the Commissioner of Personnel shall examine all qualified, applying, status employees. The Commissioner shall prepare a register in the same manner as for open competitive appointments. 101 KAR 1:080 shall govern the selection and appointment.

(4) When an appointing authority nominates a status employee for a non-competitive promotion, the Commissioner of Personnel may test the nominee. If he finds the nominee qualified, the Commissioner may authorize the promotion.

(5) Any employee promoted from a classified to an unclassified position retains his status in the classified service. On separation from the unclassified service, he reverts to the class in which he holds status. If there is no vacancy to which he can revert, 101 KAR 1:120, Section 2, applies.

Section 2. Transfer. (1) The movement of an employee from a position of one class to another of the same class shall be deemed a transfer. A transfer may be an inter-agency or an intra-agency action.

(2) No employee, certified to a vacancy in a local area on a strictly local area basis in accordance with the provisions of 101 KAR 1:080, Section 4(3), shall be transferred from that position until the probationary period has been completed.

(3) No probationary employee may be transferred between agencies nor between geographical locations to a position having the same salary range and level of responsibility, unless approved by the Commissioner of Personnel.

(4) No employee may transfer to a different department without prior approval both of the Commissioner of Personnel and of the personnel officer or head of his present department.

(5) An employee's promotion to a different department must be approved in writing by the personnel officer or head of his present department, or by the Commissioner of Personnel. If the promotion is approved by his present department, the department must file it with the Department of Personnel.

(6) Following notification of a transfer, an employee must report for work, or make himself known to be available for

work, at either his old work station or the new one to which assigned.

Section 3. Demotion. (1) The movement of an employee with status to a position in a lower class is a demotion. For this purpose a lower class means a class having a maximum salary lower than the maximum salary for the position in which the individual is employed and a position having less discretion or responsibility.

(2) An employee with status may be demoted only for cause, after the employee has been presented with the reasons for such demotion in writing, and has been allowed at least five (5) working days to reply thereto in writing, or, upon request, to appear personally with counsel and reply to the appointing authority or his deputy. A copy of the statement of reasons and the reply shall be filed with the Commissioner. An employee with status may appeal his demotion in accordance with 101 KAR 1:130.

(3) If, for personal or other reasons, an employee requests in writing that he be assigned to a position of a lower class, the appointing authority may make such demotion. In such cases, the demotion will be deemed to have been made on a voluntary basis and from which there shall be no appeal.

Section 4. Detail to Special Duty. When the services of a permanent employee are needed in a position within the department other than the position to which regularly assigned, the employee may be detailed to that position for a period not to exceed one (1) year with prior approval of the Commissioner of Personnel. For detail to special duty the Commissioner of Personnel may waive the minimum requirements when requested by the appointing authority in writing.

PROPOSED: September 13, 1974

PHILIP TALIAFERRO, Chairman
CATTIE LOU MILLER, Secretary
Kentucky Personnel Board

JAMES O. KING, Secretary
RECEIVED BY LRC: September 27, 1974 at 3:23 p.m.

PUBLIC HEARING: A public hearing on the foregoing regulation will be held in the Department of Personnel Conference Room, Room 336, New Capitol Annex, Frankfort, Kentucky, on the 8th day of November, 1974, at 9:30 a.m. Persons having an interest in the subject matter of the proposed regulation are invited to attend and present testimony or submit their comments in writing to: Commissioner, Kentucky Department of Personnel, New Capitol Annex, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Department of Personnel
(101 KAR 1:120)

RELATES TO: KRS 18.110, 18.170, 18.210, 18.240 and 18.270
PURSUANT TO: KRS 13.082, 18.170, 18.190 and 18.210
SUPERSEDES: PER-13-1
NECESSITY AND FUNCTION: KRS 18.170 requires the Personnel Board to adopt comprehensive rules consistent with KRS Chapter 18. KRS 18.190 requires the Commissioner of Personnel to prepare and recommend to the Board rules which provide for layoffs and for separation of employees deemed unsatisfactory or excessive by agency or department heads. KRS 18.210 requires the Commissioner to prepare and submit to the Board rules which provide for layoffs, imposition of fines of not more than ten (10) days' pay, suspension without pay for not longer than thirty (30) days, and for discharge or reduction in rank. This rule is necessary to comply with these statutory requirements.

Section 1. General Provisions. Except as otherwise provided in these rules, the tenure of an employee with status shall be during good behavior and the satisfactory performance of his duties.

Section 2. Layoffs. (1) An appointing authority may layoff an employee in the classified service whenever he deems it necessary by reason of shortage of funds or work, abolishment of a position, or other material change in duties or organization. The employee shall be notified of the effective date and shall be given written notice of the reasons for the layoff.

(2) Seniority, performance appraisals, conduct, qualifications and type of appointment shall be considered in determining the order of layoffs in a manner prescribed or approved by the Commissioner. No status employee is to be separated by layoff while there are provisional, temporary, emergency, or probationary employees serving in the agency in the same class in the same locality.

(3) The appointing authority and the Department shall attempt to place the employee in another position for which the employee is qualified.

Section 3. Dismissals. (1) The appointing authority may remove any employee with status only for cause after furnishing the employee and the Commissioner with a written statement of the specific reasons for dismissal. Such reasons shall be specific as to the statutory and/or rule violation, the time, place, and persons by name involved in the alleged violation, and a specific description of the alleged unlawful activity. Notifications of dismissal that do not properly specify the reasons shall be considered invalid and the employee shall remain on the payroll until such time as proper charges are effected.

(2) Notifications of dismissal shall inform the employee that he has ten (10) working days, not including the date the notice is received, to reply thereto in writing, or upon request, to appear personally with counsel and reply to the appointing authority or his deputy.

(3) An employee with status may appeal his dismissal as set forth in 101 KAR 1:130.

(4) A dismissed employee may be required to forfeit all accrued leave.

Section 4. Separation During Probationary Period. An employee may be separated without the right of appeal at any time during the probationary period as set forth in 101 KAR 1:100, Section 3.

Section 5. Resignations. An employee who desires to terminate his service with the state shall submit a written resignation to the appointing authority. Resignations shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's resignation shall be attached to the advice effecting the separation and be filed in the employee's service record in the department. Failure of an employee to give fourteen (14) calendar days notice with his resignation may result in forfeiture of accrued annual leave.

Section 6. Retirement. If an employee with status is retired, he is considered as separated without prejudice and does not have the right of appeal.

Section 7. Suspensions. An appointing authority, upon written notice stating the reasons therefor, a copy of which shall be sent to the Commissioner, may suspend any employee without pay or other compensation as punishment for disciplinary cause. Such a suspension shall not exceed thirty (30) working days during any twelve (12) month period. The twelve (12) month period begins with the first day of the suspension. An employee with status may appeal his suspension as set forth in 101 KAR 1:130.

Section 8. Diciplinary Fines. An appointing authority may impose, as a disciplinary measure, a fine of not more than ten (10) days pay to be computed on the basis of the employee's current salary. The employee will be notified in writing by the appointing authority of the reasons for the action, a copy of which shall be sent to the Commissioner. An employee with status may appeal the action in accordance with the provisions of 101 KAR 1:130.

PROPOSED: September 13, 1974

PHILIP TALIAFERRO, Chairman
CATTIE LOU MILLER, Secretary
Kentucky Personnel Board

JAMES O. KING, Secretary
RECEIVED BY LRC: September 27, 1974 at 3:24 p.m.

PUBLIC HEARING: A public hearing on the foregoing regulation will be held in the Department of Personnel Conference Room, Room 336, New Capitol Annex, Frankfort, Kentucky, on the 8th day of November, 1974, at 9:30 a.m. Persons having an interest in the subject matter of the proposed regulation are invited to attend and present testimony or submit their comments in writing to: Commissioner, Kentucky Department of Personnel, New Capitol Annex, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Department of Personnel
(101 KAR 1:130)

RELATES TO: KRS 18.170, 18.270
PURSUANT TO: KRS 13.082, 18.170, 18.210 and 18.270
SUPERSEDES: PER-14-4
NECESSITY AND FUNCTION: KRS 18.170 requires the Personnel Board to adopt comprehensive rules consistent with KRS Chapter 18. KRS 18.270 provides that any classified employee who is dismissed, demoted, suspended or otherwise penalized after completing his probationary period may appeal to the Personnel Board within thirty (30) days of the action taken against him. This rule is necessary to assure a uniform and effective procedure for scheduling, hearing, and acting upon such appeals.

Section 1. General Provisions. Any employee, applicant for employment, or eligible on a register, who believes that he has been unjustly discriminated against, may appeal to the Board for a hearing subject to the procedural rules of the Board.

Section 2. Appeal From Examination Rejection. (1) Any applicant whose application for admission to an open-competitive examination has been rejected and who has been notified of such rejection and the reasons therefor may appeal to the Board for reconsideration of his qualifications and for admission to the examination.

(2) Applicants may be conditionally admitted to an examination by the Commissioner pending a consideration of an

appeal. Admission to a written examination under such circumstances, however, shall not constitute the assurance of a passing grade in training and experience.

Section 3. Appeal From Examination Rating. (1) Any applicant who has taken an examination may appeal to the Board for a review of his rating in any part of such examination to assure that uniform rating procedures have been applied equally and fairly.

(2) Except for correction of clerical errors, a rating in any part of an examination shall not be changed unless it has been found by the Board that a mistake has been made, except as provided in 101 KAR 1:070, Section 3. A correction in the rating shall not affect a certification or appointment that may already have been made from the register.

Section 4. Appeal From Removal From Register. An eligible whose name has been removed from a register for any of the reasons specified in 101 KAR 1:070, Section 6(1)(2), may appeal to the Board for reconsideration.

Section 5. Appeal Procedure for Applicants or Eligibles. The appeal to the Board by applicants or eligibles under 101 KAR 1:130, Sections 2, 3, 4, must be filed in writing with the Commissioner not later than fifteen (15) calendar days after the notification of the action in question was mailed. The applicant or eligible shall have the right to appear before the Board and to be heard. The decision of the Board on such appeals shall be final.

Section 6. Appeal from Dismissals, Demotion, Suspension, or Penalization. (1) Any employee with status who is dismissed, demoted, suspended, or otherwise penalized may appeal to the Board.

(2) An employee may appeal a transfer which he considers to be a penalization. Following notification of a transfer, an employee must report for work, or make himself known to be available for work, at either his old work station or the new one to which assigned.

Section 7. Appeal Procedure for Employees. (1) Any employee with status who is dismissed, demoted, suspended, or otherwise penalized may, within thirty (30) days after the effective date of such dismissal, demotion, suspension, or penalization, appeal to the Board through the Commissioner. Such appeal shall be in writing and shall set forth the basis for the appeal. The appeal must be filed in the office of the Commissioner of Personnel within the aforementioned thirty-day period. When the thirtieth (30th) day of the filing period falls on a day when the Commissioner's office is closed during normal working hours, the appeal may be filed on the next regular working day. The Commissioner shall promptly transmit copies of the appeal to the Board and to the appointing authority.

(2) The Board shall designate an appropriate time and place to conduct the hearing. Such hearing shall be held within thirty (30) calendar days after receipt of the appeal unless circumstances intervene which, in the opinion of the Board, would cause undue hardship on either party to the hearing. The appellant and the appointing authority shall be notified in writing at least five (5) working days in advance of the time and place designated for the hearing.

(3) At the hearing, both the appellant and the appointing authority whose action is reviewed shall have the right to be heard publicly and to be represented by counsel to present evidentiary facts. At the hearing of such appeals, technical rules of evidence shall not apply.

(4) If the Board finds that the action complained of was taken by the appointing authority for any political, religious, or ethnic reason, the employee shall be reinstated to his former position or a position of like status and pay, without loss of pay for the period of his dismissal, demotion, or suspension and without penalization.

(5) In all other cases, the findings and recommendations of the Board shall be submitted to the appointing authority for his consideration, who may, not later than thirty (30) days after receipt of such findings and recommendations, reinstate the employee with or without pay for the period of the dismissal, demotion, or suspension, modify his original decisions of discharge, demotion, or suspension, or continue his original decision or penalization.

(6) When any employee is dismissed and not reinstated after such appeal, the Board in its discretion may direct that his name be placed on an appropriate re-employment list for employment in any similar position other than the one from which he had been removed.

Section 8. Hearing of Appeals. (1) Evidentiary hearings in appeals filed pursuant to KRS 18.270 and 101 KAR 1:130 shall be conducted by the full Board or quorum thereof, except as otherwise provided in this rule. The Board may adopt a rotating schedule for the attendance of members at evidentiary hearings to be conducted by the Board in order to assure the presence of a quorum, but notwithstanding any such schedule any member of the Board may attend and participate in any such hearing.

(2) The Chairman of the Board or a majority of the Board, by written order, may designate a single member of the Board to conduct any evidentiary hearing on behalf of the Board or may request the Commissioner to establish a calendar designating single members of the Board to conduct evidentiary hearings on behalf of the Board. In all such cases, upon the conclusion of the hearing, the presiding member-hearing examiner shall submit to the Board a synopsis of the evidence presented, his findings of fact, and dispositive recommendations in the case before him, and the Commissioner shall transmit by certified mail to both parties a copy of the findings of fact and dispositive recommendations. The Board upon review of the findings of fact, the synopsis of the evidence presented, and dispositive recommendations of the presiding member-hearing examiner, who shall be present during such review, and after consideration of such written or oral arguments or exceptions as the parties have presented as a matter of right or may present with leave or upon request of the Board, shall make a final determination of the appeal by either:

(a) Adopting as submitted the findings and recommendations of the presiding member-hearing examiner;
(b) Altering before adoption, in any manner deemed proper, either or both the findings and recommendations of the presiding member-hearing examiner;
(c) If felt necessary by any member of the Board requesting the Commissioner to prepare a copy of the stenographic record taken at the hearing and reserve ruling on the case until each member has been allowed a reasonable opportunity to consider the entire record;
(d) If felt necessary by a majority of the Board, remanding the case or any part thereof for rehearing by the same presiding member-hearing examiner, with such hearing examiner to prepare and submit to the parties and the Board such additional findings of fact and dispositive recommendations as he feels are necessary upon the conclusion of the rehearing. A stenographic record shall be taken of this additional testimony and the presiding member-hearing examiner shall submit to the Board a synopsis of the evidence presented. The Board shall then consider the findings of fact, synopses of the evidence presented, and dispositive recommendations from the original hearing and any additional rehearings ordered, and shall, upon request of any member of the Board, instruct the Commissioner to prepare a complete or partial record. The Board, upon consideration of these items and such additional written or oral arguments or exceptions as the parties have presented as a matter of right or may present with leave or upon request of the Board, shall render its final decision in the case.

(3) The Board may designate one or more hearing examiners to assist the Board in appeal proceedings. All such hearing examiners shall be attorneys authorized to practice law in Kentucky and shall be selected solely on their knowledge, ability and experience in the trial of administrative and/or judicial proceedings.

(4) Hearing examiners selected by the Board, but who are not themselves members of the Board, shall conduct evidentiary hearings in the same manner as Board member hearing examiners. In all cases, upon the conclusion of the hearing, the hearing examiner shall submit to the Board a synopsis of the evidence presented, his findings of fact, and dispositive recommendations in the case before him, and the Commissioner shall transmit by certified mail to both parties a copy of the findings of fact and dispositive recommendations. In the presence of the hearing examiner and with his advice, the Board shall review these documents, and after consideration of such written or oral arguments or exceptions as the parties have presented as a matter of right or may present with leave or upon request of the Board, shall make a final determination of the appeal by either:

(a) Adopting as submitted the findings and recommendations of the hearing examiner;
(b) Altering before adoption, in any manner deemed proper, either or both the findings and recommendations of the hearing examiner;
(c) If felt necessary by any member of the Board, requesting the Commissioner to prepare a copy of the stenographic record taken at the hearing and reserve ruling on the case until each member has been allowed a reasonable opportunity to consider the entire record;
(d) If felt necessary by a majority of the Board, remanding the case or any part thereof for rehearing by the same hearing examiner, with such hearing examiner to prepare and submit to the parties and the Board such additional findings of fact and dispositive recommendations as he feels are necessary upon the conclusion of the rehearing. A stenographic record shall be taken of this additional testimony and the hearing examiner shall submit to the Board a synopsis of the evidence presented. The Board shall then consider the findings of fact, synopses of the evidence presented, and dispositive recommendations from the original hearing and any additional rehearings ordered, and shall, upon request of any member of the Board instruct the Commissioner to prepare a complete or partial record. The Board, upon consideration of these items and such additional written or oral arguments or exceptions as the parties have presented as a matter of right or may present with leave or upon request of the Board, shall render its final decision in the case.

PROPOSED: September 13, 1974

PHILIP TALIAFERRO, Chairman
CATTIE LOU MILLER, Secretary
Kentucky Personnel Board

JAMES O. KING, Secretary
RECEIVED BY LRC: September 27, 1974 at 3:24 p.m.

PUBLIC HEARING: A public hearing on the foregoing regulation will be held in the Department of Personnel Conference Room, Room 336, New Capitol Annex, Frankfort, Kentucky, on the 8th day of November, 1974, at 9:30 a.m. Persons having an interest in the subject matter of the proposed regulation are invited to attend and present testimony or submit their comments in writing to: Commissioner, Kentucky Department of Personnel, New Capitol Annex, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Department of Personnel
(101 KAR 1:140)

RELATES TO: KRS 18.170, 18.190, 18.210
PURSUANT TO: KRS 13.082, 18.170, 18.190 and 18.210
SUPERSEDES: PER-15-5 and PER-16
NECESSITY AND FUNCTION: KRS 18.170 requires the Personnel Board to adopt comprehensive rules consistent with KRS Chapter 18. KRS 18.190 and 18.210 require the Commissioner of Personnel to prepare and submit to the Board rules which provide for annual leave, sick leave, special leaves of absence, and for other conditions of employment. This rule is necessary to comply with these statutory requirements.

Section 1. Attendance. Hours of Work: The number of hours full-time employees in state offices in Frankfort are required to work shall be uniform for all positions unless specified otherwise by the appointing authority or the statutes. The normal work day shall be from 8:00 a.m. to 4:30 p.m., local time, Monday through Friday. Employees in other than Frankfort state office buildings shall be subject to such hours of work as set by the appointing authority.

Section 2. Annual Leave. (1) Each employee in the state service, except seasonal, temporary and emergency employees, shall be allowed annual leave with pay at the following rate:

Years of Service	Annual Leave Days
0 – 5 years	1 leave day per month; 12 per year
5 – 10 years	1 1/4 leave days per month; 15 per year
10 – 15 years	1 1/2 leave days per month; 18 per year
15 years and over	1 3/4 leave days per month; 21 per year

An employee must have worked more than half of the work days in a month to qualify for annual leave. Employees serving a part-time basis or per-diem basis shall not be entitled to annual leave.

(2) Annual leave may be accumulated; however, not more than thirty (30) working days of accumulated leave may be carried forward from one calendar year to the next. However, leave in excess of thirty (30) work days may be carried forward for a period of six (6) months if the appointing authority justifies in writing the reasons which made it impossible to allow an employee to take accumulated annual leave in a timely manner. Annual leave shall not be granted in excess of that earned prior to the starting date of leave.

(3) Absence on account of sickness, injury, or disability in excess of that hereinafter authorized for such purposes may at the request of the employee and within the discretion of the appointing authority, be charged against annual leave.

(4) Accumulated annual leave shall be granted by the appointing authority in accordance with operating requirements and, insofar as practicable, with the requests of employees.

(5) Employees are charged with annual leave for absence only on days upon which they would otherwise work and receive pay.

(6) Annual leave shall accrue only when an employee is working or on authorized leave with pay.

(7) An employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his accumulated annual leave in the receiving agency.

(8) Before an employee may be placed on leave of absence without pay in excess of thirty (30) working days, he must have used or have been paid for any accumulated annual leave.

(9) Employees shall be paid in a lump sum for accumulated annual leave, not to exceed thirty (30) working days, when separated by proper resignation, layoff, retirement, or when granted leave without pay in excess of thirty (30) working days. The effective date of the separation shall be the last work day and the employee's amount of accumulated annual leave shall be listed in the remarks section of the advice effecting the separation. A supplemental pay voucher shall be submitted on accumulated annual leave.

(10) An employee who has been dismissed for cause or who has failed to give proper notice of resignation may, at the discretion of the appointing authority, be paid in a lump sum for accumulated annual leave not to exceed thirty (30) working days.

(11) Upon the death of an employee, his estate shall be entitled to pay for the unused portion of the employee's accumulated annual leave not to exceed thirty (30) working days.

Section 3. Sick Leave. (1) Each employee in the state service, except an emergency employee, shall be allowed sick leave with pay at the rate of one (1) working day for each month of service. An employee must have worked more than half of the work days in a month to qualify for sick leave with pay. Employees serving on a part-time or per-diem basis shall not be entitled to sick leave.

(2) Employees completing ten (10) years of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of ten (10) years of service. The total service must be verified in writing before the leave is credited to the employee's record.

(3) Unused sick leave may be accumulated with no maximum on accumulation.

(4) Sick leave shall accrue only when an employee is working or on authorized leave with pay.

(5) An appointing authority shall grant accrued sick leave with pay when an employee:

(a) Receives medical, dental, or optical examination or treatment;
(b) Is disabled by sickness or injury;
(c) Is disabled by pregnancy and/or confinement limited to a maximum of three (3) calendar months;
(d) Is required to care for a sick or injured member of his immediate family for a reasonable period of time;
(e) Would jeopardize the health of others at his duty post, because of exposure to a contagious disease;
(f) Has lost by death a parent, child, brother or sister, or the spouse of any of them, or any person related by blood or affinity, with a similarly close association. Leave under this sub-paragraph is limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

At the termination of sick leave with pay, the appointing authority shall reinstate the employee to his former position.

(6) An appointing authority shall grant sick leave without pay for so long as an employee is disabled by sickness, or illness, or pregnancy and confinement, and the total continuous leave does not exceed two (2) years. At the termination of sick leave without pay, the appointing authority shall reinstate the employee to a position for which he is qualified, and which resembles his former position as closely as circumstances permit.

(7) Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in hours or one-half hours.

(8) An employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his accumulated sick leave in the receiving agency.

(9) Employees shall be credited for accumulated sick leave when separated by proper resignation, layoff, retirement, or when granted leave without pay in excess of thirty (30) working days. The employee's amount of accumulated sick leave shall be listed in the remarks section of the advice effecting the separation. Former employees who are reinstated or re-employed may have their accumulated and unused sick leave balances revived after sixty (60) days of work and placed to their credit upon request of the appointing authority, and approval of the Commissioner.

(10) In cases of absence due to illness or injury for which Workmen's Compensation benefits are received for lost time, sick leave may be utilized to the extent of the difference between such benefits and the employee's regular salary.

(11) Application for sick leave. An employee shall file a written application for sick leave with pay within a reasonable time. Except in cases of emergency illness, an employee shall request advance approval for sick leave for medical, dental, or optical examination, and for sick leave without pay. In all cases of illness, an employee is obligated to notify his immediate supervisor or other designated person. Failure to do so in a reasonable period of time may be cause for denial of sick leave for the period of absence.

(12) Supporting Evidence:

(a) An appointing authority shall grant sick leave when the application is supported by acceptable evidence. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required, signed by a licensed practitioner and certifying to the incapacity, examination, or treatment.
(b) An appointing authority may place on sick leave a pregnant woman who, on request, fails to produce a satisfactory medical certificate.

Section 4. Court Leave. An employee shall be entitled to leave of absence from duties, without loss of pay or time, on all days during which he shall be subpoenaed by any court, federal, state, or political subdivision thereof, to serve as a juror or witness.

Section 5. Compensatory Leave. (1) The maximum amount of compensatory leave that can be accumulated by any employee shall be one hundred (100) hours. Upon separation from the state service or transfer to another agency, unused compensatory leave shall be forfeited unless, in the case of a transfer, the receiving agency is willing to accept the compensatory leave balance.

(2) An employee who is exempt from overtime provisions of wage and hour laws and who is authorized in advance by the appointing authority to work one (1) or more hours in excess of his prescribed hours of duty shall be granted compensatory leave on an hour-for-hour basis.

(3) An employee subject to wage and hour laws whose prescribed hours of duty are normally fewer than forty (40) per week and who is authorized in advance by the appointing authority to work one (1) or more hours in excess of his normal hours of duty may be awarded compensatory time for that portion of extra time worked up to forty (40) hours, provided his rate of pay meets requirements of minimum wage laws.

(4) An employee subject to overtime provisions of wage and hour laws shall be paid in accordance with such provisions for actual hours worked in excess of the applicable statutory maximum hours. Compensatory leave earned and used during the same workweek does not constitute "hours worked" for computing overtime pay.

Section 6. Military Leave. Any employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties upon request therefor, to serve under orders on training duty without loss of his regular compensation for a period not to exceed ten (10) working days in any one (1) calendar year, and any such absence shall not be charged to leave. Absence in excess of this amount will be charged as annual leave or leave without pay. The appointing authority may require a copy of the orders requiring the attendance of an employee before granting military leave.

Section 7. Voting Leave. Appointing authorities shall allow all employees ample time to vote. Such absence shall not be charged against leave.

Section 8. Special Leave of Absence. (1) In addition to leaves as above provided, an appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in any calendar year.

(2) An appointing authority, with approval of the Commissioner, may grant leave of absence for a period not to exceed twenty-four (24) months for the following purposes, with or without pay: for assignment to and attendance at college, university, or business school for the purpose of training in subjects related to the work of the employee and which will benefit the state service; or for purposes other than above that are deemed to be in the best interests of the state.

(3) An appointing authority, with approval of the Commissioner, may grant an employee entering active military duty a leave of absence without pay for a period of such duty.

Section 9. Absence Without Leave. An employee who is absent from duty without approval shall report the reason therefor to his supervisor immediately. Unauthorized and/or unreported absence shall be considered absence without leave and deduction of pay may be made for each period of such absence. Such absence may constitute grounds for disciplinary action and will serve to interrupt continuous service as defined in 101 KAR 1:050.

Section 10. Performance Appraisal. Quality and quantity of work shall be considered in determining salary advancements, in promotions, in determining the order of layoff, in re-employment, and as a means of identifying employees who should be promoted, demoted, or dismissed.

Section 11. Records and Reports. (1) Personnel Action Forms: The Commissioner shall prescribe personnel action forms which appointing authorities shall use to report such personnel actions and status changes as he may require. The Commissioner shall inform the appointing authorities which personnel actions and status changes must be reported to him.

(2) Leave Records: Each appointing authority shall install and maintain a leave record showing for each employee: (a) annual leave earned, used and unused; (b) sick leave earned, used and unused; and (c) special leave or any other leave with or without pay. Such record shall be documentary evidence to support and justify authorized leave of absence with pay. Each appointing authority shall notify his employees of their annual and sick leave balances as of January 1; a summary of which shall be sent to the Department by February 1.

(3) Official Roster: The Commissioner shall prepare and maintain a record of all employees showing for each employee his name, address, title of position, salary rate, changes in status, transfer, sick leave and annual leave.

Section 12. Confidentiality of Records. (1) Except as otherwise provided in the rules, all records of the Department shall be considered public records and may be inspected, when in the public interest, upon application made to the Commissioner during normal working hours.

(2) Unless the Board shall determine otherwise, records of the Department involving investigation correspondence and data related to the moral character and reputation of applicants for employment or employees in state service; and examination materials, questions, data and examination papers and records relating in any way to competitive examinations and tests conducted and held by the Department shall be held confidential.

Section 13. Dual Employment. No employee holding a full time position with the Commonwealth may hold another state position regularly requiring more than four (4) hours service per day except upon recommendation of the appointing authority and the written approval of the Commissioner of Personnel. A copy of such written approval and a statement of the reasons therefor shall be transmitted to the Governor and the Director of the Legislative Research Commission. A complete list of all employees holding more than one state position shall be furnished to the Legislative Research Commission quarterly by the Commissioner.

Section 14. Minimum Hiring Age. The minimum age for hiring of state employees shall conform to federal and state labor laws, rules and regulations.

Section 15. Maximum Hiring Age. (1) The normal maximum hiring age for permanent employment subject to these rules is sixty-five (65).

(2) Individuals over sixty-five (65) may be employed from year to year with prior approval of the Commissioner of Personnel when it serves the public interest. Such requests must be justified in writing by the appointing authority.

(3) The maximum hiring age for individuals subject to these rules shall not exceed seventy (70).

Section 16. Retirement. (1) The normal retirement age for employees subject to these rules shall be sixty-five (65).

(2) Employees over sixty-five (65) may be allowed to continue employment from year to year with prior approval of the Commissioner of Personnel when it serves the public interest. Such requests must be justified in writing by the appointing authority.

(3) The mandatory retirement age for employees subject to these rules shall be seventy (70).

Section 17. Restoration From Military Leave. (1) State appointing authorities shall comply with the provisions of KRS 61.371, 61.373, 61.375, 61.377, 61.379.

(2) The Department of Personnel shall require proper compliance with these statutes as they pertain to state employees.

(3) The appointing authorities for employees in county, city, or political subdivisions thereof, are responsible for compliance with these statutes, in keeping with normal personnel practices and procedures of each.

(4) Appeals may be filed by an employee or previous employee pursuant to 101 KAR 1:130. The governmental agency from which the appeal is filed shall bear the expense of the hearing of the appeal.

(5) A former employee seeking restoration, who has been rejected or otherwise penalized, must file an appeal within thirty (30) days, after notification of such rejection or penalization by an appointing authority.

PROPOSED: September 13, 1974

PHILIP TALIAFERRO, Chairman
CATTIE LOU MILLER, Secretary
Kentucky Personnel Board

JAMES O. KING, Secretary
RECEIVED BY LRC: September 27, 1974 at 3:25 p.m.

PUBLIC HEARING: A public hearing on the foregoing regulation will be held in the Department of Personnel Conference Room, Room 336, New Capitol Annex, Frankfort, Kentucky, on the 8th day of November, 1974, at 9:30 a.m. Persons having an interest in the subject matter of the proposed regulation are invited to attend and present testimony or submit their comments in writing to: Commissioner, Kentucky Department of Personnel, New Capitol Annex, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Teachers' Retirement System
(102 KAR 1:030)

RELATES TO: KRS 161.545
PURSUANT TO: KRS 161.310 and 13.082
SUPERSEDES: TRS-3(c)
NECESSITY AND FUNCTION: KRS 161.545 provides that members of the Teachers' Retirement System may receive credit for substitute and part-time service only in accordance with trustee regulations. This proposed regulation provides the means for evaluating and crediting such service.

Section 1. Members substituting from one (1) to nineteen (19) days in a given school year may not make contributions and receive service credit.

Section 2. Members substituting twenty (20) days but less than seven-tenths (7/10) of the legal school term for the district may make contributions and receive a fractional year of service credit.

Section 3. A member substituting for at least seven-tenths (7/10) of the legal school year for the district may make contributions for a full year and receive a full year of service credit.

Section 4. No deductions are to be made for any substitute service. A member may make personal contributions for such service under the terms of this regulation upon proper certification of service and salary by the proper authority.

All such contributions must be made to the Retirement System office on or before December 31 following June 30 of the fiscal year in which the substitute service was rendered. The contribution shall be based on the annual salary the member would have received if employed for that school year on a regular full-time basis.

Section 5. A member may receive service credit for substitute service in no more than four (4) school years. Substitute teaching may not be used to qualify for membership in the retirement system.

Section 6. Credit received as a result of substitute teaching may not be used for meeting minimum service requirements as set out in KRS 161.470(5)(d), KRS 161.600(1), and KRS 161.661(1).

TED L. CROSTHWAIT, Executive Secretary
ADOPTED: September 16, 1974
RECEIVED BY LRC: September 23, 1974 at 11:46 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Ted L. Crosthwait, Executive Secretary, Teachers' Retirement System, 216 West Main Street, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Teachers' Retirement System
(102 KAR 1:035)

RELATES TO: KRS 161.605
PURSUANT TO: KRS 161.310 and 13.082
SUPERSEDES: TRS-4(a)
NECESSITY AND FUNCTION: KRS 161.605 provides that retired teachers may do part-time or substitute teaching not to exceed the equivalent of seventy-five (75) days per year. This proposed regulation provides the procedures and definitions necessary to administer this statute.

Section 1. Teachers retired for service may do substitute or regular part-time teaching for not more than seventy-five (75) days in each fiscal year. They shall pay no contributions and shall have no reductions in their regular annuities on account of such service. Retired teachers shall do no other teaching in the public schools or state supported universities covered by the Retirement System.

Section 2. For purposes of this regulation and KRS 161.605, any period of substitute teaching of three (3) hours or less shall be considered one-half (1/2) day and any period greater than three (3) hours shall be considered a full day. Part-time employment shall not exceed forty percent (40%) of a full-time teacher's weekly schedule on a regular school term (nine and one-fourth months) basis, and no more than thirty percent (30%) of a full-time employee's weekly schedule on a twelve (12) month basis.

TED L. CROSTHWAIT, Executive Secretary
ADOPTED: September 16, 1974
RECEIVED BY LRC: September 23, 1974 at 11:45 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Ted L. Crosthwait, Executive Secretary, Teachers' Retirement System, 216 West Main Street, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Teachers' Retirement System
(102 KAR 1:045)

RELATES TO: KRS 161.590
PURSUANT TO: KRS 161.310 and 13.082
NECESSITY AND FUNCTION: KRS 161.590(2) provides that Kentucky retirement credit may not be used in calculating annuity payments if the same service credit has been used to increase benefits in another retirement system. This proposed regulation provides guidelines for transferring such credit to another retirement system, and procedures to be followed if less than total amount of Kentucky service is to be transferred.

Section 1. Members having service credit in another State or City retirement system may transfer service from the Teachers' Retirement System of the State of Kentucky, provided the member has not received and will not receive any retirement benefit from the Teachers' Retirement System of the State of Kentucky based on the service to be transferred.

Section 2. Members transferring less than the total service credit in the Teachers' Retirement System may receive benefits based on the remaining years of Kentucky service. No refund of contributions shall be made to members transferring less than the total amount of service credited in the Teachers' Retirement System.

TED L. CROSTHWAIT, Executive Secretary
ADOPTED: September 16, 1974
RECEIVED BY LRC: September 23, 1974 at 11:41 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Ted L. Crosthwait, Executive Secretary, Teachers' Retirement System, 216 West Main Street, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Teachers' Retirement System
(102 KAR 1:050)

RELATES TO: KRS 161.515
PURSUANT TO: KRS 161.310 and 13.082
SUPERSEDES: TRS-7(a)
NECESSITY AND FUNCTION: KRS 161.515 provides that members of the Teachers' Retirement System may secure credit for out-of-state service under certain circumstances, and requires the trustees to set the interest rate on contributions made to cover such service. This proposed regulation is intended to provide the procedures required to carry out the provisions of this statute and to set the interest rate to be charged.

Section 1. In presenting out-of-state service for credit, the most recent service shall be presented first in order.

Section 2. Persons presenting out-of-state service credit shall be required to file an appropriate affidavit on forms provided by the Retirement System certifying that the service being transferred is not being used at present and will not be used in the future to qualify for any benefits from any other retirement program.

Section 3. Contributions for such service shall be at such rate as was effective for members of the Teachers' Retirement System during the period of service and shall be based on the out-of-state salary received in each year to be transferred. Interest at the rate of six percent (6%) compounded annually from the end of the school year concerned to the date of payment shall be added to the required contributions.

TED L. CROSTHWAIT, Executive Secretary
ADOPTED: September 16, 1974
RECEIVED BY LRC: September 23, 1974 at 11:44 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Ted L. Crosthwait, Executive Secretary, Teachers' Retirement System, 216 West Main Street, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Teachers' Retirement System
(102 KAR 1:055)

RELATES TO: KRS 161.507
PURSUANT TO: KRS 161.310 and 13.082
SUPERSEDES: TRS-31(a)
NECESSITY AND FUNCTION: KRS 161.507 provides for the crediting for retirement purposes time spent on active duty with the Armed Forces of the United States, with certain limitations. This proposed regulation sets up the procedures for validating and crediting such active duty service.

Section 1. A member may receive credit toward retirement as provided in KRS 161.507, upon the payment of contributions to the retirement system as provided in this regulation. Military service accepted by another public teachers' retirement system and for which benefits are being paid, may not be credited for service in the Teachers' Retirement System of the State of Kentucky.

Section 2. If the member was in active contributing status at the time of entry into active military service, the salary base upon which contributions shall be made will be the last annual salary earned as a teacher.

Section 3. If the member was not in active contributing status at the time of entry into active military service, the salary base upon which contributions shall be made will be the first annual salary received in a covered position following the active military service.

Section 4. The rate of contribution payments shall be the rate in effect for each year for which contributions are to be paid. Interest at the rate of three percent (3%) compounded annually shall be added, calculated from the end of each year to the date paid.

Section 5. In the event that the member has more than six (6) years of active military service, the calculations for contributions shall be based on the most recent service. Active duty of less than six (6) months duration shall not be credited toward service for retirement purposes, unless teaching service was interrupted by such duty.

Section 6. A member, having valid service credit in the Teachers' Retirement System and one of the other state supported retirement systems of Kentucky, may elect to purchase retirement credit for active duty time in either of the systems concerned, or the service credit may be divided between the two (2) systems. If the service is to be divided the following additional requirements must be met:

(1) The total service credited in all systems may not exceed six (6) years.

(2) The same years active duty may not be used in more than one (1) system.

(3) Each system shall calculate the cost of such retirement

service credit in accordance with the statutes and regulations governing that system.

TED L. CROSTHWAIT, Executive Secretary
ADOPTED: September 16, 1974
RECEIVED BY LRC: September 23, 1974 at 11:42 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Ted L. Crosthwait, Executive Secretary, Teachers' Retirement System, 216 West Main Street, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Teachers' Retirement System
(102 KAR 1:060)

RELATES TO: KRS 161.470
PURSUANT TO: KRS 161.310 and 13.082
SUPERSEDES: TRS-9
NECESSITY AND FUNCTION: KRS 161.470(6) provides that members of the Teachers' Retirement System may receive a refund of their contributions upon withdrawal from service. This proposed regulation provides the administrative procedures necessary to carry out the provisions of this statute.

Section 1. Refunds shall be made on the basis of permanent withdrawal from teaching in a covered position. No refund may be made if the member is under contract to teach.

Section 2. Partial refunds of accounts shall not be permitted nor shall refunds be made if the member is absent from active service on an official leave-of-absence.

TED L. CROSTHWAIT, Executive Secretary
ADOPTED: September 16, 1974
RECEIVED BY LRC: September 23, 1974 at 11:44 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Ted L. Crosthwait, Executive Secretary, Teachers' Retirement System, 216 West Main Street, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Teachers' Retirement System
(102 KAR 1:070)

RELATES TO: KRS 161.600 and 161.640
PURSUANT TO: KRS 161.310 and 13.082
SUPERSEDES: TRS-10
NECESSITY AND FUNCTION: KRS 161.600 and 161.640 provide that members who are eligible for retirement may apply for an annuity and receive benefit payments. This proposed regulation sets out procedures for filing of retirement applications and for determining effective dates of annuity payments.

Section 1. Applications for retirement shall be filed on forms furnished by the Teachers' Retirement System.

Section 2. Applications for retirement for service to be effective at the beginning of the next fiscal year shall be filed on or before June 1. A member eligible to retire may exercise this right during a school year in which he has been in employment provided there is filed with the application a notarized statement from the chief administrative officer of the employing board or agency to the effect that the member is being released from the employment contract for the purpose of retirement. Applications filed during the school year shall be effective as of the first of the month following the date the application is received in the Teachers' Retirement System office.

Section 3. An application received by mail and bearing a U.S. Postal Service postmark dated on or before the filing date set out in Section 2 shall be accepted as having been filed in compliance with that section.

Section 4. The annuity calculation shall be based upon the age of the applicant as of July 1 of the fiscal year in which the retirement is to be effective.

TED L. CROSTHWAIT, Executive Secretary
ADOPTED: September 16, 1974
RECEIVED BY LRC: September 23, 1974 at 11:44 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Ted L. Crosthwait, Executive Secretary, Teachers' Retirement System, 216 West Main Street, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Teachers' Retirement System
(102 KAR 1:100)

RELATES TO: KRS 161.675
PURSUANT TO: KRS 161.310 and 13.082
SUPERSEDES: TRS-15(b)
NECESSITY AND FUNCTION: KRS 161.675 provides that the trustees are authorized to enter into contracts with insurance carriers for provision of hospital-medical insurance to members retired for service or disability and for certain dependents of such retirees. This proposed regulation sets out procedures under which this coverage is to be provided.

Section 1. The Board of Trustees of the Teachers' Retirement System of the State of Kentucky shall provide for members retired for service, age fifty-five (55) years or older; members retired for disability; spouses and minor children of retired members as provided in KRS 161.675; spouses receiving monthly benefits under the provisions of KRS 161.525; and minor children of members deceased prior to retirement if such member was fifty-five (55) years of age or older at the time of death and was eligible for retirement as provided in KRS 161.600, a medical benefit program including but not limited to hospital room and board, drugs and medicines, doctor fees, nursing care, and convalescent hospital care.

Section 2. Specific provisions and exclusions are as provided in Blanket Contract with Aetna Life and Casualty Insurance Company, the Master Policy issued under the Contract and any modifications thereto approved by the Board of Trustees.

Section 3. Members retiring under reciprocal provisions of KRS 61.680, who have less than five (5) years service credit in the Teachers' Retirement System shall not be included for coverage under the medical insurance program as set out above and in KRS 161.675.

TED L. CROSTHWAIT, Executive Secretary
ADOPTED: September 16, 1974
RECEIVED BY LRC: September 23, 1974 at 11:43 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Ted L. Crosthwait, Executive Secretary, Teachers' Retirement System, 216 West Main Street, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Teachers' Retirement System
(102 KAR 1:120)

RELATES TO: KRS 161.705
PURSUANT TO: KRS 161.310 and 13.082
SUPERSEDES: TRS-20(c)
NECESSITY AND FUNCTION: KRS 161.705 provides that members of the Teachers' Retirement System may make voluntary contributions in excess of the mandatory contributions to the retirement system in order to qualify for additional annuity payments at the time of retirement. This proposed regulation sets out procedures for receiving such contributions and the payment of additional annuities.

Section 1. Interest credited to voluntary accounts made by teachers and boards of education under authority of KRS 161.705, shall be fixed annually by the Board of Trustees. At the last regular quarterly meeting of the fiscal year, the Board of Trustees shall fix the interest rate to be credited for the following fiscal year.

Section 2. It is further provided that the Board of Trustees may not fix a rate lower than "regular interest" as defined in KRS 161.220(13) nor at a rate greater than the average annual yield rate on the "fixed dollar" investments of the Retirement System for the previous four (4) quarters. Interest shall be calculated and posted on a monthly basis with interest being based on the accumulated balance at the beginning of the month concerned.

Section 3. In the case of withdrawal or death of the member prior to retirement, the accumulated unmatched voluntary account shall be returned to the named beneficiary or estate as provided in KRS 161.705. If the employer has made contributions for the benefit of a member, such contributions shall be paid to the named beneficiary or the member's estate, except that a refund to the employer shall be made if provided for under an agreement between the member and the employer.

Section 4. Any member who has made voluntary contributions under the provisions of KRS 161.705 may withdraw all or a part of said account, provided that no more than three (3) partial withdrawals may be approved. Following retirement under the regular retirement system, the member may choose any of the retirement options which may be selected for the regular retirement annuity or payment through no more than two (2) lump sum withdrawals. The member may defer payments from this account beyond the regular retirement date, but shall be limited to the option set out above upon electing to receive benefit payments.

TED L. CROSTHWAIT, Executive Secretary
ADOPTED: September 16, 1974
RECEIVED BY LRC: September 23, 1974 at 11:43 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Ted L. Crosthwait, Executive Secretary, Teachers' Retirement System, 216 West Main Street, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Teachers' Retirement System
(102 KAR 1:125)

RELATES TO: KRS 161.560
PURSUANT TO: KRS 161.310 and 13.082
SUPERSEDES: TRS-24
NECESSITY AND FUNCTION: KRS 161.560 provides that each agency employing members of the Teachers' Retirement System shall deduct the appropriate member contributions and forward them to the system on a monthly basis. This proposed regulation sets out the conditions under which these required contributions shall be paid in the event that the employing agency fails to deduct such amounts from the member's salary and forward same to the Retirement System.

Section 1. In every case where a properly certificated teacher entitled to membership under KRS 161.470 was employed, or is employed in the future, to teach regularly, and the board of education fails for any reason to deduct the retirement contribution due under the Retirement Act, such teacher if a member of the Retirement System, and not retired, may pay the retirement dues which should have been deducted by the employer plus six percent (6%) compound interest from the end of the year in which the service was done to date of payment, and receive credit for those years; providing the teacher was not at fault in creating this delinquency.

Section 2. Members of the retirement system, who have previously withdrawn their contributions, may reinstate such accounts by complying with the requirements of KRS 161.470 (3), and by repaying the amount refunded plus interest at the rate of six percent (6%) compounded annually from the date of withdrawal to date of repayment.

Section 3. Payment may be made directly to the Retirement System, but payment shall not be made in installments. Receipt shall be given to the member making such payment.

TED L. CROSTHWAIT, Executive Secretary
ADOPTED: September 16, 1974
RECEIVED BY LRC: September 23, 1974 at 11:42 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Ted L. Crosthwait, Executive Secretary, Teachers' Retirement Sytem, 216 West Main Street, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Teachers' Retirement System
(102 KAR 1:130)

RELATES TO: KRS 161.220 and 161.555
PURSUANT TO: KRS 161.310 and 13.082
NECESSITY AND FUNCTION: KRS 161.220(4)(f) and 161.555 provide that agencies employing members of the Teachers' Retirement System and whose salaries are paid from Federal project funds or from non-public funds, shall make additional contributions to the System equal to the contributions of such members. This proposed regulation sets out the manner of transmitting these additional contributions to the system.

Section 1. Agencies, boards, and other organizations employing members of the Teachers' Retirement System referred to in KRS 161.220(7) and 161.555 shall make contributions to the Teachers' Retirement System in an amount equal to the total contributions of such members. Contributions of both the member and employer shall be forwarded to the Teachers' Retirement System in the same manner and at the same time as provided in KRS 161.560 for regular contributions to the Teachers' Retirement System.

Section 2. Members employed by employers referred to in Section 1. may make contributions for part-time, substitute, and partial year's service as provided in Teachers' Retirement System regulations for other members of the Teachers' Retirement System. Employers would be required to make additional contributions for these employees in the same manner as provided for full-time employees.

Section 3. Members employed by employers referred to above may make contributions while on leave of absence as set out in the statutes and Teachers' Retirement System regulations, providing the employer or the employee makes an additional contribution equal to the regular member contribution for the period of time covered by such leave of absence.

TED L. CROSTHWAIT, Executive Secretary
ADOPTED: September 16, 1974
RECEIVED BY LRC: September 23, 1974 at 11:41 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Ted L. Crosthwait, Executive Secretary, Teachers' Retirement Sytem, 216 West Main Street, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Department of Revenue
(103 KAR 1:010)

RELATES TO: KRS 131.110, 131.340, 131.345, 131.360, 131.365, 131.370, 139.760 and 139.980(4)
PURSUANT TO: KRS 13.082
SUPERSEDES: GA-1
NECESSITY AND FUNCTION: This regulation summarizes significant portions of the statutes dealing with taxpayer protest and appeal rights and outlines procedures to facilitate the filing, processing and disposition of such protests and appeals.

Section 1. Protests - Assessments: (1) Taxpayers will be notified of additional tax assessments by mail. Payment including interest from the original due date, in the absence of protest, must be made within thirty (30) days from the date of the notice of tax due.

(2) A written protest may be filed by the taxpayer, or other persons representing the taxpayer, against additional assessments. The protest shall be filed with the Department of Revenue within thirty (30) days from the date of notice.

(3) A hearing may also be requested. The taxpayer may appear in person or by representative. If a taxpayer is not present in person, or if a corporation is not represented by an authorized officer, the department may require the taxpayer's representative to furnish evidence of his authority to act for the taxpayer. Consideration will be given to additional information presented in the protest and at hearings and the additional assessment may be adjusted accordingly.

Section 2. Protests - Refund Denials: (1) Taxpayers will also be notified by mail of disallowance or partial disallowance of any refund claim including a refund requested upon any return.

(2) A taxpayer may protest such disallowance or partial disallowance by written protest filed with the division director; Department of Revenue, within thirty (30) days of the disallowance. Procedures governing protests and hearings for refunds are the same as for assessments.

Section 3. Final Ruling: If the taxpayer's protest of an assessment or refund denial cannot be resolved through correspondence and/or conferences with officials of the Department of Revenue and he desires to exercise his rights of further appeal, a final ruling will be issued by the Department of Revenue. The final ruling shall be given to the taxpayer over the signature of the director of the division administering the tax with the approval of the Commissioner of Revenue.

Section 4. Appeal - Kentucky Board of Tax Appeals: (1) If a taxpayer desires to appeal a final ruling of the Department he may, within thirty (30) days from the date of such ruling, apply for a hearing before the Kentucky Board of Tax Appeals. The appeal:

(a) must be filed in duplicate;
(b) must contain a brief statement of the law and facts in issue;
(c) must state the petitioner's position regarding the law, facts, or both;
(d) must contain a copy of the final ruling of the department; and
(e) may contain a request for hearing.

(2) The board will set a date for a formal hearing. The hearing procedure before the board will be in accordance with the board's rules.

(3) On the basis of the hearing, briefs, and other documents, the board will issue a written order which will affirm, reverse, modify or remand the final ruling, and will forward a copy of the order to the taxpayer and the department. Assessments upheld by the board shall be due and payable thirty (30) days after the date of the board's order. In the absence of appeal, penalties for failure to pay tax when due apply if payment is not made within thirty (30) days after the date of the board's order.

(4) Interest from the original due date of the return until the tax is paid shall be added to the additional assessments.

Section 5. Appeal - Circuit Court: Any party aggrieved by a final order of the Kentucky Board of Tax Appeals, may, within thirty (30) days after such order becomes final, file a petition of appeal on any question of law to the Franklin Circuit Court or to the circuit court of the county in which the aggrieved party resides or conducts his business. A copy of the petition of appeal shall be filed with the board and all other parties against whom the appeal is prosecuted.

Section 6. Appeal - Kentucky Court of Appeals: Any party may appeal to the Kentucky Court of Appeals as provided in the Rules of Civil Procedure.

JOHN McD. ROSS, COMMISSIONER
APPROVED: JAMES O. KING, SECRETARY
ADOPTED: October 15, 1974
RECEIVED BY LRC: October 16, 1974 at 4:26 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Department of Revenue, Capitol Annex, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Department of Revenue
(103 KAR 16:010)

RELATES TO: KRS 141.010
PURSUANT TO: KRS 13.082
SUPERSEDES: IC-1-1
NECESSITY AND FUNCTION: This regulation explains the special income tax deduction provided for corporations in KRS 141.010(12)(e) for certain income from the disposal of coal.

Section 1. Taxable income from disposal of coal (including lignite) held by the owner for more than six (6) months before disposal, under any contract by which the owner retains an economic interest in such coal, shall be fifty (50) percent of the gross royalty income less "deductions allowed by Section 63(a), Internal Revenue Code, to the extent that these deductions are not excluded by Section 272, Internal Revenue Code."

Section 2. Taxpayers reporting income under KRS 141.010(12)(e) cannot deduct percentage depletion on such income; however, cost depletion is deductible. This subsection does not preclude a mining company from taking percentage depletion on its production.

JOHN McD. ROSS, Commissioner
APPROVED: JAMES O. KING, Secretary
ADOPTED: October 15, 1974
RECEIVED BY LRC: October 16, 1974 at 4:31 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Department of Revenue, Capitol Annex, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Department of Revenue
(103 KAR 16:030)

RELATES TO: KRS 141.012
PURSUANT TO: KRS 13.082
SUPERSEDES: IC-3
NECESSITY AND FUNCTION: This regulation explains the requirements for, and computation of, the limited net operating loss carry forward authorized by KRS 141.012.

Section 1. General Requirements. Any corporation engaging in business for the first time in Kentucky after January 1, 1962, which permanently owns or leases $100,000 of real property in Kentucky, may carry forward a net-operating loss determined under Section (2) except:
(1) A corporation which is a successor to a previously existing corporation doing business in Kentucky, or
(2) A new corporation which resulted from the incorporation of an operating division(s) because of corporate reorganization.

Section 2. Computation. Net income or loss for the purpose of this regulation must be determined by separate accounting. Any net-operating losses incurred prior to the first full year of operations shall be carried forward to the first full year of operations. Operations means production, or other similar activity, regardless of the level of production or product quality, and does not include construction. Net-operating losses in prior years and any net-operating loss incurred in the first full year of operations must be deducted in the next taxable year. Separate accounting will not be permitted after the second full year of operations unless approved by the department.

Section 3. Example: Corporation X, which has never operated in Kentucky, begins construction of a two-million dollar plant in Kentucky on March 1, 1970. Construction is completed June 30, 1971, and operations begin. In this example, 1972 is the first full year of operations. Thus, any operating losses incurred from 1970 through 1972 may be carried forward to 1973 unless such losses were applied against income earned in any prior year(s).

JOHN McD. ROSS, Commissioner
APPROVED: JAMES O. KING, Secretary
ADOPTED: October 15, 1974
RECEIVED BY LRC: October 16, 1974 at 4:31 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Department of Revenue, Capitol Annex, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Department of Revenue
(103 KAR 16:050)

RELATES TO: KRS 141.120
PURSUANT TO: KRS 13.082
SUPERSEDES: IC-5
NECESSITY AND FUNCTION: This regulation identifies certain corporations which do not classify and apportion income under general corporate regulations unless specifically directed. It also provides a technical definition of the term "manufacturing."

Section 1. Income Tax Regulations 103 KAR 16:060 through 103 KAR 16:090 do not apply to public service companies (defined by KRS 136.120) or to financial organizations unless regulations for those corporations specifically do so by reference.

Section 2. The term "manufacturing", for the purpose of these regulations, includes the extraction and recovery of natural resources and all processes of fabricating and curing.

JOHN McD. ROSS, Commissioner
APPROVED: JAMES O. KING, Secretary
ADOPTED: October 15, 1974
RECEIVED BY LRC: October 16, 1974 at 4:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Department of Revenue, Capitol Annex, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Department of Revenue
(103 KAR 16:060)

RELATES TO: KRS 141.120
PURSUANT TO: KRS 13.082
SUPERSEDES: IC-6-1
NECESSITY AND FUNCTION: The Kentucky income tax law contains provisions for assigning to Kentucky the business income and nonbusiness income of multi-state corporations. This regulation establishes criteria for classification of corporate income into its business and nonbusiness components.

Section 1. General. If a corporation has income from activities within Kentucky and within other states, the division of income and the resulting determination of the net income within Kentucky is determined by the allocation and apportionment provisions in KRS 141.120. Thus, the first step is to determine which portion of the entire net income constitutes "business income" and which portion constitutes "nonbusiness income." The various items of nonbusiness income are then directly allocated to each state pursuant to the provisions of KRS 141.120. Business income is divided among the states where the business is conducted based upon the property, payroll, and sales apportionment factors in KRS 141.120. The sum of: (1) nonbusiness income allocated to Kentucky, and (2) business income attributed to Kentucky by the apportionment formula constitutes the amount of the corporation's entire net income which is subject to tax under KRS Chapter 141.

Section 2. The corporation shall classify income as business or nonbusiness income on a consistent basis. If the corporation is not consistent, it shall disclose in its Kentucky return the nature and extent of the inconsistency.

Section 3. The word "apportionment" generally refers to the division of net income among states by the formula containing apportionment factors, and the word "allocation" generally refers to assignment of net income to a state.

Section 4. Business and Nonbusiness Income--Definitions. "Business income" is income arising from transactions and activities in the regular course of the corporation's trade or business and includes income from tangible and intangible property if its acquisition, management, or disposition constitute integral parts of the regular trade or business operations. The business income is the portion of the corporation's entire net income which arises from trade or business operations. "Net income" is business income unless it is clearly classified as nonbusiness income under KRS 141.120 and related regulations. "Nonbusiness income" means all income other than business income.

Section 5. Business and Nonbusiness Income--Application of Definitions. Income classification by the customary labels; such as, interest, rents, royalties, and capital gains does not determine whether income is business or nonbusiness. Gain or loss recognized on the sale of property, for example, may be business income or nonbusiness income depending upon the relation to the corporation's trade or business. The following are rules and examples for determining whether a particular type of income is business or nonbusiness income:
(1) Rents and Royalties - Real and Tangible Personal Property. Rental and royalty income from real and tangible property is business income if the rental or lease of such property is a principal business activity or the rental or lease of the property is related to or incidental to the principal business activity:
(a) Example: The corporation operates a multi-state car rental business. The income from car rentals is business income since it is the corporation's principal business.
(b) Example: The corporation is in the heavy construction business and it uses equipment such as cranes, tractors, and earth moving vehicles. The corporation makes short-term leases of the equipment when particular pieces of equipment are not needed on a project. The rental income is business income.
(c) Example: The corporation operates a multi-state chain of men's clothing stores. It purchases a five-story office building primarily for use in its

principal business. It uses the street floor as one of its retail stores and the second and third floors for its general corporate headquarters. The remaining two (2) floors are leased to others. The rental income is business income.

(d) Example: The corporation operates a multi-state chain of men's clothing stores. It invests in a twenty-story office building and uses the street floor as one of its retail stores and the second floor for its general corporate headquarters. The remaining eighteen (18) floors are leased to others. The net rental income is nonbusiness income.

(e) Example: The corporation operates a multi-state chain of grocery stores and purchases, as an investment, an office building in another state with surplus funds and leases the entire building to others. The net rental income is nonbusiness income.

(f) Example: The corporation constructed a plant in 1930 as a part of its multi-state manufacturing business. On June 30, 1970, the plant was closed and put up for sale. The plant was rented from July 1, 1970, until sold in November, 1971. The rental income is business income and the gain on the sale of the plant is business income.

(g) Example: The corporation operates a multi-state chain of grocery stores. It owned an office building which is occupied as its corporate headquarters. Because of inadequate space, it acquired a new and larger building for its corporate headquarters. The old building was rented to an investment company under a five-year lease. Upon expiration of the lease, the building was sold at a gain (or loss). The rental income received over the lease period is nonbusiness income and the gain (or loss) on the sale of the building is nonbusiness income.

(h) Example: The corporation is engaged in extracting natural resources. The corporation owns and operates or leases and operates mines or wells which are located in several states. For various reasons, the corporation ceases actual operation of the properties and leases or subleases mineral rights to others. Royalties are paid to the corporation by the operators based on units extracted. The royalty income is business income.

(i) Example: The corporation is engaged in lumber and related wood products business in various states. The corporation owns or leases timberlands which are used as raw materials for its lumber business. Some of the land is unsuitable and the corporation leases or subleases mineral rights to other parties. Royalties are paid to the corporation based on units extracted. The royalty income is business income.

(j) Example: The corporation acquires undeveloped land for future expansion of its multi-state manufacturing business. The expansion plans are later discarded and mineral rights under the land are leased to others. The corporation receives royalties based on units extracted. The royalty income is nonbusiness income.

(2) Gains or Losses from Sale of Assets. As a general rule, gain or loss from the sale, exchange or other disposition of real, tangible, or intangible personal property is business income if the property was used by the corporation to produce business income. However, the gain or loss is nonbusiness income if the property was later utilized principally for the production of nonbusiness income or otherwise was removed from the property factor:

(a) Example: In conducting its multi-state manufacturing business, the corporation systematically replaces automobiles, machines, and other equipment. The gains or losses resulting from those sales are business income.

(b) Example: The corporation constructed a plant in 1930 as a part of its multi-state manufacturing business. In 1971 the property is sold at a gain while it is in operation by the corporation. The gain is business income.

(c) Example: Same as above except that the plant is closed on June 30, 1970, and put up for sale but was not sold until November, 1971. The gain is business income.

(d) Example: Same as above except that the plant was rented from July 1, 1970, until sold in November, 1971. The rental income is business income and the gain on the sale of the plant is business income.

(e) Example: The corporation operates a multi-state chain of grocery stores. It owned an office building which is occupied as its corporate headquarters. Because of inadequate space, taxpayer acquired a new and larger building for its corporate headquarters. The old building was rented to an investment company under a five-year lease. Upon expiration of the lease, the building was sold at a gain (or loss). The gain (or loss) is nonbusiness income and the rental income received over the lease period is nonbusiness income.

(3) Interest. Interest income is business income if the intangible which earned the interest arises out of or was created by a business activity of the corporation and when the purpose for acquiring the intangible is directly related to the business activity.

(a) Example: The corporation operates a multi-state chain of department stores, selling for cash and on credit. Service charges, interest, or time-price differentials are received with installment sales and revolving charge accounts. The interest income is business income.

(b) Example: The corporation operates a multi-state manufacturing business. The taxpayer receives a federal income tax refund and collects a judgment against the debtor. Both the tax refund and the judgment bore interest. The interest income is business income.

(c) Example: The corporation operates a multi-state manufacturing and wholesaling business. It maintains special accounts to cover such items as workmen's compensation claims, rain and storm damage, machinery replacement, etc. The funds in those accounts are invested at interest. Similarly, the corporation temporarily invests funds intended for payment of federal, state and local tax obligations. The interest income is business income.

(d) Example: The corporation operates a multi-state money order and traveler's check business. In addition to the fees received from selling money orders and traveler's checks, the corporation earns interest income by investing the funds pending their redemption. The interest income is business income.

(e) Example: The corporation operates a multi-state manufacturing and selling business. It usually has working capital and extra cash totaling $200,000 which it regularly invests in short-term interest-bearing securities. The interest income is business income.

(f) Example: In January the corporation sold all the stock of a subsidiary for $20,000,000. The funds are placed in a separate interest-bearing account pending a decision by management as to how the funds are to be utilized. The interest income is nonbusiness income.

(4) Dividends. Dividend income is business income when dealing in securities is a principal business activity of the corporation. Most other dividends are nonbusiness income.

(a) Example: The corporation operates a multi-state chain of stock brokerage houses. During the year the corporation receives dividends on stock it owns for purposes of making a market in that stock. The dividend income is business income.

(b) Example: The corporation is engaged in a multi-state manufacturing and wholesaling business. In connection with that business the corporation maintains special accounts to cover such items as workmen's compensation claims, etc. A portion of the monies in those accounts is invested in interest-bearing bonds. The remainder is invested in various common stocks listed on the national stock exchanges. Both the interest and any dividends are business income.

(c) Example: The parent owns all the stock of a subsidiary corporation which is engaged in a business similar to that of the parent. Any dividends received from the subsidiary are nonbusiness income.

(5) Note: Dividends received after December 31, 1969, are excluded from Kentucky gross income by an amendment to KRS 141.010.

(6) Patent and Copyright Royalties. Patent and copyright royalties are business income if the patent or copyright was created or used as an integral part of the corporation's principal business.

(a) Example: The corporation operates a multi-state business of manufacturing and selling industrial chemicals. In connection with that business, it obtained patents on certain of its products. It licensed the production of those products in foreign countries, and receives royalties. The royalties are business income.

(b) Example: The corporation operates a music publishing business and holds copyrights on numerous songs. The corporation acquires the assets of a small publishing company, including music copyrights. These acquired copyrights are then used in its business. Any royalties received on these copyrights are business income.

(c) Example: Same as last example, except that the acquired company also held the patent on a type of phonograph needle. The corporation does not manufacture or sell phonographs or phonograph equipment. Any royalties received on the patent are nonbusiness income.

Section 6. Proration of Deductions. Any allowable deduction, that applies to both business and nonbusiness income or to more than one "trade or business," shall be prorated to those classes of income or trades or businesses by a formula prescribed by the department.

JOHN McD. ROSS, Commissioner
APPROVED: JAMES O. KING, Secretary
ADOPTED: October 15, 1974
RECEIVED BY LRC: October 16, 1974 at 4:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Department of Revenue, Capitol Annex, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Department of Revenue
(103 KAR 16:070)

RELATES TO: KRS 141.120
PURSUANT TO: KRS 13.082
SUPERSEDES: IC-7
NECESSITY AND FUNCTION: KRS 141.120(9) requires that all business income of multi-state corporations be apportioned to Kentucky by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is three (3). This regulation provides detailed guidelines for determining the sales factor of a multi-state corporation.

Section 1. General. (1) KRS 141.120(1)(g) defines "sales" to mean all gross receipts not allocated under subsections (4) through (8) of KRS 141.120. Thus, for the purposes of the sales factor, the term "sales" generally means all gross receipts derived by a corporation from transactions and activities in the course of its regular trade or business operations which produce business income.

(2) In the case of a corporation whose business activity consists of manufacturing and selling or purchasing and reselling goods or products, "sales" includes all gross receipts from the sales of goods or products (or other property which would properly be included in inventory if on hand at the close of the taxable year) held by the corporation primarily for sale in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales, less returns and allowances, and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales. Federal and state excise taxes (including sales taxes) shall be included as part of such receipts if such taxes are passed on to the buyer or included as part of the selling price of the product.

Section 2. General Business Operations. (1) The term "sales," as a general rule, also includes gross receipts derived from business transactions or activities which are incidental to the principal business activity and which are includible in business income. However, substantial amounts of gross receipts from an incidental or occasional sale of a fixed asset, used in the taxpayer's regular trade or business, will be excluded from the sales factor since the inclusion of such gross receipts will not fairly apportion to Kentucky the income derived from business activity in Kentucky. For example, gross receipts from the sale of a factory or plant will be excluded. Conversely, the inclusion in the sales factor of insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may not materially affect the income fairly attributable to the business conducted in Kentucky. A corporation may include or exclude the gross receipts from such transactions as the sale of office furniture, business automobiles, etc.

(2) If a corporation regularly derives receipts from the sale of equipment used in its business, they are included in the sales factor. For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sales of the trucks are included in the sales factor.

(3) In including or excluding gross receipts, the corporation shall be consistent in the treatment of such gross receipts in filing returns or reports to all states to which the taxpayer reports. In the event the corporation is not consistent in its reporting, it shall disclose in its Kentucky return the nature and extent of the inconsistency.

Section 3. Sales in Other Business Activities. As applied to a corporation engaged in business activity, other than the manufacturing and selling or purchasing and reselling of property, "sales" include gross receipts from the corporation's business activity:

(1) If business activity consists of providing services, such as the operation of an advertising agency, the performance of equipment service contracts, or research and development contracts; "sales" includes gross receipts from the performance of such services including fees, commissions, and similar items.

(2) In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, gross receipts includes the entire reimbursed cost, plus the fee.

(3) If the business activity is renting of real or tangible personal property, "sales" includes the gross receipts from the rental, lease, or licensing of the property.

(4) If the business activity is the sale, assignment, or licensing of intangible personal property such as patents and copyrights, "sales" includes the gross receipts therefrom.

Section 4. Sales Factor - Numerator. The numerator of the sales factor will generally include the gross receipts from sales which are attributable to Kentucky, and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales regardless of where the accounting records are maintained or the location of the contract or other evidence or indebtedness.

Section 5. Assignment of Sales of Tangible Personal Property to Kentucky. (1) Gross receipts from sales of tangible personal property (except sales to the United States Government) are in Kentucky if:

(a) The property is delivered or shipped to a purchaser within Kentucky regardless of the f.o.b. point or other conditions of sale; or

(b) The property is shipped from an office, store, warehouse, factory, or other place of storage in Kentucky and the corporation is not taxable in the state of the purchaser. Note: Receipts from sale of property shipped from Kentucky to a state where taxpayer is not taxable are excluded from Kentucky sales for taxable years beginning after December 31, 1973. (1974 General Assembly amendment to KRS 141.120)

(2) Property shall be deemed to be delivered or shipped to a purchaser within Kentucky if the recipient is located in Kentucky, even though the property is ordered from outside Kentucky.

(a) Example: The corporation, with inventory in State A, sold $100,000 of its products to a purchaser with branch stores in several states including Kentucky. The purchase order was placed by the purchaser's central purchasing department located in State B. Twenty-five thousand dollars of the purchase order was shipped directly to purchaser's branch store in Kentucky. The branch store in Kentucky is the "purchaser within this state" with respect to $25,000 of the corporation sales.

(3) Property is delivered or shipped to a purchaser in Kentucky if the shipment terminates in Kentucky, even though the property is later transferred by the purchaser to another state.

(a) Example: The corporation makes a sale to a purchaser who maintains a central warehouse in Kentucky where all merchandise purchases are received. The purchaser reships the goods to its branch stores in other states for sale. All products shipped to the purchaser's warehouse in Kentucky is property "delivered or shipped to a purchaser within this state."

(4) The term "purchaser within this state" includes the ultimate recipient of the property if the corporation in Kentucky, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient in Kentucky.

(a) Example: A corporation in Kentucky sold merchandise to a purchaser in State A. The corporation directed the manufacturer of the merchandise in State B to ship the merchandise to the purchaser's customer in this state pursuant to purchaser's instruction. The sale by the corporation is "in this state."

(5) When property being shipped by a seller from the state of origin to a consignee in another state is diverted while enroute to a purchaser in Kentucky, the sales are in Kentucky.

(a) Example: The corporation, a produce grower in State A, begins shipment of perishable produce to the purchaser's place of business in State B. While enroute the produce is diverted to the purchaser's place of business in Kentucky where the corporation is subject to tax. The sale by the corporation is assigned to Kentucky.

(6) If the corporation is not taxable in the state of the purchaser, the sale is attributed to Kentucky if the property is shipped from an office, store, warehouse, factory, or other place of storage in Kentucky.

(a) Example: The corporation has its head office and factory in State A. It maintains a branch office and inventory in Kentucky. The only activity in State B is the solicitation of orders by a resident salesman. All orders by the State B salesman are sent to the branch office in Kentucky for approval and are filled by shipment from the inventory in Kentucky. Since the corporation is immune under P.L. 86-272 from income tax in State B, all sales of merchandise to purchasers in State B are attributed to Kentucky, the state from which the merchandise was shipped. Note: Receipts from sale of property shipped from Kentucky to a state where taxpayer is not taxable are excluded from Kentucky sales for taxable years beginning after December 31, 1973. (1974 General Assembly amendment to KRS 141.120)

(7) If a corporation whose salesman operates from an office located in Kentucky makes a sale to a purchaser in another state in which the corporation is not taxable, and the property is shipped directly by a third party to the purchaser, the sale will be attributed to the state from which the property is shipped if the corporation is taxable in that state. If the corporation is not taxable in the state from which the property is shipped, then the property will be deemed to have been shipped from Kentucky and the sale is assigned to Kentucky.

(a) Example: The corporation in Kentucky sold merchandise to a purchaser in State A. The corporation is not taxable in State A. Upon direction of the corporation the merchandise was shipped directly to the purchaser by the manufacturer in State B. If the corporation is taxable in State B, the merchandise is deemed to have been shipped from State B to the purchaser in State A. If the corporation is not taxable in State B, the merchandise is deemed to have been shipped from Kentucky by the corporation to the purchaser in State A. Note: Receipts from sale of property shipped from Kentucky to a state where taxpayer is not taxable are excluded from Kentucky sales for taxable years beginning after December 31, 1973. (1974 General Assembly amendment to KRS 141.120)

Section 6. Sales to United States Government. (1) Gross receipts from the sales of tangible personal property to the United States Government are in Kentucky if the property is shipped from an office, store, warehouse, factory, or other place of storage in Kentucky. Only sales for which the United States Government makes direct payment to the seller, pursuant to the terms of its contract, constitute sales to the United States Government. Thus, as a general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States Government, do not constitute sales to the United States Government.

(a) Example: A corporation contracts with General Services administration to deliver trucks which were paid for by the United States Government. The United States Government is the purchaser.

(b) Example: The corporation is a subcontractor and contracts to build a component of a rocket for $1,000,000. The sale by the subcontractor to the prime contractor is not a sale to the United States Government.

(2) When the United States Government is the purchaser of property which remains in the possession of the corporation in Kentucky for further processing under another contract, or for other reasons, "shipment" is deemed to be made when the property is accepted by the United States Government.

Section 7. Sales Other Than Sales of Tangible Personal Property. (1) General. KRS 141.120(9)(c)(3) includes gross receipts from sales, other than sales of tangible personal property, in the numerator of the sales factor. Under that section, gross receipts are assigned to Kentucky if the income producing activity which gave rise to the receipts is performed entirely in Kentucky. If the income producing activity is performed within and without Kentucky, receipts are attributed to Kentucky if the greater proportion of the income producing activity is performed in Kentucky, based on costs of performance.

(2) Income Producing Activity Defined. The term "income producing activity" means the act or acts directly engaged in by the corporation for the ultimate purpose of obtaining gains or profit. Such activity does not include activities performed on behalf of a corporation, such as those conducted on its behalf by an independent contractor. Accordingly, the income producing activity includes but is not limited to the following:

(a) Personal services by employees or the use of tangible and intangible property in performing a service.

(b) The sale, rental, leasing, or licensing or other use of real property.

(c) The rental, leasing, licensing or other use of tangible personal property.

(d) The sale or licensing of intangible personal property.

(3) Income Producing Activity–Location. The income producing activity is deemed performed at the situs of real, tangible, and intangible personal property or the place where personal services are rendered. The situs of real and tangible personal property is at its physical location. The situs of intangible personal property is the corporation's commercial domicile unless the property has acquired a "business situs" in: (i) the place where intangible personal property is employed as capital; or (ii) the place where the property is located if possession and control of the property is localized in connection with a trade or business so that substantial use or value attaches to the property.

(a) Example: A corporation whose principal business activity is the manufacture and sale of hot water heaters pledges bonds in Kentucky as security for the payment of taxes in connection with its business activities in Kentucky. The property has a business situs in Kentucky, therefore, interest income from such bonds is attributable to Kentucky.

(4) Costs of Performance Defined. The term "cost of performance" means direct costs determined consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the corporation.

(5) Assignment of Sales.

(a) If receipts from sales, other than sales of tangible personal property, do not constitute a principal source of business income and such receipts are included in the denominator of the receipts factor, these receipts are in Kentucky if:

1. The income producing activity is performed wholly within Kentucky; or
2. The income producing activity is performed both in and outside of Kentucky and a greater proportion of the income producing activity is performed in Kentucky than in any other state, based on costs of performance.

a. Example: The corporation is engaged in the heavy construction business in which it uses cranes, tractors, and earth-moving vehicles. It makes short-term rentals of the equipment when not needed on any project. The corporation rented some of the equipment to X for three (3) weeks. The equipment was used by X for two (2) weeks in Kentucky and one (1) week in State Y. The direct costs in connection with the equipment during the rental period were $500 weekly. Accordingly, the greater proportion of such costs was incurred in Kentucky. All of the rental receipts are business income and, for purposes of the sales factor, are included in the numerator.

b. Example: A corporation with commercial domicile in Kentucky manufactures and sells industrial chemicals. It owns patents on certain products. The corporation licensed production of the chemicals in foreign countries in return for royalties which are a relatively minor amount of its income. The royalties are business income and, for purposes of the sales factor, are included in the numerator.

(b) Receipts from sales, other than sales of tangible personal property which constitute a principal source of business income, are attributed to Kentucky as follows:

1. Gross receipts from sale, lease, rental or other use of real property are in Kentucky if the real property is located in Kentucky.
2. Gross receipts from rental, lease, licensing or other use of tangible personal property shall be assigned to Kentucky if the property is in Kentucky during the entire period of rental, lease, license or other use. If the property is within and without Kentucky during such period, gross receipts attributable to Kentucky shall be based upon the ratio which the time the property was physically present or was used in Kentucky bears to the total time or use of the property everywhere during such period.
3. Gross receipts for the performance of personal services are attributable to Kentucky to the extent such services are performed in Kentucky. If the services are performed partly within and without Kentucky, such receipts shall be attributed to Kentucky based upon the ratio which the time spent in performing such services in Kentucky bears to the total time spent in performing such services everywhere. Time spent in performing services includes time spent in performing contracts or other obligations which gave rise to such gross receipts. Personal service not directly connected with the performance of the contract or other obligation; such as, time spent in negotiating the contract is excluded from the computations.

a. Example: The corporation, a road show, presents theatrical performance at various locations in State X and in Kentucky during the taxable year. All gross receipts from performances presented in Kentucky are attributed to Kentucky.

b. Example: The corporation, a public opinion survey corporation conducted a poll by its employees in State S and in Kentucky for $9,000. The project required 600 man hours to obtain the basic data and prepare the survey report. Two hundred of the 600 man hours were spent in Kentucky. The receipts attributable to Kentucky are $3,000 (200 man hours divided by 600 man hours times $9,000).

4. Gross receipts from intangible personal property shall be attributed to Kentucky based upon the ratio which the total property and payroll factors in Kentucky bears to the total of the property and payroll factors everywhere for the taxable year.
5. This regulation shall also apply to sales, other than sales of tangible personal property, to the United States Government.

JOHN McD. ROSS, Commissioner
APPROVED: JAMES O. KING, Secretary
ADOPTED: October 15, 1974
RECEIVED BY LRC: October 16, 1974 at 4:31 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Department of Revenue, Capitol Annex, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Department of Revenue
(103 KAR 16:080)

RELATES TO: KRS 141.120
PURSUANT TO: KRS 13.082
SUPERSEDES: IC-8
NECESSITY AND FUNCTION: KRS 141.120(9) requires that all business income of multi-state corporations be apportioned to Kentucky by multiplying the income by a fraction; the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is three (3). This regulation provides detailed guidelines for determining the property factor of a multi-state corporation.

Section 1. General. The property factor includes all real and tangible personal property owned or rented and used during the taxable year to produce business income, except pollution control property located in Kentucky for which a tax exemption certificate is issued by the Department for Natural Resources and Environmental Protection (1974 Amendment to KRS 141.120 effective for taxable year ending after June 21, 1974). The term "real and tangible personal property" includes land, buildings, machinery, stocks of goods, equipment and other real and tangible personal property used in the production of business income but does not include coin or currency. Property used in production of nonbusiness income which is directly allocated shall be excluded from the factor. Prop-

erty used in both the production of business and non-business income shall be included in the factor only to the extent the property was used in connection with the production of business income. The method of determining the value to be included in the factor will depend upon the facts of each case. The property factor shall include the average value of property includible in the factor.

Section 2. Property Used for Business Income. (1) Property shall be included in the property factor if it is actually used or is available for or capable of being used during the taxable year for the production of business income. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are included in the factor. Property or equipment under construction during the income year (except inventoriable goods in process) shall be excluded from the the factor until it is actually used for the production of business income. If the property is partially used for the production of business income while under construction, the value of the property to the extent used shall be included in the property factor. Property used in the production of business income shall remain in the property factor until its permanent withdrawal is established by an identifiable event such as its sale or conversion to the production of nonbusiness income:

(a) Example: On June 30, 1968, the corporation closed its manufacturing plant in State X and held it for sale. The property remained vacant until its sale on October 31, 1969. The value of the manufacturing plant is included in the property factor until November 1, 1969.

(b) Example: Same as above except that the property was rented until it was sold. The rental income is business income and the plant is included in the property factor until November 1, 1969.

(c) Example: On June 30, 1968, the corporation closed its manufacturing plant and leased the building under a five-year lease on October 1, 1968. The plant is included in the property factor until October 1, 1968.

(d) Example: The corporation operates a chain of retail grocery stores. On June 30, 1968, the corporation closes Store A. It is then remodeled into three (3) small retail stores such as a dress shop, dry cleaning, and barber shop, which are leased on November 1, 1968. The property is removed from the property factor on July 1, 1968.

(2) In Example (a), the plant was sold shortly after it was put up for sale. Cases will vary as to the lapse of time until there is a sale. If a closed plant remains unsold for five (5) years after it is put up for sale, it is removed from the property factor.

Section 3. Consistency in Reporting. The corporation shall be consistent in the valuation of property and in excluding or including property in the property factor in filing returns or reports in all states. In the event the corporation is not consistent in its reporting, it shall disclose in its Kentucky return the nature and extent of the inconsistency.

Section 4. Property Factor — Numerator. (1) The numerator of the property factor shall include the average value of the corporation's real and tangible personal property owned or rented and used in Kentucky during the taxable year for the production of business income.

(2) Property in transit between locations of the corporation to which it belongs shall be considered at the destination for purposes of the property factor. Property in transit between a buyer and seller which is included by a corporation in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination.

(3) The value of mobile or movable property such as construction equipment, trucks or leased electronic equipment which are located within and without Kentucky during the taxable year shall be determined, for purposes of the numerator of the factor, on the basis of total time within the state during the taxable year. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

Section 5. Valuation of Owned Property. (1) Property owned by the corporation shall be valued at original cost. As a general rule "original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal adjustments) at the time of acquisition by the corporation and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc.

(a) Example: On January 1, 1960, corporation acquired a factory building in Kentucky at a cost of $500,000 and on July 1, 1961, expended $100,000 for major remodeling of the building. It files its return for 1968 on the calendar year basis. Depreciation deduction of $22,000 was claimed on the building for its return for 1968. The value of the building includible in the numerator and denominator of the property factor is $600,000 as the depreciation deduction is not taken into account in determining the value of the building.

(b) Example: In 1970, X corporation merges into Y corporation in a tax-free reorganization under the Internal Revenue Code. At the time of the merger, X owns a factory which X built in 1965 at a cost of $1,000,000. X has been depreciating the factory at the rate of two percent (2%) per year, and its basis in X's hands at the time of the merger is $900,000. Since the property is acquired by Y in a transaction in which, under the Internal Revenue Code, its basis in Y's hands is the same as its basis in X's hands, Y includes the property in Y's property factor at X's original cost, without adjustment for depreciation, i.e., $1,000,000.

(c) Example: Corporation Y acquires the assets of corporation X in a liquidation by which Y is entitled to use its stock cost as the basis of the X assets under Section 334(b)(2) of the 1954 Internal Revenue Code (i.e., stock possessing eighty percent (80%) control is purchased and liquidated within two (2) years). Under these circumstances, Y's cost of the assets is the purchase price of the X stock, prorated over the X assets.

(2) If original cost of property is unascertainable, nominal, or zero, the property is included in the factor at its fair market value at the date of acquisition by the corporation.

(3) Inventory of stock of goods shall be included in the factor by valuation method used for federal income tax purposes.

(4) Property acquired by gift or inheritance shall be included in the factor at its basis for depreciation for federal income tax purposes.

Section 6. Rented Property. (1) Property rented by a corporation is valued at eight (8) times the net annual rental rate. The net annual rental rate is the total annual rental paid, less total annual rental received from subrentals. In exceptional cases this may result in a negative value or a clearly inaccurate valuation. In those instances any other method which will properly reflect the value may be required by the department or may be requested by the corporation, but in no case shall the net annual rental rate be less than an amount which bears the same ratio to the total annual rental rate paid by the taxpayer as the rental property used by the corporation bears to all the rental property:

(a) Example: The corporation rents a 10-story building at an annual rental rate of $1,000,000. It occupies two (2) stories and sublets eight (8) stories for $1,000,000 a year. The net annual rental rate must not be less than two-tenths of the annual rental rate for the entire year or $200,000.

(2) If property is used at no charge or rented for a nominal rate, the property shall be included in the property factor on the basis of a reasonable market rental rate.

(3) The "annual rental rate" is the amount paid as rental for the property for a 12-month period, or the "annual rent." If property is rented for less than a 12-month period, the net rent paid for the actual period of rental shall constitute the "annual rental rate" for the taxable year. However, if a corporation has rented property for a term of twelve (12) or more months and the current tax period covers a period of less than twelve (12) months due, for example, to a reorganization or change of accounting period, the net rent paid for the short tax period shall be annualized. If the rental term is for less than twelve (12) months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month to month basis.

(a) Example: Corporation A which ordinarily files its return on a calendar year is merged into corporation B on April 30. The net rent paid under a lease with five (5) years remaining is $2,500 a month. The rent for the tax period January 1 to April 30 is $10,000. After the rent is annualized the net rent is $30,000 ($2,500 times 13).

(b) Example: Same facts as in Example (a) except that the lease would have terminated on August 31. In this case the annualized net rent is $20,000 ($2,500 times 8).

(4) "Annual rent" is the actual sum of money or other consideration payable, directly or indirectly, by the corporation or for its benefit for the use of the property and includes:

(a) Any amount payable for the use of real or tangible personal property whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

1. Example: A corporation pursuant to the terms of a lease, pays a lessor $1,000 per month as a base rental and at the end of the year pays the lessor one percent (1%) of its gross sales of $400,000. The annual rent is $16,000 ($12,000 plus one percent (1%) of $400,000 or $4,000).

(b) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, and does not include amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

1. Example: A corporation, pursuant to the terms of a lease, pays the lessor $12,000 a year rent plus

taxes in the amount of $2,000 and interest on a mortgage in the amount of $1,000. The annual rent is $15,000.

2. Example: A corporation stores part of its inventory in a public warehouse. The total charge for the year was $1,000 of which $700 was for the use of storage space and $300 for inventory insurance, handling and shipping charges, and C.O.D. collections. The annual rent is $700.

(5) "Annual rent" does not include incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles, etc.

(6) Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the corporation regardless of whether the corporation is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. The original cost of leasehold improvements shall be included in the factor.

Section 7. Averaging Property Values. (1) As a general rule the average value of property owned or leased and used by a corporation shall be determined by averaging the values at the beginning and ending of the income year. However, the department may require or allow averaging by monthly values if it is required to properly reflect the average value of the corporation's property for the taxable year.

(2) Averaging by monthly values will be generally applied if substantial fluctuations in the values of the property exist during the taxable year or where property is acquired after the beginning of the taxable year or disposed of before the end of the taxable year:

(a) Example: The monthly value of the corporation's property was as follows:

January	$ 2,000
February	2,000
March	3,000
April	3,500
May	4,500
June	10,000
July	15,000
August	17,000
September	23,000
October	25,000
November	13,000
December	2,000
Total	$120,000

The average value of property includible in the property factor for the taxable year is determined as follows: $120,000 divided by 12 equals $10,000.

JOHN McD. ROSS, Commissioner
APPROVED: JAMES O. KING, Secretary
ADOPTED: October 15, 1975
RECEIVED BY LRC: October 16, 1974 at 4:32 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Department of Revenue, Capitol Annex, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Department of Revenue
(103 KAR 16:090)

RELATES TO: KRS 141.120
PURSUANT TO: KRS 13.082
SUPERSEDES: IC-9
NECESSITY AND FUNCTION: KRS 141.120(9) requires that all business income of multi-state corporations be apportioned to Kentucky by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is three (3). This regulation provides a detailed explanation of the payroll apportionment factor.

Section 1. General. (1) The payroll factor shall include the total amount paid by the corporation for compensation during the taxable year.

(2) The total amount "paid" to employees is determined by the corporation's accounting method. If the corporation has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the corporation's method of accounting, compensation paid to employees may be included in the payroll factor by the cash method if the corporation is required to report compensation under such method for unemployment compensation purposes. The corporation shall be consistent in the treatment of compensation paid in filing returns or reports to all states. If the corporation is not consistent in its reporting, it shall disclose in its Kentucky return the nature and extent of the inconsistency.

Section 2. Compensation. (1) The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the corporation in return for personal services provided that such amounts constitute income to the recipient under the Federal Internal Revenue Code. In the case of employees not subject to the Federal Internal Revenue Code, e.g., those employed in foreign countries, the determination of whether such benefits or services would constitute income to the employees shall be made as though such employees were subject to the Federal Internal Revenue Code.

(2) The payroll factor includes only compensation which is attributable to business income subject to apportionment. The compensation of any employee whose activities are connected primarily with nonbusiness income shall be excluded from the factor:

(a) Example: The corporation uses some of its employees in constructing a storage building which will be used for production of business income. The wages paid to those employees is treated as a capital expenditure. The amount of such wages is included in the payroll factor.

(b) Example: The corporation owns various securities from which nonbusiness income is derived. The management of the investment portfolio is the only duty of Mr. X, an employee. The salary paid to Mr. X is excluded from the payroll factor.

Section 3. Employee. The term "employee" means (1) any officer of a corporation, or (2) any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person will be considered an employee if he is included by the corporation as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act; except that, since certain individuals are included within the term "employees" in the Federal Insurance Contributions Act who would not be employees under the usual common-law rules, it may be established that a person who is included as an employee for purposes of the Federal Insurance Contributions Act is not an employee for purposes of this regulation.

Section 4. Payroll Factor-Numerator. (1) The numerator of the payroll factor is the total amount paid in Kentucky during the taxable year by the corporation for compensation. The tests in KRS 141.120(9)(b), to be applied in determining whether compensation is paid in Kentucky are derived from the Model Unemployment Compensation Act. Accordingly, if compensation paid to employees is included in the payroll factor by the cash method of accounting, or if the corporation is required to report compensation under such method for unemployment compensation purposes, it shall be presumed that the total wages reported by the corporation to Kentucky for unemployment compensation purposes constitutes compensation paid in Kentucky except for compensation excluded by this regulation. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to Kentucky for unemployment compensation purposes.

(2) Compensation is paid in Kentucky if any one of the following tests, applied consecutively, are met:

(a) The employee's service is performed entirely within Kentucky.

(b) The employee's service is performed both within and without Kentucky, but the service performed without Kentucky is incidental to the employee's service in Kentucky. The word "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction.

(c) If the employee's services are performed both within and without Kentucky, the employee's compensation will be attributed to Kentucky:

1. If the employee's base of operations is in Kentucky; or
2. if there is no base of operations in any state in which some part of the service is performed but the place from which the service is directed or controlled is in Kentucky; or
3. if the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the employee's residence is in Kentucky.

(3) The term "base of operation" is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the corporation or communications from his customers or other persons, or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his trade or profession at some other point or points.

(4) The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the corporation.

Section 5. Payroll Factor-Denominator. (1) The denominator of the payroll factor is the total compensation paid everywhere during the taxable year. Accordingly, compensation paid to employees whose services are performed entirely in a state where the corporation is exempt from taxation, for example, by Public Law 86-272, are included in the denominator of the payroll factor.

(a) Example: A corporation, has employees in its state of legal domicile (State A) and is taxable in State B. In addition the corporation has other employees whose services are performed entirely in State C where the corporation is exempt from taxation by Public Law 86-272. The compensation paid employees in State C will be assigned to State C where their

services are performed (i.e. included in the denominator only of the payroll factor) even though the corporation is not taxable in State C.

JOHN McD. ROSS, Commissioner
APPROVED: JAMES O. KING, Secretary
ADOPTED: October 15, 1974
RECEIVED BY LRC: October 16, 1974 at 4:32 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Department of Revenue, Capitol Annex, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Department of Revenue
(103 KAR 25:050)

RELATES TO: KRS 139.100
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-36
NECESSITY AND FUNCTION: This regulation interprets the sales and use tax law as it applies to transactions involving factors and agents.

Section 1. A factor, or agent of an owner, or former owner or factor, to whom property is consigned, entrusted, or otherwise delivered for the purpose of selling shall be considered the retailer of such property when sold. Said factor, or agent, shall include the retail selling price of said property in his gross receipts and be liable for the sales tax thereon; provided, however, that said factor or agent need not include the retail selling price of the subject property in his gross receipts in those instances where the principal involved is a retail permit holder under the Kentucky Sales and Use Tax Act, and said principal includes the retail selling price of the subject property in his gross receipts.

Section 2. The delivery in this state by a factor, or agent of an owner, or former owner or factor, to a consumer or person for redelivery to a consumer pursuant to a retail sale made by a retailer not engaged in business in this state shall be considered a retail sale. Said factor, or agent, shall include the retail selling price of said property in his gross receipts and be liable for the sales tax thereon; provided, however, that said factor or agent need not include the retail selling price of the subject property in his gross receipts in those instances where the principal involved is a retail permit holder under the Kentucky Sales and Use Tax Act, and said principal includes the retail selling price of the subject property in his gross receipts.

JOHN McD. ROSS, Commissioner
APPROVED: JAMES O. KING, Secretary
ADOPTED: October 15, 1974
RECEIVED BY LRC: October 16, 1974 at 4:29 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Department of Revenue, Capitol Annex, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Department of Revenue
(103 KAR 26:010)

RELATES TO: KRS 139.110
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-21-2
NECESSITY AND FUNCTION: This regulation interprets the sales and use tax law as it applies to service enterprises in general.

Section 1. Persons engaged in the business of rendering service are consumers, not retailers, of the tangible personal property which they use incidentally in rendering the service. Tax, accordingly, applies to the sale of the property to them. Examples of service enterprises may include, but are not limited to, the following: banks, advertising agencies, launderers, cleaners, barbers, beauty shop operators, tire repairers, taxidermists, shoe repairmen, bootblacks, and similar enterprises.

Section 2. Persons rendering professional services are consumers, not retailers, of the tangible personal property which they use incidentally in rendering their services. Examples of such persons would be lawyers, architects, engineers, and accountants.

Section 3. If any of the above persons or enterprises, in addition to using property incidentally in connection with rendering services, are regularly engaged in selling tangible personal property to consumers, they are retailers with respect to such sales, and they must obtain permits, file returns and remit tax measured by such sales.

JOHN McD. ROSS, Commissioner
APPROVED: JAMES O. KING, Secretary
ADOPTED: October 15, 1974
RECEIVED BY LRC: October 16, 1974 at 4:28 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Department of Revenue, Capitol Annex, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Department of Revenue
(103 KAR 26:020)

RELATES TO: KRS 139.050, 139.100, 139.110, 139.120, 139.130, 139.472
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-18-1
NECESSITY AND FUNCTION: This regulation defines and clarifies the sales and use tax law as it applies to sales to and by physicians and surgeons.

Section 1. Physicians and surgeons are the consumers of the materials, supplies, or other items of tangible personal property which they use in performing their services. The tax accordingly applies to the sale of the tangible personal property to them. Drugs, medicines and other tangible personal property which are personally administered by a physician or surgeon or by an assistant under his direction during treatment of a patient are not the subject of a "retail sale." Likewise, drugs and medicines and other tangible personal property which can only be compounded by a physician or surgeon or by an assistant under his direction are not the subject of a retail sale whether or not they are personally administered by such physician or surgeon or by an assistant under his direction.

Section 2. A physician or surgeon who supplies or dispenses medicine and drugs for a separate retail price will be considered to be dispensing prescription medicine exempt from the sales and use tax if such medicines or drugs would require a prescription if sold by a pharmacist. Records of sales for which an exemption is claimed must be kept in a manner permitting ready inspection by the Department of Revenue.

JOHN McD. ROSS, Commissioner
APPROVED: JAMES O. KING, Secretary
ADOPTED: October 15, 1974
RECEIVED BY LRC: October 16, 1974 at 4:27 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Department of Revenue, Capitol Annex, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Department of Revenue
(103 KAR 26:030)

RELATES TO: KRS 139.110
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-19
NECESSITY AND FUNCTION: This regulation defines and clarifies the sales and use tax law as it applies to transactions involving optometrists, oculists and opticians.

Section 1. Oculists and optometrists are the consumers of ophthalmic materials including eyeglasses, frames and lens used or furnished to their patients in the performance of their professional services. The tax accordingly applies to the sale of the tangible personal property to them.

Section 2. Where optometrists fill prescriptions written by others, the optometrist is the retailer and the tax applies to the entire charge made for the glasses furnished in filling the prescription.

Section 3. Opticians are engaged in the business of selling tangible personal property and the tax applies to the entire charge made by a dispensing optician for glasses and kindred products furnished in filling a prescription of an oculist, optometrist or ophthalmologist.

JOHN McD. ROSS, Commissioner
APPROVED: JAMES O. KING, Secretary
ADOPTED: October 15, 1974
RECEIVED BY LRC: October 16, 1974 at 4:27 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Department of Revenue, Capitol Annex, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Department of Revenue
(103 KAR 27:030)

RELATES TO: KRS 139.100, 139.110, 139.120, 139.130, 139.140
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-34
NECESSITY AND FUNCTION: This regulation interprets the sales and use tax law as it applies to sales by brokers, lienors, and fiduciaries.

Section 1. Brokers such as food or produce brokers, grain brokers, lumber brokers and other brokers not having possession of tangible personal property for sale are not retailers.

Section 2. Pawnbrokers selling tangible personal property are retailers and shall report and pay the tax on the gross receipts from the sale of such property. The sale of property

forfeited to them by reason of the pawner's failure to redeem shall be included in the gross receipts.

Section 3. Lienors such as storage operators, mechanics, artisans and others selling tangible personal property to enforce a lien thereon are retailers with respect to sales of the property to consumers and the tax applies to the gross receipts from such sales.

Section 4. Fiduciaries having possession of tangible personal property for the purpose of sale are retailers with respect to sales of the property to consumers and the tax applies to the gross receipts from such sales.

JOHN McD. ROSS, Commissioner
APPROVED: JAMES O. KING, Secretary
ADOPTED: October 15, 1974
RECEIVED BY LRC: October 16, 1974 at 4:28 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Department of Revenue, Capitol Annex, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Department of Revenue
(103 KAR 27:050)

RELATES TO: KRS 139.110
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-25
NECESSITY AND FUNCTION: This regulation interprets the sales and use tax law as it applies to sales by florists and nurserymen.

Section 1. Sales of flowers, wreaths, bouquets, potted plants, shrubbery, and other such items of tangible personal property are subject to the sales and use tax.

Section 2. Where florists conduct transactions through a florists' telegraphic delivery association, the following rules will apply in the computation of tax liability:
(1) On all orders taken by a Kentucky florist and telegraphed to a second florist in Kentucky for delivery in Kentucky, the sending florist will be liable for the tax;
(2) In cases where a Kentucky florist receives an order pursuant to which he gives telegraphic instructions to a second florist located outside Kentucky for delivery of flowers to a point outside Kentucky, the tax will likewise be owing with respect to the total receipts of the sending florist from the customer who places the order;
(3) In cases where Kentucky florists receive telegraphic instructions from other florists either within or outside of Kentucky for the delivery of flowers, the receiving florist will not be held liable for tax with respect to any receipts which he may realize from the transaction. In this instance, if the order originated in Kentucky, the tax will be due from and payable by the Kentucky florist who first received the order and gave the telegraphic instructions to the second florist.

Section 3. When a nurseryman or florist sells shrubbery, young trees or similar items, and as part of the transaction transplants them to the land of the purchaser for a lump sum or a flat rate, the vendor so selling and installing must make a segregation of that portion of the charge which is for tangible personal property sold and that portion of the charge which is for installation. Failure to segregate the charge will subject the entire amount of the transaction to the sales tax.

JOHN McD. ROSS, Commissioner
APPROVED: JAMES O. KING, Secretary
ADOPTED: October 15, 1974
RECEIVED BY LRC: October 16, 1974 at 4:28 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Department of Revenue, Capitol Annex, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Department of Revenue
(103 KAR 27:140)

RELATES TO: KRS 139.100, 139.110
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-8
NECESSITY AND FUNCTION: This regulation interprets the sales and use tax law as it applies to sales of newspapers, magazines and periodicals.

Section 1. Newspapers. (1) Sales of newspapers by the publisher are sales of tangible personal property. The tax applies to the gross receipts of the publisher from such sales in all cases where the publisher receives directly from the consumer the full retail sales price of the newspaper, unless the sale is for delivery outside of this state.
(2) The sales of newspapers by the publisher to carriers, newsboys, street vendors, and operators of newsstands and similar places are sales for resale the proceeds of which are not subject to the tax.
(3) Newsstands, drug stores and other places of business with a fixed location are the retailers of newspapers sold by them. Proceeds from the sale thereof shall be included in the gross receipts of the retailer subject to the tax.

Section 2. Magazines and Periodicals. (1) Sales of magazines, periodicals and all publications other than newspapers, whether made "over the counter," or by subscription, are subject to the sales or use tax.
(2) Receipts from subscriptions for magazines, periodicals, and trade journals, which subscriptions are taken within the State of Kentucky, sent to a publication house outside of the State of Kentucky, and the publication is thereafter mailed directly to the subscriber within the State of Kentucky are subject to the sales tax. Where such publications are printed within the State of Kentucky and sold subject to delivery outside the State of Kentucky, such sales would not be subject to the sales tax.
(3) Persons who distribute trade publications, journals and the like free of charge to the reader thereof are regarded as consumers of publications which they distribute.

JOHN McD. ROSS, Commissioner
APPROVED: JAMES O. KING, Secretary
ADOPTED: October 15, 1974
RECEIVED BY LRC: October 16, 1974 at 4:26 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Department of Revenue, Capitol Annex, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Department of Revenue
(103 KAR 27:170)

RELATES TO: KRS 139.050
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-39
NECESSITY AND FUNCTION: This regulation interprets the sales and use tax law as it applies to transactions involving sales by civic clubs and similar organizations.

Section 1. Where civic clubs, associations, chambers of commerce, and similar organizations sell tickets for meals at prices which include services rendered in addition to the cost paid to the supplier for the meals, such clubs, associations, chambers of commerce and similar organizations will be treated as consumers of such meals, and the tax applies to gross receipts from the sale of the meals to them. Such clubs and other organizations are consumers of other items of tangible personal property which they sell incidentally in connection with the rendering of their services, and the tax applies to gross receipts from the sales of such property to them.

JOHN McD. ROSS, Commissioner
APPROVED: JAMES O. KING, Secretary
ADOPTED: October 15, 1974
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SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Department of Revenue, Capitol Annex, Frankfort, Kentucky 40601.

ECRETARY OF THE CABINET
Department of Revenue
(103 KAR 30:020)

RELATES TO: KRS 139.050, 139.110, 139.130, 139.472
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-20-1
NECESSITY AND FUNCTION: This regulation defines and clarifies the sales and use tax exemption provided in KRS 139.472 for prescription medicine, prosthetic devices and physical aids.

Section 1. As provided in KRS 139.472, effective January 1, 1971, the sales and use tax does not apply to sales of prescription medicines, prosthetic devices and physical aids.

Section 2. Prescription medicine shall mean and include any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease or infirmity and which is commonly recognized as a substance or preparation intended for such use which is prescribed for the treatment of a human being by a person authorized to prescribe the medicines and dispensed on prescription by a registered pharmacist in accordance with law.

Section 3. Sales of prescription medicine pursuant to a physician's or dentist's telephone (oral) prescription are exempt from sales tax provided the prescription is transcribed and signed by the pharmacist and is filed in the same manner as an original written prescription.

Section 4. Prescriptions refilled on or after January 1, 1971 will be exempt from the tax even though the original prescription was written prior to that date. Sales records of all prescriptions, including refills, must be kept in a manner permitting ready inspection by the Department of Revenue.

Section 5. Prosthetic Devices and Physical Aids shall mean: (1) Artificial devices individually designed, constructed or altered solely for the use of a particular crippled person so as to become a brace, support, supplement, correction, or substitute for the bodily structure including the extremities of the individual;

(2) Artificial limbs, artificial eyes, hearing aids individually designed, constructed or altered solely for the use of a particular disabled person;

(3) Crutches and wheelchairs for the use of invalids and crippled persons.

Section 6. Sales of standardized or stock devices, braces or supports are not exempt from the tax. These include such items as anklets, arch supports, athletic supporters, bandages, elbow caps, ear correction caps, elastic goods, eye shades and shields, gloves, knee caps, leggings, shields, thumb protectors, stockings, suspensories and wristlets. Sales of trusses, abdominal supports, uterine supports, maternity supports, kidney supports and post-operative supports are also taxable unless specially made up for the use of a particular crippled or disabled person. Corrective eyeglasses and standardized hearing aids are not exempt from the tax.

Section 7. Sales of crutches, wheelchairs and similar equipment to persons who rent them to others are taxable. The rental receipts would not be subject to sales or use tax. Repair and replacement parts for prosthetic devices and physical aids are taxable.

Section 8. To claim an exemption for sales of prosthetic devices and physical aids, sellers of these items, with the exception of crutches and wheelchairs, must retain evidence to show that the devices were specifically designed for the use of a particular crippled or disabled person and not merely removed from inventory for sale.

JOHN McD. ROSS, Commissioner
JAMES O. KING, Secretary

APPROVED:
ADOPTED: October 15, 1974
RECEIVED BY LRC: October 16, 1974 at 4:28 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Department of Revenue, Capitol Annex, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Department of Revenue
(103 KAR 30:060)

RELATES TO: KRS 139.050, 139.130
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-11
NECESSITY AND FUNCTION: This regulation interprets the sales and use tax law as it relates to trade-in allowances.

Section 1. For purposes of computing "gross receipts" or "sales price," as the case may be, a seller who holds a retail sales and use tax permit is not required to place a value on property taken in trade as a credit or part payment on the sale of new or used articles:

(1) where the property traded in is of like kind and character to the property sold, and

(2) where the seller holds the property traded in for resale.

Section 2. If the property traded in is not of like kind and character to the property sold, or the person accepting the article traded is not a seller who holds a retail sales and use tax permit, the seller will be required to include the full fair market value of the property taken in trade as well as the full selling price of the article sold.

JOHN McD. ROSS, Commissioner
JAMES O. KING, Secretary

APPROVED:
ADOPTED: October 15, 1974
RECEIVED BY LRC: October 16, 1974 at 4:27 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Department of Revenue, Capitol Annex, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Department of Revenue
(103 KAR 31:110)

RELATES TO: KRS 139.260, 139.270, 139.280, 139.290, 139.300, 139.400, 139.410, 139.420, 139.430, 139.440, 139.490, 139.760, 139.990
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-9-1
NECESSITY AND FUNCTION: This regulation describes and illustrates a certificate for use to avoid payment of sales tax on nontaxable purchases for resale. It also defines and clarifies the use of the resale certificate.

Section 1. Every person selling tangible personal property in this state must obtain from the purchaser a certificate of resale on all tangible personal property sold in this state for the purpose of resale. The certificate must be taken in good faith from a person engaged in selling tangible personal property who, at the time of purchase, either intends to sell the property in the regular course of business, or cannot, at the time of the purchase, ascertain whether it will be sold or not. The certificate shall be of two types:

(1) "Single purchase certificate" on which the purchaser must itemize the property to be purchased. A single purchase certificate may only be used for a single purchase of commodities for resale and cannot be used for subsequent purchases.

(2) "Blanket certificate" on which the purchaser is required to generally describe the kind of property to be purchased for resale in the regular course of his business. A purchaser who has executed a blanket certificate shall not be required to execute additional certificates of resale for individual purchases so long as there is no change in the character of his operation and the purchases are of tangible personal property of the kind usually purchased by the purchaser for resale.

Section 2. All sales for resale which are not supported by a properly executed resale certificate shall be deemed retail sales and the burden of proving that the sale is not at retail is upon the seller.

Section 3. The certificate shall be substantially in the form prescribed below. It must include the number of the permit held by the purchaser, but if he is not required to hold a permit because he is a nonresident purchaser not required to register in Kentucky, he shall make a notation on the face of the certificate to the effect that he is a nonresident purchaser not required to register and obtain a permit in Kentucky. The certificate, in all cases, must be signed by the purchaser, bear his name and address, and indicate the general character of the property sold by the purchaser in the regular course of his business. The purchaser shall clearly mark on the certificate whether it is a single purchase certificate or a blanket certificate.

Section 4. The following form of resale certificate is prescribed by the Department pursuant to KRS 139.280 and 139.420:

☐ Blanket Certificate

☐ Single Purchase Certificate

I HEREBY CERTIFY: That I hold a valid Retail Sales and Use Tax Permit, Account No._____, issued pursuant to the Sales and Use Tax Law; that I am engaged in the business of selling_____; that the tangible personal property described herein which I shall purchase from_____will be resold by me; provided, however, that in the event any such property is used for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, it is understood that I am required by the Sales and Use Tax Law to report and pay the tax measured by the purchase price of such property.

Description of property to be purchased:

_____

_____

For a Single Purchase Certificate, itemize the tangible personal property to be purchased; for a Blanket Certificate, give a general description of the kind of property to be purchased for resale in the regular course of the purchaser's business.

Purchaser_____

Address_____

Dated:_____19___.

At_____

Section 5. Certificate of resale may not be used to obtain tangible personal property to be used by the purchaser and not for resale. Such use shall be grounds for the Department of Revenue to revoke the permit of the purchaser wrongfully making use of such certificate of resale. In addition to this penalty, any person who gives a resale certificate for property knowing that such property is not to be resold by him in the regular course of business, for the purpose of evading the tax, is subject to a fine of not less than ten dollars ($10) nor more than one hundred dollars ($100) or imprisoned in jail for a period not exceeding thirty (30) days or both.

Section 6. The good faith of the seller is absent if he has facts which give rise to a reasonable inference that the purchaser does not intend to resell the property but instead intends it for his own use or consumption; for example, knowledge that the purchaser of particular merchandise is not engaged in the business of selling that kind of merchandise.

JOHN McD. ROSS, Commissioner
JAMES O. KING, Secretary

APPROVED:
ADOPTED: October 15, 1974
RECEIVED BY LRC: October 16, 1974 at 4:26 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Department of Revenue, Capitol Annex, Frankfort, Kentucky 40601.

EXECUTIVE DEPARTMENT FOR FINANCE AND ADMINISTRATION
Kentucky Board of Pharmacy
(201 KAR 2:030)

RELATES TO: KRS Chapter 315
PURSUANT TO: KRS 13.082, 315.191, 315.210
SUPERSEDES: Rx-3 and Rx-11
NECESSITY AND FUNCTION: This regulation is to provide for interstate reciprocity of pharmacists licensure. It establishes uniform minimum standards and requirements.

Section 1. License by reciprocity means a license to practice pharmacy issued by the Kentucky Board of Pharmacy (hereafter referred to as the board) pursuant to this regulation. An applicant must have had the legal qualifications at the time of examination and registration in the state from which he applies which would enable him to qualify for registration by the board.

Section 2. An applicant who has failed any Kentucky Board of Pharmacy examination shall not be eligible for license by reciprocity. The board will consider only those official applications for reciprocity approved by the board. An applicant must include the reciprocal registration fee fixed by the board with his application for reciprocal licensure.

Section 3. The board may accept reciprocity from states which are active members of the National Association of Boards of Pharmacy and which under equivalent conditions will grant reciprocal licensure to pharmacists duly licensed by examination by the board. The applicant must be in good standing in the state from which he applies.

Section 4. All applicants for license by reciprocity must appear in person before the board or a member thereof, for an examination before any certificate of registration will be issued. Applicants shall be required to take an examination in jurisprudence. An applicant who has not actively engaged in the practice of pharmacy as a registered pharmacist during the year preceding the time of filing the application may be required to take a practical examination.

Section 5. The purpose of a temporary license is to enable applicants for license by reciprocity to be able to procure legal authorization to begin practicing in Kentucky without awaiting a meeting of the board. It is not intended that a temporary license shall be a substitute for a pharmacist license.

Section 6. Whenever an applicant for a license by reciprocity satisfies the board that he has met all the requirements prescribed therefor and the regulations of the board thereunder, the secretary may issue, on behalf of the board, a temporary license to such person for the practice of pharmacy. No person who is an applicant for license by examination in Kentucky shall be issued a temporary license.

Section 7. A temporary license issued pursuant to this regulation shall entitle the holder to practice pharmacy for a period of not more than six (6) months from issuance thereof, unless the temporary license is sooner cancelled by the secretary. Applicants are admonished not to accept positions as pharmacists or attempt to practice as pharmacists until a temporary license is received.

Section 8. The secretary may at any time, and for reasons deemed sufficient, without hearing, cancel any or all temporary licenses in effect and shall immediately cancel any temporary license in effect upon direction by the board or upon denial by the board of the holder's application for a pharmacist license. No temporary license issued pursuant to this regulation shall create a permanent or vested property interest in the licensee.

Section 9. The secretary of the board shall prepare or cause to be prepared all forms which he considers desirable and appropriate in connection with temporary licenses. Each temporary license shall expressly state the date of issuance and that it is for a definite period not in excess of six (6) months from the date of issuance.

Section 10. The board reserves the right to deny any reciprocal application for a good and just reason, and in the event of so doing, seventy-five percent (75%) of the fee paid to it will be refunded.

J. H. VOIGE, Executive Secretary
APPROVED: JAMES O. KING, Secretary
ADOPTED: September 18, 1974
RECEIVED BY LRC: October 17, 1974 at 8:01 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Secretary, Kentucky Board of Pharmacy, P. O. Box 553, Frankfort, Kentucky 40601.

EXECUTIVE DEPARTMENT FOR FINANCE AND ADMINISTRATION
Kentucky Board of Pharmacy
(201 KAR 2:055)

RELATES TO: KRS Chapter 315
PURSUANT TO: KRS 13.082, 315.010(1), 315.140, 315.191(2), 315.120
SUPERSEDES: Rx-9
NECESSITY AND FUNCTION: Although most of the pharmacists renew their license within the time specified in KRS 315.110, some are negiligent in responding to the first notice. This regulation assists the pharmacists and the board in maintaining current licensures.

Section 1. The Executive Secretary of the board shall mail to each registered pharmacist who failed to pay his renewal fee for his license by the first day of February, a notice of such deliquency together with an application for renewal of his license.

Section 2. Any registered pharmacist who fails to renew his license on or before April 1 of each year may have his license renewed upon the payment of the required renewal fee and a revival fee. The revival fee shall be five dollars ($5).

Section 3. Upon presentation of proper evidence of acute illness or other justifiable cause, the board may wave payment of the revival fee(s).

J. H. VOIGE, Executive Secretary
APPROVED: JAMES O. KING, Secretary
ADOPTED: September 18, 1974
RECEIVED BY LRC: October 17 at 7:59 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Secretary, Kentucky Board of Pharmacy, P. O. Box 553, Frankfort, Kentucky 40601.

EXECUTIVE DEPARTMENT FOR FINANCE AND ADMINISTRATION
Kentucky Board of Pharmacy
(201 KAR 2:080)

RELATES TO: KRS Chapter 315
PURSUANT TO: KRS 13.082, 315.191(2)
SUPERSEDES: Rx-8
NECESSITY AND FUNCTION: Although the Kentucky Generics Drug Formulary Act of 1972 provides for selection of an equivalent brand name drug if listed in the formulary, there is no prohibition for such selection and dispensing of drugs not listed in this formulary. This regulation provides for protection of the public and practitioners in assuming that the medications and drugs dispensed are acceptable.

Section 1. Except as provided elsewhere by statutes, whenever any registered pharmacist is requested to sell, furnish, or compound any drug, medicine, chemical or pharmaceutical preparation by means of a prescription and substitutes or causes to be substituted therefore, any other drug, medicine, chemical, or pharmaceutical preparation without specific or express permission, approval, or consent of the prescriber, the board may find such person guilty of engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public, and may revoke or suspend his license as prescribed by law.

Section 2. If approval or consent is obtained from the prescriber, the brand name or the name of the manufacturer of the drug, medicine, chemical or pharmaceutical preparation dispensed must be stated on the prescription by the pharmacist.

J. H. VOIGE, Executive Secretary
APPROVED: JAMES O, KING, Secretary
ADOPTED: September 18, 1974
RECEIVED BY LRC: October 17, 1974 at 7:58 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Secretary, Kentucky Board of Pharmacy, P. O. Box 553, Frankfort, Kentucky 40601.

EXECUTIVE DEPARTMENT FOR FINANCE AND ADMINISTRATION
Kentucky Board of Pharmacy
(201 KAR 2:090)

RELATES TO: KRS Chapter 315
PURSUANT TO: KRS 13.082, 315.035, 315.191(2)
SUPERSEDES: Rx-10
NECESSITY AND FUNCTION: This regulation specifies the minimum reference material and prescription equipment, supplies, and instruments to provide the usual and necessary professional services.

Section 1. The following shall be deemed as minimum reference material required of a Pharmacy:
(1) The recent edition and supplement to The United States Pharmacopoeia.*
(2) The recent edition and supplements to The National Formulary.*
(3) An up-to-date reference work on recent prescription drugs.
(4) Copies or summaries of Federal, State, and Local Laws governing the practice of pharmacy.

* The Board will accept the recent edition of "Remington's Pharmaceutical Sciences" or the recent edition of "United States Dispensatory" in lieu of (1) and (2).

Section 2. The following shall be deemed as minimum equipment required of a Pharmacy:
(1) Prescription Class A Balance.
(2) Weights—metric or apothecary—complete set.
(3) Graduates capable of accurately measuring from 1 ml. to 250 ml.
(4) Mortars and pestles—glass, porcelain, or wedgewood.
(5) Spatulas—steel and non-metallic.
(6) Filtration funnel with filter papers.
(7) A heating unit.
(8) Suitable refrigeration unit for proper storage of drugs.
(9) Ointment slab or ointment papers.
(10) Exempt Narcotic Register.
(11) Poison Register.
(12) Hypodermic needles and syringe register.

All equipment shall be maintained in a clean condition.

Section 3. The prescription counter upon which prescriptions are compounded shall be used for the prime purpose of compounding prescriptions. All pharmacies shall comply with all sanitation laws and regulations.

Section 4. The pharmacy shall have such other references and equipment as dictated by experience to meet the needs of the particular pharmacy.

J. H. VOIGE, Executive Secretary
APPROVED: JAMES O. KING, Secretary
ADOPTED: September 18, 1974
RECEIVED BY LRC: October 17, 1974 at 8:00 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Secretary, Kentucky Board of Pharmacy, P.O. Box 553, Frankfort, Kentucky 40601.

DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(301 KAR 1:012)

RELATES TO: KRS 150.025, 150.090, 150.620, 150.625, 150.640
PURSUANT TO: KRS 13.082
SUPERSEDES: KFWR-F-149
NECESSITY AND FUNCTION: This regulation is necessary to allow multiple use of state waters within parameters of safety, ability to enforce and non-interference with the primary users, fishermen.

Section 1. Water skiing is permitted on Guist Creek Lake and Lake Beshear beginning the third Thursday of May and continuing through September 30, annually, during the daylight hours of 10:00 a.m. to sunset and only in those areas designated and marked as "ski areas" by buoys and/or signs by the Department of Fish and Wildlife Resources. Water skiing is prohibited in coves or embayments of the lakes.

Section 2. Water skiing and/or the pulling of water skiers is permitted on Lake Malone beginning the third Thursday of May and continuing through October 31, annually, but only during the daylight hours of 10:00 a.m. to sunset and only in those areas designated and marked as "ski areas" by buoys and/or signs by the Department of Fish and Wildlife Resources. Water skiing and/or pulling of a water skier is prohibited in coves or embayments of Lake Malone.

Section 3. Boat speeding and/or reckless operation of a boat (see subsection (2) below) is not permitted at any time in any area of any lake owned and/or controlled by the Department of Fish and Wildlife Resources including the ski zones. All boats, except those being operated in the designated skiing areas during the annual summer water skiing period, shall in all areas of any lake maintain slow speed as defined in subsection (1) below when passing any other boat in which the occupants are actively engaged in fishing.
(1) Slow speed is defined herein as that speed attained with the throttle of the motor set at its slowest forward position.
(2) Speeding and/or reckless operation in this regulation is defined to be any operation of a boat in any area of a lake that may endanger other persons or craft using the lake by intimidation, direct contact or by waves created by the speed or reckless operation of a boat.

Section 4. Swimming in any lake controlled and/or owned by the Department of Fish and Wildlife Resources is prohibited, except in areas specifically set aside for swimming at which a qualified lifeguard is on duty.

Section 5. All officers and agents of the Department of Fish and Wildlife Resources shall have full authority to enforce the provisions of this regulation. Failure to comply with the rules and specifications set forth in this regulation shall constitute grounds for revocation of the rights and privileges of any person to admittance to and to the use of these public waters.

DR. ROBERT C. WEBB, Chairman
Department of Fish and Wildlife Resources Commission

ARNOLD L. MITCHELL, Commissioner

CHARLES F. HAYWOOD, Secretary

ADOPTED: October 18, 1974
RECEIVED BY LRC: October 18, 1974 at 9:16 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Commissioner, Department of Fish and Wildlife Resources, Capital Plaza Tower, Frankfort, Kentucky 40601.

DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(301 KAR 1:015)

RELATES TO: KRS 150.025, 150.090, 150.620, 150.625
PURSUANT TO: KRS 13.082
SUPERSEDES: KFWR-F-SL1-1
NECESSITY AND FUNCTION: It is necessary to regulate the size of outboard motors and boats on state-owned lakes to minimize the conflict with the primary purposes of the lakes which are the perpetuation of fish or game populations and the associated sports.

Section 1. No boat of any type, canoes excepted, will be permitted on any of the herein named lakes with a centerline exceeding sixteen (16) feet in length as measured on deck or from bow to stern; however, in no case shall pontoons that may be used in floating the decking or superstructure of boats, exceed a length of twenty-two (22) feet.

Section 2. No house boats of any description will be permitted on any of the herein named lakes.

Section 3. No motor of any type is permitted on the following lakes:
(1) Lake Chumley, Lincoln County,
(2) Dennie Gooch Lake, Pulaski County,
(3) Martin County Lake, Martin County,
(4) Kingdom Come Lake, Harlan County.

Section 4. Electric motors only may be used on the following lakes:
(1) Carter Caves Lake, Carter County,
(2) Spurlington Lake, Taylor County,
(3) Marion County Lake, Marion County,
(4) Elliott County Sportsmen's Lake, Elliott County,
(5) Lake Washburn, Ohio County,
(6) Bert Combs Lake, Clay County,
(7) McNeely Lake, Jefferson County,
(8) Lake Mauzy, Union County,
(9) Carpenter Lake and Kingfisher Lakes, Daviess County,
(10) Metcalfe County Lake, Metcalfe County,
(11) Briggs Lake, Logan County.

Section 5. Electric motors only may be used on the following lakes located in Ballard County. These lakes are closed 1 October to 15 March, annually:
(1) Big Turner,
(2) Little Turner,
(3) Shelby,
(4) Mitchell,
(5) Happy Hollow,
(6) Burnt Slough,
(7) Butler.

Section 6. No motor larger than 6 H.P. may be used on Greenbo Lake located in Greenup County.

Section 7. No motor larger than 10 H.P. (inboard or outboard) may be used on the following state-owned lakes; however, slow speeds which cause no disturbance or interference with fishing must be exercised at:
(1) Shanty Hollow Lake, Warren County,
(2) Bullock Pen Lake, Grant County,
(3) Lake Boltz, Grant County,
(4) Falmouth Lake, Pendleton County,
(5) Elmer Davis Lake, Owen County,
(6) Beaver Creek Lake, Anderson County,
(7) Herb Smith Lake, Harlan County,
(8) Corinth Lake, Grant County,
(9) Wilgreen Lake, Madison County.

Section 8. There is no size limit on motors on the following state-owned lakes:
(1) Guist Creek Lake, Shelby County,
(2) Lake Malone, Todd, Muhlenburg and Logan Counties,
(3) Lake Beshear, Christian and Caldwell Counties.

Section 9. All officers and agents of the Department of Fish and Wildlife Resources shall have full authority to enforce the provisions of this regulation. Failure to comply with the rules and specifications set forth in this regulation shall constitute grounds for revocation of the rights and

privileges of any person to admittance to and to the use of these public waters.

DR. ROBERT C. WEBB, Chairman
Department of Fish and Wildlife Resources Commission

ARNOLD L. MITCHELL, Commissioner

CHARLES F. HAYWOOD, Secretary

ADOPTED: October 18, 1974
RECEIVED BY LRC: October 18, 1974 at 9:16 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Commissioner, Department of Fish and Wildlife Resources, Capital Plaza Tower, Frankfort, Kentucky 40601.

DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(301 KAR 1:035)

RELATES TO: KRS 150.025, 150.250, 150.170, 150.175, 150.470
PURSUANT TO: KRS 13.082
SUPERSEDES: KFWR-F-NP1-1
NECESSITY AND FUNCTION: This regulation is a cooperative effort by the state and National Parks to permit use of a limited and specialized resource.

Section 1. The following rules shall apply to those portions of Shillalah Creek and Martins Fork Creek lying wholly within the Cumberland Gap National Historical Park:
(1) Fishing is permitted from sunrise to sunset only.
(2) During any period of emergency or to prevent overuse by fishermen of waters open to fishing in Cumberland Gap National Historical Park, the Superintendent, in his discretion may close to fishing all or any portion of such open waters for such periods of time that may be necessary; provided, the notice be given by the posting of appropriate signs, notices and markers.
(3) The waters of Shillalah Creek and Martins Fork Creek, inclusive of its tributaries are designated as "sport fishing streams" only.
(4) Fishing is permitted from May 15 through September 15 inclusive.
(5) No trout less than twelve (12) inches in length may be retained. All undersized fish shall be immediately and carefully returned to water.
(6) The limit of catch per day or possession by each person shall not exceed two (2) trout. Immediately upon retention of the limit of trout the fisherman must disassemble his fishing tackle and cease fishing.
(7) Fishing is permitted only with artificial flies or lures with a single hook. Possession of fish eggs, small fish, insects, worms and other similar organic bait or parts thereof while in the possession of fishing tackle is prohibited.
(8) The National Park Service makes no charge for fishing, but persons fishing within the park in these waters must procure a resident or nonresident state license and trout stamp as issued and required by the State of Kentucky.

Section 2. That portion of the Little Yellow Creek and its tributaries lying within the boundaries of Cumberland Gap National Historical Park is reserved, posted and open to fishing year round, exclusively for children fourteen (14) years of age and under. State size limits will be adhered to.
(1) The limit of catch per day or possession by each child shall be four (4) fish. Immediately upon retention of the limit of fish, each child must disassemble his fishing tackle and cease fishing.
(2) Bait is permitted; however, the use of dead fish and fish eggs or the digging for bait on park lands is prohibited.

DR. ROBERT C. WEBB, Chairman
Department of Fish and Wildlife Resources Commission

ARNOLD L. MITCHELL, Commissioner

CHARLES F. HAYWOOD, Secretary

ADOPTED: October 18, 1974
RECEIVED BY LRC: October 18, 1974 at 9:17 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Commissioner, Department of Fish and Wildlife Resources, Capital Plaza Tower, Frankfort, Kentucky 40601.

DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(301 KAR 1:055)

RELATES TO: KRS 150.025, 150.470, 150.990
PURSUANT TO: KRS 13.082
SUPERSEDES: KFWR-F-LS1-1
NECESSITY AND FUNCTION: In order to perpetuate and protect the size and well being of fish populations, it is necessary to govern the size and numbers fishermen can harvest.

Section 1. The statewide season, creel limits and size limits for taking fish by angling shall be as follows except as specified on specific bodies of water by separate regulation:

Species	Daily Creel Limits	Possession Limits	Size Limits
Black bass (largemouth, smallmouth and Ky. bass)	10	20	10"
Rockbass (goggle-eye, redeye)	15	30	None
Walleye (jack salmon, pike)	10	20	15"
Sauger (sand pike, pickerel)	10	20	None
Muskellunge (musky, pike)	5	10	30"
Northern Pike	5	10	None
Chain Pickerel	5	10	None
White bass (striped bass and yellow bass)	60	60	None
Rockfish (ocean striped bass)	5	5	15"
Crappie	60	60	None
Trout (all species)	8	8	None
Frogs (bull frogs)	15	30	None

Seasons for all species, except frogs (bull frogs), is year-around. Frogs (bull frogs) season is May 15-October 31, annually.

Section 2. All fish must be measured from the terminal end of the lower jaw to the tip of the longest tail fin. All fish caught that are smaller than those prescribed minimum lengths must be returned immediately to the waters from which they were taken in the best physical condition possible. Under no circumstances may a fisherman remove the head or the tail or part thereof of any of the above named fish while in the field and before he has completed fishing for the day.

DR. ROBERT C. WEBB, Chairman
Department of Fish and Wildlife Resources Commission

ARNOLD L. MITCHELL, Commissioner

CHARLES F. HAYWOOD, Secretary

ADOPTED: October 18, 1974
RECEIVED BY LRC: October 18, 1974 at 9:17 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Commissioner, Department of Fish and Wildlife Resources, Capital Plaza Tower, Frankfort, Kentucky 40601.

DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(301 KAR 1:075)

RELATES TO: KRS 150.025, 150.175, 150.360, 150.440, 150.470
PURSUANT TO: KRS 13.082
SUPERSEDES: KFWR-F-GS1-1
NECESSITY AND FUNCTION: This regulation is necessary to permit and govern methods of harvest to the benefit of the fishery resource.

Section 1. As used in this regulation, the word "snagging" means an act of taking fish by using a single hook or one (1) treble hook (except in the main stream of Green River and the main stream of Rolling Fork River where five (5) hooks, either single or treble hooks, may be used) which is attached by line to a pole and is used in a jerking and pulling manner, but does not include the term "snag line" as used in KRS Chapter 150 pertaining to designated commercial fishing streams.

Section 2. A person may gig or snag from the stream or lake banks, but cannot exercise these fishing methods from a boat or platform or perch or tree, except gigging is permitted from a boat in any lake with a surface acreage of 500 acres or larger during the daylight hours of 6:00 a.m. to 6:00 p.m.

Section 3. The season during which gigging and snagging is permitted is March 1 through May 10, annually.

Section 4. Gigging and/or snagging for rough fish is permitted night and day in all lakes and streams, except where specifically prohibited as described in Sections 2 and 5.

Section 5. Gigging and/or snagging is specifically prohibited in the following streams and their tributaries. (Exceptions: See (1)(a) and (2)(a) below.)
(1) The Cumberland River below Wolf Creek Dam downstream to the Tennessee line, and in the Cumberland River in the area below Barkley Dam downstream to US 62 bridge:
  (a) Those tributaries to the Cumberland River below Wolf Creek Dam downstream to the Tennessee line, shall be open to gigging and snagging, in season, except that portion of each tributary which is within one-half (1/2) mile of its junction with the Cumberland River.
(2) Within 200 yards of any dam on any stream.
  (a) Snagging only is permitted in the Tennessee River below Kentucky Dam (see Section 6).
(3) Elkhorn Creek - Scott, Woodford, Fayette and Franklin,
(4) Russell Fork - Pike,
(5) Goose Creek - Russell and Casey,
(6) South Fork of Harrods Creek - Oldham,
(7) North and South Forks of Rolling Fork River - Marion, Boyle and Casey,

(8) Salt River, between Ky. 248 at Van Buren and Bonds Mill Dam – Anderson,
(9) Casey Creek – Trigg,
(10) Rough River, below Rough River Dam downstream to where Ky. 54 crosses the stream,
(11) Middle Fork of the Ky. River, from Buckhorn Dam downstream to Breathitt – Perry County line,
(12) Trammel Creek – Allen,
(13) Long Creek – Allen,
(14) Puncheon Creek – Allen,
(15) L. Whippoorwill Creek – Logan,
(16) Shultz Creek – Greenup,
(17) Sulphur Spring Creek – Simpson,
(18) Lick Fork Creek – Simpson,
(19) Sinking Creek – Breckinridge,
(20) Beaver Creek – Barren,
(21) Big Brush Creek – Green,
(22) Rough Creek – Hardin,
(23) Cloverlick – Harlan,
(24) Lynn Camp Creek – Hart,
(25) Roundstone Creek – Hart,
(26) Ravens Creek – Harrison,
(27) Boone Creek – Fayette,
(28) Caney Creek – Elliott,
(29) Kinniconnick Creek – Lewis,
(30) Laurel Fork Creek – Harlan,
(31) Beaver Creek – Wayne,
(32) Craney Creek – Rowan,
(33) Swift Camp Creek – Wolfe,
(34) Middle Fork – Powell,
(35) War Fork – Jackson,
(36) Indian Creek – Jackson,
(37) Clover Bottom Creek – Jackson,
(38) Cane Creek – Laurel,
(39) Hawk Creek – Laurel,
(40) Beaver Creek – McCreary,
(41) Hurricane Fork – McCreary,
(42) Rock Creek – McCreary,
(43) Lick Creek – McCreary,
(44) Bark Camp Creek – Whitley,
(45) Dogslaughter Creek – Whitley,
(46) Bunches Creek – Whitley,
(47) Big Double Creek – Clay.

Section 6. Snagging is permitted in the Tennessee River below Kentucky Dam and in the Dix River upstream from the impounded waters of Herrington Lake to a point in the stream directly below the Ky. 52 bridge.

Section 7. All game fish caught by gigging or snagging, except those taken below Kentucky Dam in the Tennessee River, shall be returned to the water immediately, regardless of condition.

Section 8. The tickling and noodling (hand grabbing) season for rough fish only shall be June 10 to August 31st (all dates inclusive). Tickling and noodling shall be permitted only in the overflow waters of Hickman, Fulton, Carlisle and Ballard counties. The daily creel limit for tickling and noodling shall be fifteen (15) rough fish per day of which not more than five (5) may be catfish. Each day for tickling and noodling shall be from 12:00 noon to 12:00 noon the following day.

DR. ROBERT C. WEBB, Chairman
Department of Fish and Wildlife Resources Commission

ARNOLD L. MITCHELL, Commissioner

CHARLES P. HAYWOOD, Secretary

ADOPTED: October 18, 1974
RECEIVED BY LRC: October 18, 1974 at 9:15 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Commissioner, Department of Fish and Wildlife Resources, Capital Plaza Tower, Frankfort, Kentucky 40601.

DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(301 KAR 1:120)

RELATES TO: KRS 150.175, 150.180, 150.190, 150.235, 150.485
PURSUANT TO: KRS 13.082
SUPERSEDES: KFWR-F-LF2-1
NECESSITY AND FUNCTION: This regulation is necessary in order to control the flow of live fish from and into natural waters and commercial channels to prevent the spread of disease or undesirable species.

Section 1. All individuals or companies who sell retail or wholesale or who place fish in a body of water for fee fishing purposes must have a live fish and bait dealers license issued in the name of the individual or company that is transacting business in this Commonwealth. This license or an exact copy thereof, must be in the possession of the persons who are transporting, selling or possessing these fish for sale in Kentucky. This license is not in lieu of a propagation or transportation permit if they also are applicable to the operation.

Section 2. Those individuals or companies transporting live fish from one state to another state through Kentucky without conducting any type of business in this Commonwealth are not required to have a live fish and bait dealers license, but must have a valid transportation permit.

Section 3. Those individuals or companies who sell any of these fish for food in establishments licensed by another state agency to sell retail or wholesale food stuffs are not required to have a live fish and bait dealers license.

DR. ROBERT C. WEBB, Chairman
Department of Fish and Wildlife Resources Commission

ARNOLD L. MITCHELL, Commissioner

CHARLES P. HAYWOOD, Secretary

ADOPTED: October 18, 1974
RECEIVED BY LRC: October 18, 1974, at 9:21 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Commissioner, Department of Fish and Wildlife Resources, Capital Plaza Tower, Frankfort, Kentucky 40601.

DEVELOPMENT CABINET
Department of Agriculture
(302 KAR 1:010)

RELATES TO: KRS 247.510 to 247.595
PURSUANT TO: KRS 247.555 and 13.082
NECESSITY AND FUNCTION: KRS 247.555 authorizes the commissioner to establish and determine the rules and regulations to conduct a referendum among producers of soybeans for the purpose of promoting and stimulating by research, market development and education, the increased production, use and sale, domestic and foreign, of soybeans and soybean products.

Section 1. Definitions: As used in these rules and regulations, unless the context otherwise requires:
(1) Commissioner – means the Commissioner of Agriculture;
(2) Board – means the State Board of Agriculture;
(3) Producer – means every person who produces soybeans and thereafter causes the same to be marketed;
(4) New Producer – means a producer who was not engaged in the business of producing soybeans at the time a referendum was conducted in accordance with the provisions in these rules and regulations;
(5) Person – means any individual, corporation, partnership, association, cooperative, or other business entity;
(6) Marketing Year – means from July 1 to June 30 of the following year;
(7) Referendum Agent – means an employee of the State Department of Agriculture under the direct control of the Commissioner of Agriculture;
(8) County Referendum Agent – an appointed person by the Commissioner of Agriculture, in a county where the soybean referendum is held, as his agent for the conduct of said referendum;
(9) Kentucky Soybean Association – means an existing association, representative of the soybean producers of Kentucky;
(10) Crop Reporting Districts – means those districts as used and referred to by the Kentucky Crop and Livestock Reporting Service.

Section 2. Counties In Which Referendum Will Be Conducted. The soybean referendum will be conducted in the following crop reporting districts with the counties involved listed for each district:
(1) District 1 – Ballard, Calloway, Carlisle, Fulton, Graves, Hickman, Livingston, Lyon, McCracken, Marshall and Trigg;
(2) District 2 – Caldwell, Christian, Crittenden, Daviess, Hancock, Henderson, Hopkins, Logan, McLean, Muhlenberg, Ohio, Simpson, Todd, Union and Webster;
(3) District 3 – Adair, Allen, Barren, Breckinridge, Bullitt, Butler, Casey, Clinton, Cumberland, Edmonson, Grayson, Green, Hardin, Hart, Jefferson, Larue, Marion, Meade, Metcalfe, Monroe, Nelson, Russell, Taylor and Warren;
(4) District 4 – Boone, Bracken, Campbell, Carroll, Gallatin, Henry, Oldham, Owen and Trimble;
(5) District 5 – Bath, Bourbon, Fayette, Fleming, Franklin, Madison, Mason, Mercer, Scott, Shelby, Spencer, Washington and Woodford;
(6) District 6 – Estill, Greenup, Lewis, Pulaski and Wayne.

Section 3. Who May Vote. Each person engaged in the production of soybeans on a commercial basis, including the owners of farms on which soybeans are produced, tenants and sharecroppers sharing in the proceeds of the sale of soybeans shall be entitled to cast one (1) vote in the referendum. Without limiting the previous sentence, each person whose name regularly appears on checks issued in payment for the sale of soybeans is eligible to cast one (1) vote in the referendum regardless of the ownership of the farm upon which soybeans were produced. No person who certifies to the county referendum agent that he is a producer of soybeans shall be refused a ballot but such person shall be required to furnish the county referendum agent with information specific enough for the commissioner to verify the person's voting eligibility before such ballot is counted in the referendum.

Section 4. Voting Place. The commissioner shall establish a voting place in each county within the state where producers

of soybeans reside. Such voting place will be in the Cooperative Extension Service offices in each county where the referendum is conducted. The voting place must provide an area where each voter can mark his ballot in privacy. Only one (1) voter shall be permitted in the voting area at any one time. One (1) or more county referendum agents shall be permitted in each voting place for the purpose of conducting the referendum. The county referendum agent shall be in charge of and be responsible for the voting area. Campaigning for or against said referendum will not be permitted in the Cooperative Extension Service offices during voting hours.

Section 5. Hours For Voting. The voting places will be open from 8:00 a.m. to 5:00 p.m. local time and eligible voters will be permitted to vote only during such period of time. Voters will be permitted to vote only in the county of their residence or in the case of a corporate producer in the county where its principal place of business is located.

Section 6. Referendum Voting Date. The soybean referendum voting date will be January 22, 1975. This date will be published by the commissioner through the medium of the public press in the Commonwealth of Kentucky at least thirty (30) days before the holding of such referendum, and direct written notice thereof shall likewise be given to each County Cooperative Extension or Area Agent in any county covered by such referendum.

Section 7. Supervision Of Referendum And Duties Of The County Referendum Agent. The commissioner shall provide the county referendum agent with a copy of these rules and regulations to conduct said referendum. Each county referendum agent shall have in his possession and under his control a ballot box and the approved ballot forms, indelible marking pens, and other supplies sufficient to operate each voting place as established in Section 4. Each prospective voter must identify himself to the county referendum agent; and such person will be required to sign a registration book giving his name, complete mailing address, and telephone number. The registration book shall be maintained by the county referendum agent. Upon signing the register, each prospective voter will receive an approved ballot form from the county referendum agent. The official ballot after it has been completed by each eligible voter, shall be placed in the ballot box by said voter. An eligible voter which is other than an individual may cast his vote by a person who is duly authorized to cast such vote, and the ballot shall show the official title of the person casting such vote.

Section 8. Approved Ballot Forms. The commissioner shall furnish each county referendum agent with the approved ballots which shall contain a certification by each person casting a vote that such person is a producer of soybeans or shares in the proceeds of the sale of soybeans. Also, the approved ballot shall show that the soybean producer is voting on whether or not to have one-half cent (1/2¢) per bushel, deducted by the purchaser at the time of sale to be sent to the Kentucky Soybean Association to be used as described under Necessity and Function of this regulation.

Section 9. Custody of Ballot Box And Referendum Material. Each county referendum agent shall provide a ballot box large enough to enclose all ballots cast in the referendum and to protect the ballots to insure that the information on the ballots is held in confidence. The county referendum agent shall seal each ballot box immediately after the closing of the polls and shall be responsible for holding the ballot box, register of voters, and the unused ballots at their place of residence for a period not to exceed three (3) days after the referendum during which period of time an employee of the Kentucky Department of Agriculture will pick up the ballot box, register of voters, and all unused ballots from the county referendum agents. The county referendum agent will be permitted to release such material to an employee of the Department of Agriculture after satisfactory proof is established by the county referendum agent that the person is a bona fide employee of the Department of Agriculture.

Section 10. Confidential Information. All ballots cast, the identity of any person who voted, or the manner in which any person voted, and all information furnished to, compiled by, or in the possession of the commissioner, the referendum agent, and the county referendum agents shall be regarded as confidential. The commissioner shall retain the records, the ballots, the result of the referendum, and all other information furnished to or compiled by the commissioner in regard to the referendum for a period of twelve (12) months.

Section 11. Counting Of Votes. Within five (5) days after the referendum, the commissioner shall designate an area within the Department of Agriculture's offices to be used for counting the votes cast in the referendum. The vote count shall be conducted by employees of the Department of Agriculture, but the Kentucky Soybean Association and any organization actively engaged in the production of soybeans in Kentucky may each have one representative present during the counting of the votes. Such organization must establish, to the satisfaction of the commissioner, that its desire to observe the counting of the ballots is for a legitimate purpose.

Section 12. Announcement Of The Referendum Results. Announcement of the results of the referendum will be made only by the commissioner. The referendum agent or others who assist in the referendum shall not disclose any information in regard to the referendum. The commissioner will announce the results within ten (10) days after the referendum.

WENDELL P. BUTLER, Commissioner

ADOPTED: October 9, 1974
RECEIVED BY LRC: October 15, 1974 at 1:50 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Mr. Wendell P. Butler, Commissioner, Department of Agriculture, 7th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

(302 KAR 1:010)

CERTIFICATION OF ELIGIBILITY TO VOTE IN
KENTUCKY SOYBEAN PRODUCERS' ASSESSMENT REFERENDUM

I, _____ (Print Name), hereby certify to the Commissioner, Kentucky Department of Agriculture, that I am a producer of soybeans and share in the proceeds of the sale of such soybeans.

_____ (Signature)

_____ (Address)

_____ (Area Code) (Telephone No.)

(DETACH AND GIVE TO REFERENDUM OFFICIAL)

OFFICIAL BALLOT

KENTUCKY SOYBEAN PRODUCERS' ASSESSMENT REFERENDUM
JANUARY 22, 1975

Are you in favor of the collection by the Kentucky Soybean Association of an assessment for the purpose of financing a promotional program through research, market development, and education designed to increase production, the use and sale, domestic and foreign, of soybeans and soybean products; said assessment to be deducted from the payments for soybeans delivered after July 1, 1975, in the following amount for a marketing year which is July 1 to June 30 of the following year:

ONE-HALF CENT (1/2¢) PER BUSHEL

YES ☐ NO ☐

(FOLD AND PLACE IN BALLOT BOX)

DEPARTMENT OF TRANSPORTATION
Bureau of Vehicle Regulation
(601 KAR 12:010)

RELATES TO: KRS Chapter 186
PURSUANT TO: KRS 13.082, KRS 186.565
NECESSITY AND FUNCTION: KRS 186.565 provides for the revocation of a person's license or permit, without a prior hearing, if the person is arrested for any offense arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle in this state while under the influence of intoxicating beverages and refuses to submit to a test to determine the alcoholic content of his blood. The United States District Court for the Eastern District of Kentucky declared in Slone vs. Kentucky Department of Transportation, Civ. No. 74-10 (July 23, 1974) that KRS 186.565 is unconstitutional insofar as it denies notice and hearing prior to license revocation. This regulation sets forth the procedure for giving notice and opportunity for a hearing prior to revocation.

Section 1. Upon receipt of a sworn report by a law enforcement officer which complies with the requirements set forth in KRS 186.565(3), the Department of Transportation shall notify the person in writing that his license, permit or privilege to operate a motor vehicle in this state is revoked, effective ten (10) days from the date the person receives such notice, unless the person requests a hearing within ten (10) days of receipt of the notice.

Section 2. An oral request for a hearing must be confirmed by a written request within the time specified in Section 1. A request postmarked within ten (10) days of receipt of the notice is timely.

Section 3. The Commissioner of the Bureau of Vehicle Regulation within ten (10) days after the completion of the hearing shall order that the person's license or permit be revoked for six months or that no action be taken regarding said license or permit.

Section 4. In computing the period during which a request for a hearing must be made, the day the notice is received is not included. The last day of the period so computed is to be included unless it is a Saturday, or Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday.

Section 5. The period during which a hearing must be scheduled and during which the commissioner must issue an order after the completion of the hearing shall be computed in the same manner as set out in Section 4.

Section 6. All requests for hearings must be submitted to the Director, Division of Driver License, Bureau of Vehicle Regulation, Room 232, New State Office Building, Frankfort, Kentucky 40601.

BILLY PAXTON, Secretary

ADOPTED: October 17, 1974
RECEIVED BY LRC: October 18, 1974 at 3:04 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Commissioner, Bureau of Vehicle Regulation, State Office Building, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Highways
(603 KAR 5:025)

RELATES TO: KRS 177.220, 177.230, 177.300, 189.190, 189.340, 433.750 and 433.753
PURSUANT TO: KRS 13.082, 174.080, 175.450(7), 177.230, 177.410(6) and 189.231
SUPERSEDES: HIWA – LIM ACC
NECESSITY AND FUNCTION: This regulation repromulgates existing prescriptions and proscriptions deemed necessary for the safe, orderly regulation of traffic for all Kentucky Toll Roads, Interstate Highways and other Fully Controlled Access Highways. The new regulatory material (new section 9) is considered necessary to protect vehicular traffic and pedestrians, whose presence would be brought about by the existence of the prohibited activity, on Fully Controlled Limited Access facilities which are especially designed for through traffic.

Section 1. Unidirectional Nature of Traffic Lanes and Ramps. (1) On multi-lane (four or more lanes) divided toll roads, Interstate highways, and other fully controlled access highways, no vehicle shall be operated or otherwise caused to move in a direction which is against the normal flow of traffic on any traffic lane, deceleration lane, acceleration lane, ramp, shoulder or other traveled way of such highway.
(2) On two-lane, two-way undivided toll roads, Interstate highways, and other fully controlled access highways, no vehicle shall be operated or otherwise caused to move in a direction which is against the normal flow of traffic on any traffic lane where passing is prohibited by signs or markings or on any deceleration lane, acceleration lane, ramp, shoulder or other traveled way of such highway.

Section 2. Prohibition of U-Turns and Left Turns. The making of a U-turn at any point on toll roads, Interstate highways, and other fully controlled access highways is prohibited. Excepted from this provision are maintenance, emergency, and police vehicles. The making of a left turn, except where permitted by official signs, is prohibited.

Section 3. Prohibition of Standing, Stopping, or Parking on Shoulders. No vehicle shall be parked, stopped, or allowed to stand on the shoulders of any toll road, Interstate highway, or other fully controlled access highway, including ramps thereto, except that in the case of emergency, vehicles shall be permitted to stop on the shoulders to the right of the traveled way with all wheels and projecting parts of such vehicles, including the load, completely clear of the traveled way. Parking of any vehicle which is disabled on the shoulders of a toll road, Interstate highway, or other fully controlled access highway, including ramps thereto, for more than six (6) hours continuously is prohibited and vehicles violating this provision may be towed away at the cost of the owner.

Section 4. Waste and Rubbish. Littering of the right of way of any toll road, Interstate highway, or other fully controlled access highway with bottles, cans, paper, garbage, rubbish or other material of any kind or description is prohibited.

Section 5. Damaging of Shrubs or Plants. No person shall cut, mutilate, or remove any trees, shrubs, or plants located within the right of way of any toll road, Interstate highway, or other fully controlled access highway.

Section 6. Limitations on Use. Use of toll roads, Interstate highways, and other fully controlled access highways by the following is prohibited at all times:
(1) Bicycles or Motor Scooters. Motor scooters are hereby defined as motor vehicles having a seat or saddle for the use of the driver and designed to travel on not more than three (3) wheels with a motor which produces five (5) horsepower or less.
(2) Vehicles drawn by animals.
(3) Animals led, ridden, or driven on hoof.
(4) Vehicles with improperly secured loads or loaded with animals not properly confined.
(5) Vehicles with metal treads and vehicles with caterpillar treads.
(6) Farm implements and farm machinery, whether propelled or towed (does not include farm trucks).
(7) Construction equipment other than motor trucks, except by special permit.

Section 7. Prohibition of Hitchhiking. The soliciting of rides in vehicles, commonly known as hitchhiking, on any portion of a toll road, Interstate highway, or other fully controlled access highway is prohibited.

Section 8. Passing and Following Vehicles; Traffic Lanes (Applicable only to two-lane, two-way undivided toll roads, Interstate highways, and other fully controlled access highways): (1) Vehicles overtaking other vehicles proceeding in the same direction shall pass to the left of them and shall not again drive to the right until reasonably clear of those vehicles. No vehicle shall be driven to the left side of the roadway in overtaking and passing another vehicle proceeding in the same direction unless the left side is clearly visible and free of oncoming traffic for a sufficient distance ahead to permit overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken.
(2) Drivers shall obey the directions of all signs and markings placed to assign traffic lanes, to specify directions or to slow moving traffic in all areas where climbing lanes have been added.
(3) The operator of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having regard for the speed of the vehicle and the traffic upon and condition of the highway. The operator of any truck, bus, or heavy equipment unit shall not follow within 250 feet of another such vehicle or equipment unit; this will not prevent overtaking and passing, nor shall it apply to any lane designated for use of slow moving traffic.

Section 9. Prohibition of Vending on Shoulders and Right of Way. No vehicle shall be parked, stopped, or allowed to stand on the shoulders or right of way of any toll road, Interstate highway, or other fully controlled access highway, including ramps thereto for the purpose of displaying, selling or offering for sale any merchandise, wares, produce, services or other items. Nor shall any person be allowed to engage in the above activities on the above mentioned shoulders or right of ways.

Section 10. (1) "Fully controlled access highways" as used in this regulation shall mean highways which give preference to through traffic and which shall have access only at selected public roads or streets, and which shall have no highway grade crossing or intersection. Such term includes, but is not limited to, Interstate highways and toll roads.
(2) "Toll roads" as used in this regulation shall mean any turnpike project constructed under the provisions of KRS Chapter 175 or KRS 177.390 – 177.570.

BILLY PAXTON, Secretary

ADOPTED: September 11, 1974
RECEIVED BY LRC: September 24, 1974 at 3:09 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: William L. Willis, Attorney, Department of Transportation, State Office Building, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Highways
(603 KAR 5:040)

RELATES TO: KRS 177.230
PURSUANT TO: KRS 13.082, 174.080 and 177.230
SUPERSEDES: HIWA-RA-1
NECESSITY AND FUNCTION: This regulation is considered necessary to preserve the original purpose of safety rest areas and to avoid dangerous traffic and pedestrian congestion within and around the safety rest areas.

Section 1. Time Limit; Restricted Uses. (1) Except as provided in Section 3, the use of a Safety Rest Area located within the right of way of limited access facilities, as defined in KRS 177.220, shall be limited to a maximum of four (4) hours during any twenty-four (24) hour period for the same person or group of persons.
(2) Rest Areas shall not be used as a relay station or transfer point for trailers in transit. No cargo trailer or mobile home shall be uncoupled from the power unit in a rest area except in case of fire or explosion.
(3) Safety Rest Areas shall not be used by any person for the purpose of displaying, selling or offering for sale, any merchandise, wares, produce, services or any other items.

Section 2. Animals shall not be allowed within buildings in such Safety Rest Areas.

Section 3. The Department of Transportation may grant permits to exceed the limit in Section 1 (1) upon application therefor showing that such permission will contribute to the safety of motorists. Persons actually engaged in work on such limited access facility requiring their presence at such

Safety Rest Area are excluded from the application of Section 1.

Section 4. The Department of Transportation shall erect and maintain appropriate signs to adequately notify the public of the limitations provided for in this regulation.

Section 5. "Safety Rest Areas" does not include Service Areas where commercial facilities are provided.

Section 6. Violators of any provision of this regulation are subject to the penalty provided for in KRS 177.990 (1).

BILLY PAXTON, Secretary

ADOPTED: September 11, 1974
RECEIVED BY LRC: September 24, 1974 at 3:09 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Mr. William L. Willis, Attorney, Department of Transportation, State Office Building, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Highways
(603 KAR 6:022)

RELATES TO: KRS 189.222
PURSUANT TO: KRS 13.082
SUPERSEDES: HIWA-TC-KY 153
NECESSITY AND FUNCTION: KRS 189.222 authorizes the Bureau of Highways to establish reasonable weight classifications of highways and fix a different maximum for each classification.

Section 1. The classifications for KY 153 are as follows:

KY 153	AA	From:	Jct. KY 146, extending Northwest
		To:	Nicherson Farms Restaurant Entrance (0.2 Mile N.W. of Jct. I-71)
	B	All other portions not herein classified.	

BILLY PAXTON, Secretary

ADOPTED: September 23, 1974
RECEIVED BY LRC: October 2, 1974 at 11:31 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Director, Division of Maintenance, Bureau of Highways, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Highways
(603 KAR 6:023)

RELATES TO: KRS 189.222
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: KRS 189.222 authorizes the Bureau of Highways to establish reasonable weight classifications of highways and fix a different maximum for each classification.

Section 1. The classification for KY 805 is as follows:

KY 805 (old US 119)	AA	From:	Jct. with new US 119 at Hayking
		To:	Via Millstone and Haymond to Jct. with US 23 and US 119 in Jenkins

BILLY PAXTON, Secretary

ADOPTED: October 7, 1974
RECEIVED BY LRC: October 14, 1974 at 3:23 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Director, Division of Maintenance, Bureau of Highways, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
(803 KAR 1:080)

RELATES TO: KRS 337.275, 337.285
PURSUANT TO: KRS 337.295, 13.082
SUPERSEDES: LAB 8
NECESSITY AND FUNCTION: The statutory definition for "wages" when used in the Act includes any compensation due to an employe by reason of his employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such allowances made in the Act. KRS 337.295 authorizes the commissioner to promulgate regulations permitting allowances as part of the wage rates applicable under the statutes for board, lodging, gratuities, and other facilities. The function of this regulation is to set forth what allowances may be credited toward the payment of wages as required by the Act.

Section 1. Board, lodging, and other facilities. (1) An employer may be permitted to include as wages paid to an employe, as required by KRS 337.275 and 337.285, the reasonable cost of furnishing an employe with board, lodging, or other facilities if such are customarily furnished by such employer to his employes. Reasonable cost shall not include a profit to the employer or to any affiliated person. This section does not prohibit payment of wages in facilities furnished either as additions to a stipulated wage or as items for which deductions from the stipulated wage will be made. The reasonable cost of board, lodging, or other facilities may be considered as part of the wage paid an employe only where customarily furnished to the employe. Not only must the employe receive the benefits of the facility for which he is charged, but it is essential that his acceptance of the facility be voluntary and uncoerced.

(2) Customarily furnished. The reasonable cost of board, lodging, or other facilities may be considered as part of the wage paid an employe only where customarily furnished to the employe. Where such facilities are furnished to the employe, it will be considered a sufficient satisfaction of this requirement if the facilities are furnished regularly by the employer to his employes or if the same or similar facilities are customarily furnished by other employers engaged in the same or similar trade, business, or occupation in the same or similar communities.

(3) Other facilities.

(a) Other facilities, as used in this regulation, must be something like board or lodging. The following items are deemed to be within the meaning of the term: meals furnished at company restaurants or cafeterias or by hospitals, hotels, or restaurants to their employes; meals, dormitory rooms, and tuition furnished by a college to its student employes; housing furnished for dwelling purposes; general merchandise furnished at company stores and commissaries (including articles of food, clothing, and household effects), fuel, electricity, water, and gas furnished for the non-commercial personal use of the employe; transportation furnished employes between their house and work where the travel time does not constitute hours worked and the transportation is not an incident of and necessary to the employment.

(b) The cost of furnishing facilities which are primarily for the benefit or convenience of the employer will not be recognized as reasonable and may not therefore be included in computing wages. The following examples of facilities to be primarily for the benefit or convenience of the employer is meant as illustrative rather than exclusive: tools of the trade and other materials and services incidental to carrying on the employer's business; the cost of any construction by or for the employer; the cost of uniforms and of their laundering, where the nature of the business requires the employes to wear a uniform.

(4) Free and clear payment; kick-backs. Whether in cash or in facilities, "wages" cannot be considered to have been paid by the employer and received by the employe unless they are paid finally and unconditionally or "free and clear." The wage requirements of the Act will not be met where the employe kicks back directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to the employe. This is true whether the kick-back is made in cash or in other than cash. For example, if it is a requirement of the employer that the employe must provide a uniform which will be used in, or is specifically required for, the performance of the employer's particular work, there would be a violation of the Act in any workweek when the cost of furnishing and maintaining the uniform by the employe cuts into the minimum or overtime wages required to be paid him under the Act.

(5) Non-overtime workweeks. When no overtime is worked by the employe, this regulation will apply only to the applicable minimum wage for all hours worked. To illustrate, where an employe works forty (40) hours a week at a cash wage rate of one dollar and sixty cents ($1.60) an hour in a situation when that rate is the applicable minimum wage and is paid sixty-four dollars ($64) in cash free and clear at the end of the workweek, and in addition is furnished facilities valued at four dollars ($4), no consideration need be given to the question of whether such facilities meet the requirements of this regulation, since the employe has received in cash the applicable minimum wage for all hours worked. Similarly, where an employe is employed at a rate of one dollar and eighty cents ($1.80) an hour and during a particular workweek works forty (40) hours for which he is paid sixty-four dollars ($64) in cash, the employer having deducted eight dollars ($8) from his wages for facilities furnished, whether such deduction meets the requirements of this regulation need not be considered, since the employe is still receiving, after the deduction has been made, a cash wage of the applicable minimum wage. Deductions for board, lodging, or other facilities may be made in non-overtime workweeks even if they reduce the cash wage below the applicable minimum, provided the prices charged do not exceed the reasonable cost of such facilities. When such items are furnished the employe at a profit, the deductions from wages in weeks in which no overtime is worked are considered to be illegal only to the extent that the profit reduces the wage below the required minimum. Deductions for articles which do not constitute board, lodging, or other facilities may likewise be made in non-overtime workweeks if the employe receives the required minimum wage in cash free and clear; but to the extent that they reduce the wages of the employe in any such workweek below the minimum required by the statute, they are illegal.

(6) Overtime workweeks.

(a) KRS 337.285 requires that the employe receive compensation for overtime hours at a rate of not less than one and one-half (1 1/2) times the rate at which he is employed. When overtime is worked by an employe who receives the whole or part of his wage in facilities and it becomes necessary to determine the portion of his wages represented by facilities, all such facilities must be measured by the requirements of this regulation. Deductions may be made, however, on the same basis in an overtime workweek as in non-overtime workweeks, if their purpose and effect are not to evade the overtime requirements of KRS 337.285; provided, the amount deducted does not exceed the amount which could be deducted if the employe had only worked the maximum number of straight-time hours during the workweek. For example, in a situation where one dollar and sixty cents ($1.60) is the applicable minimum wage, if an employe is employed at a rate of one dollar and sixty-five cents ($1.65) an hour (5 cents in excess of the minimum wage) the maximum amount which may be deducted from his wages in a 40-hour workweek which are not facilities within the meaning of this regulation, is forty (40) times five (5) cents or two dollars ($2). Deductions in excess of this amount for such items are illegal in overtime workweeks as well as in non-overtime workweeks. There is no limit on the amount which may be deducted for board, lodging, or other facilities in overtime workweeks (as in workweeks when no overtime is worked), provided that these deductions are made only for the reasonable cost of the items furnished. When such items are furnished at a profit, the amount of the profit (plus the full amount of any deductions for items which are not facilities) may not exceed two dollars ($2) in the example heretofore used in this paragraph.

(b) Where deductions are made from the stipulated wage of an employe, the regular rate of pay is arrived at on the basis of the stipulated wage before any deductions have been made. Where board, lodging, or other facilities are customarily furnished as addition to a cash wage, the reasonable cost of the facilities to the employer must be considered as part of the employe's regular rate of pay. Thus, suppose an employe employed at a cash rate of two dollars ($2) an hour, whose maximum non-overtime workweek under KRS 337.285 is forty (40) hours, works forty-four (44) hours during a particular workweek. If, in addition, he is furnished board, lodging, or other facilities valued at sixteen dollars ($16), but whose reasonable cost is eleven dollars ($11), the eleven dollars ($11) must be added to his cash straight-time pay of eighty-eight dollars ($88) in determining the regular rate of pay on which his overtime compensation is to be calculated. The regular rate then becomes two dollars and twenty-five cents ($2.25) an hour. The employe is thus entitled to receive a total of one hundred three dollars and fifty cents ($103.50) for the week. In addition to the straight-time pay of eighty-eight dollars ($88) in cash and eleven dollars ($11) in facilities, extra compensation of four dollars and fifty cents ($4.50) in cash for the four (4) overtime hours must, therefore, be paid by the employer.

Section 2. Payment made to person other than employe. (1) Amounts deducted for taxes. Taxes which are assessed against the employe and which are collected by the employer and forwarded to the appropriate governmental agency may be included as wages. This principle is applicable to the employe's share of social security, as well as other federal, state, or local taxes. No deduction may be made for any tax or share of a tax which the law requires to be borne by the employer.

(2) Payments to third persons pursuant to court order. Where an employer is legally obliged, as by order of a court of competent and appropriate jurisdiction, to pay a sum for the benefit or credit of the employe to a creditor of the employe, trustee, or other third party, under garnishment, wage attachment, trustee process, or bankruptcy proceeding, deduction from wages of the actual sum so paid is not prohibited: provided, that neither the employer nor any person acting in his behalf or interest derives any profit or benefit from the transaction.

(3) Payments to employe's assignee.

(a) Where an employer is directed by a voluntary assignment or order of his employe to pay a sum for the benefit of the employe to a creditor, donee, or other third party, deductions from wages of the actual sum so paid is not prohibited, provided, that neither the employer nor any person acting in his behalf or interest, directly or indirectly, derives any profit or benefit from the transaction.

(b) No payment by the employer to a third party will be recognized as a valid payment of compensation required under the Act where it appears that such payment was part of a plan or arrangement to evade or circumvent the requirements of the Act. For the protection of both employer and employe, it is suggested that full and adequate record of all assignments and orders be kept and preserved.

(c) Under the principles stated in paragraphs (a) and (b) of this subsection, employers will be permitted to treat as payments to employes for purposes of the Act sums paid at the employes' direction to third persons for the following purposes: Sums paid, as authorized by the employe, for the purchase in his behalf of U. S. Savings Bonds; union dues paid pursuant to a collective bargaining agreement with bona fide representatives of the employes; employes' accounts with merchants independent of the employer; insurance premiums; voluntary contributions to churches and charitable, fraternal, athletic, and social organizations or societies from which the employer receives no profit or benefit directly of indirectly.

Section 3. Payment of wages to tipped employes.

(a) Conditions for taking tip credits in making wage payments. The wage credit permitted on account of tips under KRS 337.275(2) may be taken only with respect to wage payments made under the Act to those employes whose occupations in the workweeks for which such payments are made are those of "tipped employes" as defined in KRS 337.010(2)(f). To determine whether a tip credit may be taken in paying wages to a particular employe it is necessary to know what payments constitute tips, whether the employe receives more than twenty dollars ($20) a month in such payments in the occupation in which he is engaged, and whether in such occupation he receives these payments in such amount customarily and regularly.

(b) General characteristics of tips. A tip is a sum presented by a customer as a gift or gratuity in recognition of some service performed for him. It is to be distinguished from payment of a charge made for the service. Whether a tip is to be given, and its amount, are matters determined solely by the customer, and he has the right to determine who shall be the recipient of his gratuity. In the absence of an agreement to the contrary between the recipient and a third party, a tip becomes the property of the person in recognition of whose service it is presented by the customer. Only tips actually received by an employe as money belonging to him which he may use as he chooses free of any control by the employer, may be counted in determining whether he is a tipped employe within the meaning of the Act and in applying the provisions of KRS 337.275(2) which govern wage credits for tips.

(c) Examples of amounts not considered as tips. A compulsory charge for service, such as ten (10) percent of the amount of the bill, imposed on a customer by an employer's establishment, is not a tip and, even if distributed by the employer to his employes, cannot be counted as a tip received by an employe. Similarly, where negotiations between an employer and a customer for banquet facilities include amounts for distribution to employes, the amounts so distributed are not counted as tips received. Likewise, where the employment agreement is such that amounts presented by customers as tips belong to the employer and must be credited or turned over to him, the employe is in effect collecting for his employer additional income from the operations of the employer's establishment. Even though such amounts are not collected by imposition of any compulsory charge on the customer, plainly the employe is not receiving tips within the meaning of the Act. The amounts received from customers are the employer's property, not his, and do not constitute tip income to the employe.

(d) More than twenty dollars ($20) a month in tips. An employe who receives tips must receive more than twenty dollars ($20) a month in the occupation in which he is engaged. An employe engaged in an occupation in which the tips he receives meet this minimum standard is a tipped employe for whom the wage credit provided by KRS 337.275(2) may be taken in computing the compensation due him under the Act for employment in such occupation, whether he is employed in it full time or part time. An employe employed full time or part time in an occupation in which he does not receive more than twenty dollars ($20) a month in tips customarily and regularly is not a tipped employe within the meaning of the Act and must receive the full compensation required by the Act in cash or allowable facilities without any credit for tips received. (i) The definition of tipped employe does not require that the calendar month be used in determining whether more than twenty dollars ($20) a month is customarily and regularly received as tips. Any appropriate recurring monthly period beginning on the same day of the calendar month may be used. (ii) An employe must himself customarily and regularly receive more than twenty dollars ($20) a month in tips in order to qualify as a tipped employe. The fact that he is part of a group which has a record of receiving more than twenty dollars ($20) a month in tips will not qualify him.

(e) Receiving the minimum amount customarily and regularly. The employe must receive more than twenty dollars ($20) a month in tips customarily and regularly to qualify as a tipped employe. If it is

known that he always receives more than the stipulated amount each month, as may be the case with many employes in occupations such as those of waiters, bellhops, and taxicab drivers, the employe will qualify and the tip credit may be applied. On the other hand, an employe who only occasionally or sporadically received tips totaling more than twenty dollars ($20) a month, will not be deemed a tipped employe. The phrase "customarily and regularly" signifies a frequency which must be greater than occasional, but which may be less than constant. If an employe is in an occupation in which he normally and recurrently receives more than twenty dollars ($20) a month in tips, he will be considered a tipped employe even though occasionally, because of sickness, vacation or the like, he fails to receive more than twenty dollars ($20) in tips in a particular month.

(f) Initial and terminal months. An exception to the requirement that an employe, whether full-time, part-time, permanent or temporary, will qualify as a tipped employe only if he customarily and regularly receives more than twenty dollars ($20) a month in tips is made in the case of initial and terminal months of employment. In such months the purpose of the provision for tipped employes would seem fulfilled if qualification as a tipped employe is based on his receipt of tips in the particular week or weeks of such month at a rate in excess of twenty dollars ($20) a month, where the employe has worked less than a month because he started or terminated employment during the month.

(g) The tip wage credit. In determining compliance with the wage payment requirements of the Act, under the provisions of KRS 337.275(2) the amount paid to a tipped employe by an employer is deemed to be increased on account of tips by an amount which cannot exceed fifty (50) percent of the minimum wage applicable to such employe in the workweek for which the wage payment is made. This credit is in addition to any credit for board, lodging, or other facilities which may be allowable under this regulation. The credit allowed on account of tips may be less than fifty (50) percent of the applicable minimum wage; it cannot be more. The actual amount is left by the statute to determination by the employer on the basis of his information taken from his records concerning the tipping practices and receipts in his establishment. In order for an employer to take the maximum credit allowed by this special provision, the tipped employe must receive the maximum in actual tips. If the employe is receiving less than the amount credited, the employer is required to pay the balance so that the employe receives at least the minimum wage with the combination of wages and tips. The tip credit may be taken only for hours worked by the employe in an occupation in which he qualifies as a tipped employe. An employer shall not use any part of an employe's tips to pay the minimum wage to any employe; but may only apply credit toward the payment of the minimum wage to the employe who actually received the tip. Under employment agreements requiring tips to be turned over or credited to the employer to be treated by him as part of his gross receipts, the employer must pay the employe the full minimum hourly wage.

(h) Overtime payments. When overtime is worked by a tipped employe who is subject to the overtime pay provisions of KRS 337.285, his regular rate of pay is determined by dividing his total remuneration for employment in any workweek by the total number of hours actually worked by him in that workweek for which such compensation was paid. A tipped employe's regular rate of pay includes the amount of tip credit taken by the employer (not in excess of fifty (50) percent of the applicable minimum wage), the reasonable cost of any facilities furnished him by the employer, and the cash wages including commissions and bonuses paid by the employer. Any tips received by the employe in excess of the tip credit need not be included in the regular rate. Such tips are not payments made by the employer to the employe as remuneration for employment.

(i) Tip pooling. The statute permits employes to enter into an agreement to divide tips among themselves. Where employes enter into this type of agreement, as where waiters give a portion of their tips to the busboys, both the amounts retained by the waiters and those given the busboys are considered tips of the individuals who retain them, in applying the provisions of KRS 337.275(2) and this regulation. Where an employer requires his employes to pool tips, no credit may be taken and the employer must pay the employe the full minimum wage.

Section 4. Records. Where an employer uses the reasonable cost of furnishing an employe with board, lodging, or other facilities in meeting the requirements of KRS 337.275 and 337.285, it will be necessary to keep the following records, in addition to those required by KRS 337.320: (i) the facility being provided by the employer to the employe, and (ii) the cost being charged for such facility by the employer.

GEORGE R. WAGONER, Deputy Commissioner, for
JAMES R. YOCOM, Commissioner of Labor
ADOPTED: October 11, 1974
APPROVED: ELIJAH N. HOGGE, Secretary
RECEIVED BY LRC: October 18, 1974 at 3:54 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Director, Kentucky Department of Labor, Division of Labor Standards, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
(803 KAR 1:085)

RELATES TO: KRS 337.505 to 337.550
PURSUANT TO: KRS 337.520(1), 13.082
NECESSITY AND FUNCTION: KRS 337.520(1) authorizes the commissioner to make regulations he may deem appropriate to carry out the provisions and purposes of KRS 337.505 to 337.550. The function of this regulation is to interpret the prevailing wage and fringe benefit provisions of KRS 337.505 to 337.550.

Section 1. The statutory provisions. The Commissioner of Labor has the authority to determine schedules of rates of prevailing wages and of the amount of fringe benefits included therein as defined in KRS 337.505. The statute defines the term "prevailing wage" as the sum of: (i) "The basic hourly rate paid" and (ii) "An additional amount per hour equal to the hourly rate of contribution irrevocably made or to be made by an employer on behalf of employes within each classification of construction to a trustee or to a third person pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the employes affected, for the following fringe benefits: Medical or hospital care, pensions on retirement, death compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, defraying costs of apprenticeship or other similar programs, or other bona fide fringe benefits, but only where the employer is not required by other federal, state or local law to provide any of such benefits: Provided, said additional amount may, at the discretion of the employer, be paid either in cash to the employe or by contributions for fringe benefits, or partly in cash and partly by such contributions."

Section 2. The basic hourly rate of pay. The basic hourly rate paid is that part of a laborer, workman, and mechanic's wage which the commissioner would have determined and included in his determination as the portion of the wage in which a cash payment was made directly to the laborer, workman, and mechanic. It does not include fringe benefits.

Section 3. Rate of contribution for fringe benefits. (1) Under the statute, the commissioner is obligated to make a separate finding of the rate of contribution of fringe benefits. Only the amount of contributions for fringe benefits which meets the requirements of the statute will be considered by the commissioner.

(2) The rate of contribution is ordinarily an hourly rate, and will be reflected in the wage determination as such. In some cases, however, the contribution for certain fringe benefits may be expressed in a formula or method of payment other than an hourly rate. In such cases, the commissioner may in his discretion express in the wage determination the rate of contribution used in the formula or method or may convert it to an hourly rate of pay whenever he finds that such action would facilitate the administration of the law.

Section 4. Contribution irrevocably made to a trustee or to a third person. Under the fringe benefits provisions of KRS 337.505 the amount of contributions for fringe benefits must be made to a trustee or to a third person irrevocably. The third person must be one who is not affiliated with the employer. The trustee must assume the usual fiduciary responsibilities imposed upon trustees by applicable law. The trust or fund must be set up in such a way that in no event will the employer be able to recapture any of the contributions paid in or any way divert the funds to his own use or benefit. Although contributions made to a trustee or third person pursuant to a benefit plan must be irrevocably made, this does not prevent return to the employer any sums which he had paid in excess of the contributions actually called for by the plan, as where such excess payments result from error or from the necessity of making payments to cover the estimated cost of contributions at a time when the exact amount of the necessary contributions under the plan is not yet ascertained.

Section 5. Plan or program. Under the statute, the contributions for fringe benefits must be made pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the affected employes. No type of fringe benefit will be eligible for consideration under this part unless: (i) It provides fringe benefits described in the statute; (ii) It represents a commitment that can be legally enforced; (iii) It is carried out under a financially responsible plan or program;

and (iv) The plan or program providing the benefits has been communicated in writing to the employes affected.

Section 6. Specific fringe benefits. (1) The statute lists all types of fringe benefits which the legislature considered to be common in the construction industry as a whole. These include the following: medical or hospital care, pensions on retirement, death compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, defraying costs of apprenticeship or other similar programs, other bona fide fringe benefits, but only where the employer is not required by other federal, state or local law to provide any of such benefits.

(2) The term "other bona fide fringe benefits" is the so-called open end provision of the statute. This was included so that new fringe benefits may be recognized by the commissioner as they become prevailing. To insure against considering and giving credit to any and all fringe benefits, some of which might be illusory or not genuine, the qualification was included that such fringe benefits must be "bona fide." No difficulty is anticipated in determining whether a particular fringe benefit is "bona fide" in the ordinary case where the benefits are those common in the construction industry and which are established under a usual plan or program. Employers may take credit for contributions made under conventional plans listed in subsection (1) of this section which are funded under a trust or insurance program.

(3) Where the plan is not the conventional type described in the preceding subsection, it will be necessary for the commissioner to examine the facts and circumstances to determine whether they are "bona fide" in accordance with the requirements of the statute. Employers seeking credit for such plans must request specific permission from the commissioner.

(4) The statute excludes fringe benefits which an employer is obligated to provide under other federal, state, or local law. No credit may be taken for payments made for such benefits. For example, payment for workmen's compensation insurance are not considered payments for fringe benefits under the statute.

Section 7. Meeting wage determination obligations. (1) An employer performing work subject to a prevailing wage determination may discharge his minimum wage obligations for the payment of both the straight time wages and fringe benefits by paying in cash the basic hourly rate and by making payments for fringe benefits of the types listed in the applicable wage determination, or by paying in cash the basic hourly rate and paying fringe benefits partly in cash and partly in contributions for fringe benefits.

(2) An employer may discharge his obligations for the payment of the basic hourly rates and the fringe benefits where both are contained in a wage determination in the following ways:

(a) By paying not less than the basic hourly rate to the laborers, workmen, and mechanics and by making the contributions for the fringe benefits in the wage determination, as specified therein.

(b) By paying not less than the basic hourly rate to the laborers, workmen, and mechanics and by making contributions for fringe benefits in a total amount not less than the total of the fringe benefits required by the wage determination.

(c) By paying in cash directly to the laborers, workmen, and mechanics the basic hourly rate and by making an additional cash payment in lieu of the required benefits.

Section 8. Overtime payments. (1) The law excludes amounts paid by an employer for fringe benefits in the computation of overtime under KRS 337.540(3). It is clear that in no event can the rate upon which premium pay for overtime is calculated be less than the amount determined by the commissioner as the basic hourly rate. Contributions by employes are not excluded from the basic rate upon which overtime is computed; that is, an employe's basic straight-time rate is computed on his earnings before any deductions are made for the employe's contributions to fringe benefits. The employer's contributions for fringe benefits may be excluded in computing such rate so long as the exclusions do not reduce the rate below the basic hourly rate contained in the wage determination.

(2) The statute permits an employer to pay a cash equivalent of any fringe benefits found prevailing by the commissioner. Such a cash equivalent would also be excludable in computing the rate upon which overtime is computed.

GEORGE R. WAGONER, Deputy Commissioner, for
JAMES R. YOCOM, Commissioner of Labor
ADOPTED: October 11, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: October 18, 1974 at 3:55 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Director, Kentucky Department of Labor, Division of Labor Standards, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
(803 KAR 1:090)

RELATES TO: KRS 337.275, 337.285
PURSUANT TO: KRS 337.295, 13.082
SUPERSEDES: LAB 9
NECESSITY AND FUNCTION: KRS 337.295 authorizes the commissioner to issue regulations permitting handicapped workers, sheltered workshop employes, and students to be employed at less than the established minimum wage. KRS 337.010(2)(v) requires that the wages be set for a period of time fixed by the commissioner. The function of this regulation is to set certain standards to be used in obtaining these special rates.

Section 1. As used in this regulation, unless the context requires otherwise:

(1) "Commissioner" means commissioner of labor or any authorized person to act in his behalf, having jurisdiction over laws or regulations governing wages and hours of employes working in this state;

(2) "Department" means Department of Labor;

(3) "Handicapped worker" means an individual whose earning or productive capacity is impaired by age or physical or mental deficiency or injury for the work he is to perform;

(4) "Sheltered workshop" means a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of rehabilitation for handicapped workers, and/or providing such individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature; and

(5) "Student" means a person who receives primarily daytime instruction at the physical location of a bona fide educational institution, in accordance with the institution's accepted definition of a student. A student covered under a certificate for sub-minimum wages will lose this status during legally recognized school holidays, which will entail the student missing more than two (2) days of school. During these periods the student will be considered a full-time employe and subject to applicable minimum wage.

Section 2. (1) No employer shall employ a handicapped worker or sheltered workshop employe at less than the applicable minimum wage, unless he has been granted a special certificate from the Commissioner of Labor authorizing such employment. The rate of pay shall be fixed by the commissioner and be in effect for such period of time as fixed by the commissioner.

(2) Before a certificate will be issued it will be necessary for the employer to submit a formal application signed by both the employer and employe. The application shall set forth, among other things, the nature of the disability, a description of the occupation at which the worker is to be employed, and the wage the employer proposes to guarantee the worker per hour. The nature of the disability must be set out in detail. The application shall be addressed to the Director, Division of Labor Standards, Kentucky Department of Labor, Frankfort, Kentucky 40601.

(3) If the application is approved, the commissioner will issue a special certificate to the employer authorizing the individual stated in the certificate permission to work at the rate contained in the certificate and for the period stated in the certificate.

(4) The employer shall not be permitted to employ such worker at less than the applicable minimum wage until the certificate has been returned to him approved by the commissioner.

(5) In the event an employer misuses the certificate in any way, the commissioner reserves the right to revoke such certificate and refuse to issue such certificate in the future.

Section 3. (1) No employer shall employ a student at less than the applicable minimum wage, unless he has been granted a special certificate from the commissioner authorizing such employment. The certificate, if issued, will permit the student to be paid no less than eighty-five percent (85%) of the applicable minimum wage.

(2) A student shall not be permitted to work at sub-minimum wages for more than twenty (20) hours a week. A student worker who exceeds these limitations shall be paid the applicable minimum wage for hours worked in excess of twenty (20) hours per week.

(3) Certificates authorizing the employment of students at sub-minimum wages shall not be issued unless the following conditions are met:

(a) Students are available for employment at sub-minimum wages.

(b) The employment of students will not create a substantial probability of reducing the full-time employment opportunities for persons other than those employed under such certificates. To insure against the probability of reducing the full-time employment opportunities for persons, the employer shall be limited to ten percent (10%) of his full-time employes or four (4) student employes at sub-minimum wages, whichever is the least.

(c) Abnormal labor conditions such as a strike or lock-out do not exist at the establishment for which a certificate is requested.

(d) There are no outstanding violations of the provisions of a student certificate previously issued to the employer, nor have there been any violations of

any minimum wage laws or child labor regulations which provide reasonable grounds to conclude that the terms of a certificate may not be complied with.

(e) The application for a special certificate shall be upon forms furnished by the department. If all required information requested on the form is not provided, the certificate will not be granted. Certificates may be requested from the Director, Division of Labor Standards, Kentucky Department of Labor, Frankfort, Kentucky 40601.

(4) The employer shall not be permitted to employ such worker at less than the applicable minimum wage until the certificate has been returned to him approved by the commissioner.

(5) In the event an employer misuses the certificate in any way, the commissioner reserves the right to revoke such certificate and refuse to issue such certificate in the future.

GEORGE R. WAGONER, Deputy Commissioner, for
JAMES R. YOCOM, Commissioner of Labor
ADOPTED: September 16, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: October 18, 1974 at 3:57 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Director, Kentucky Department of Labor, Division of Labor Standards, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
(803 KAR 1:100)

RELATES TO: KRS 339.210 to 339.450
PURSUANT TO: KRS 339.230, 13.082
SUPERSEDES: LAB 120
NECESSITY AND FUNCTION: KRS 339.230(3) authorizes the Commissioner of Labor to promulgate regulations to properly protect the life, health, safety or welfare of minors. He may consider sex, age, premises of employment, substances to be worked with, machinery to be operated, number of hours, hours of the day, nature of the employment and other pertinent factors. The commissioner may in no event make regulations less restrictive than those promulgated by the U.S. Secretary of Labor under provisions of the Fair Labor Standards Act and its amendments. The function of this regulation is to set standards for the employment of minors. This regulation and KRS Chapter 339 will guide the Department of Labor in carrying out its responsibilities under the law and assist employers who may be concerned with the provisions of the law in understanding their obligations under the law.

Section 1. Employment of minors between fourteen (14) and sixteen (16) years of age. (1) Minors between fourteen (14) and sixteen (16) years of age may not be employed in any of the following:

(a) Manufacturing, mining, or processing occupations, including occupations requiring the performance of any duties in work rooms or work places where goods are manufactured, mined, or otherwise processed;
(b) Occupations which involve the operation or tending of hoisting apparatus or of any power-driven machinery other than office machines;
(c) The operation of motor vehicles or service as helpers on such vehicles;
(d) Public messenger service;
(e) Occupations in connection with: 1. Transportation of persons or property by rail, highway, air, water, pipeline, or other means; 2. Warehousing and storage; 3. Communications and public utilities; 4. Construction (including demolition and repair); except such office work, or sales work, in connection with subparagraphs 1., 2., 3. and 4. of this paragraph, as does not involve the performance of any duties on trains, motor vehicles, aircraft, vessels, or other media of transportation or at the actual site of construction operations.
(f) Any occupation which the U.S. Secretary of Labor may find and declare to be hazardous for the employment of minors and set forth in CFR Title 29, Part 570, Subpart E, Section 570.50 through 570.68;
(g) Any occupation prohibited under KRS 339.230(2)(d).

(2) Except as provided in subsection (3) of this section, employment in any of the occupations to which this section is applicable shall be confined to the following periods:

(a) Outside school hours;
(b) Not more than forty (40) hours in any one (1) week when school is not in session;
(c) Not more than eighteen (18) hours in any one (1) week when school is in session;
(d) Not more than eight (8) hours in any one (1) day when school is not in session;
(e) Not more than three (3) hours in any one (1) day when school is in session;
(f) Between 7 A.M. and 7 P.M. in any one (1) day, except during the summer (June 1 through Labor Day) when the evening hour will be 9 P.M.

(3) In the case of enrollees in work training programs conducted under Part B of Title I of the Economic Opportunity Act of 1964, there is an exception to the requirement of subsection (2)(a) of this section if the employer has on file an unrevoked written statement of the Regional Manpower Administrator or his representative setting out the periods which the minor will work and certifying that his employment confined to such periods will not interfere with his health and well-being, countersigned by the principal of the school which the minor is attending with his certificate that such employment will not interfere with the minor's schooling.

(4) Minors between fourteen (14) and sixteen (16) years of age may be employed by retail, food service, and gasoline service establishments in the following occupations:

(a) Office and clerical work, including the operation of office machines;
(b) Cashiering, selling, modeling, art work, work in advertising departments, window trimming, and comparative shopping;
(c) Price marking and tagging by hand or by machine, assembling orders, packing and shelving;
(d) Bagging and carrying out customers' orders;
(e) Errand and delivery work by foot, bicycle, and public transportation;
(f) Clean up work, including the use of vacuum cleaners and floor waxers, and maintenance of grounds, but not including the use of powerdriven mowers, or cutters;
(g) Kitchen work and other work involved in preparing and serving food and beverages, including the operation of machines and devices used in the performance of such work, such as but not limited to; dishwashers, toasters, dumb-waiters, popcorn poppers, milk shake blenders, and coffee grinders;
(h) Work in connection with cars and trucks if confined to the following: Dispensing gasoline and oil; courtesy service; car cleaning, washing and polishing; and other occupations permitted by this section, but not including work involving the use of pits, racks, or lifting apparatus, or involving the inflation of any tire mounted on a rim equipped with a removable retaining ring.
(i) Cleaning vegetables and fruits, and wrapping, sealing, labeling, weighing, pricing and stocking goods when performed in areas physically separate from freezers and meat coolers.

(5) Subsection (4) of this section shall not be construed to permit the employment of minors between fourteen (14) and sixteen (16) years of age in any of the following in retail, food service, and gasoline service establishments:

(a) All occupations listed in subsection (1) of this section;
(b) Work performed in or about boiler or engine rooms;
(c) Work in connection with maintenance or repair of the establishment, machines or equipment;
(d) Outside window washing that involves working from window sills, and all work requiring the use of ladders, scaffolds, or their substitutes;
(e) Cooking (except at soda fountains, lunch counters, snack bars, or cafeteria serving counters) and baking;
(f) Occupations which involve operating, setting up, adjusting, cleaning, oiling, or repairing power-driven food slicers and grinders, food choppers, and cutters, and bakery-type mixers;
(g) Work in freezers and meat coolers and all work in the preparation of meats for sale except as described in subsection (4)(i) of this section;
(h) Loading and unloading goods to and from trucks, railroad cars, or conveyors;
(i) All occupations in warehouses except office and clerical work.

Section 2. Employment of minors between sixteen (16) and eighteen (18) years of age. (1) Minors between sixteen (16) and eighteen (18) years of age may be employed at any occupation, except as hereinafter restricted:

(a) Occupations particularly hazardous as declared by the U.S. Secretary of Labor and set forth in CFR Title 29, Part 570, Subpart E, Section 570.50 through 570.68 which is incorporated herein and made a part hereof by reference.
(b) Any occupation prohibited under KRS 339.230(2)(d).

(2) Except as provided in subsection (3) of this section, employment in any occupation, not prohibited by subsection (1) of this section, shall be confined to the following periods:

(a) Not more than forty-eight (48) hours in any one (1) week when school is not in session;
(b) Not more than thirty-two (32) hours in any one (1) week when school is in session;
(c) Not more than eight (8) hours in any one (1) day when school is not in session;
(d) Not more than four (4) hours in any one (1) day when school is in session, except Friday;
(e) Between 6 A.M. and 10 P.M. Sunday through Thursday, and 6 A.M. and midnight on Friday and Saturday when attending school;
(f) Between 6 A.M. and midnight during vacation; except if in a federally sponsored program where such program requires, may be employed between midnight and 6 A.M.;

(3) (a) If minor has graduates from high school or an approved vocational school equivalent to a high school, or is no longer attending a school and has not attended school for the previous sixty (60) days, he may work a maximum of ten (10) hours per day not to exceed sixty (60) hours per week.
(b) Enrollees in a work training program established by a local board of education or the federal government

and approved by the federal government shall be exempt from subsection (2) of this section, except under no circumstances shall the minor be employed more than eight (8) hours per day or more than forty-eight (48) hours per week.

GEORGE R. WAGONER, Deputy Commissioner, for
JAMES R. YOCOM, Commissioner of Labor

ADOPTED: October 3, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: October 18, 1974 at 3:57 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Director, Kentucky Department of Labor, Division of Labor Standards, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
(803 KAR 2:040)

RELATES TO: KRS 338.015
PURSUANT TO: KRS 13.082
SUPERSEDES: OSH 101
NECESSITY AND FUNCTION: Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by KRS 338.051, the definitions listed below are adopted.

Section 1. As used in these regulations: (1) The definitions and interpretations contained in KRS 338.015 shall be applicable to such terms when used in these regulations.
(2) "Working days" means Monday through Friday but shall not include Saturday, Sundays, or Federal or State holidays. In computing fifteen (15) working days, the day of receipt of any notice shall not be included.
(3) "Compliance Safety and Health Officer" means a person authorized by the Commissioner of Labor, Kentucky Department of Labor, to conduct inspections.

GEORGE R. WAGONER, Deputy Commissioner, for
JAMES R. YOCOM, Commissioner of Labor

ADOPTED: October 11, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: October 18, 1974 at 3:45 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Coordinator, Kentucky Department of Labor, Occupational Safety and Health Program, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
(803 KAR 2:050)

RELATES TO: KRS 338.021
PURSUANT TO: KRS 13.082
SUPERSEDES: OSH 102
NECESSITY AND FUNCTION: Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by KRS 338.051, this regulation is adopted. The function of this regulation is to identify the scope of the regulations pertaining to Kentucky Occupational Safety and Health under KRS Chapter 338.

Section 1. These regulations shall apply to all employers, employees, and places of employment throughout the Commonwealth except the following:
(1) Employees of the United States Government.
(2) Employers, employees, and places of employment over which federal agencies other than the United States Department of Labor exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.
(3) Nothing in these regulations shall be construed to supersede or in any manner affect any Workmen's Compensation law or to enlarge or diminish or affect in any manner the common law or statutory rights, duties, or liabilities of employers or employees, under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of employment.

Section 2. These regulations shall not apply to the issues covered in the following Federal Standards:
(1) 29 CFR Part 1 1910.13, Ship repairing;
(2) 29 CFR Part 1 1910.14, Shipbuilding;
(3) 29 CFR Part 1 1910.15, Shipbreaking;
(4) 29 CFR Part 1 1910.16, Longshoring.

GEORGE R. WAGONER, Deputy Commissioner, for
JAMES R. YOCOM, Commissioner of Labor

ADOPTED: October 11, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: October 18, 1974 at 3:46 p.m.

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PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
(803 KAR 2:060)

RELATES TO: KRS 338.161
PURSUANT TO: KRS 13.082
SUPERSEDES: OSH 103
NECESSITY AND FUNCTION: Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by KRS 338.051, this regulation identifies the responsibility placed upon the employer to post notices furnished by the Occupational Safety and Health Program, Department of Labor, and also to furnish certain information to the employers for his safety and protection.

Section 1. Purpose and Scope. (1) KRS Chapter 338 requires, in part, that every employer shall furnish to his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees. Covered employers shall comply with the occupational safety and health standards promulgated pursuant to KRS Chapter 338. Employees shall comply with standards, rules, regulations and orders issued under KRS Chapter 338 which are applicable to their own actions and conduct.
(2) The Department of Labor is authorized to conduct inspections and issue citations and proposed penalties for alleged violations.

Section 2. Posting of Notice, Availability of Act, Regulations, and Applicable Standards. (1) Each employer shall post and keep posted a notice or notices to be furnished by the Occupational Safety and Health Program, Department of Labor, informing employees of the protections and obligations provided for in KRS Chapter 338, and that for assistance and information, including copies of KRS Chapter 338 and of specific safety and health standards, employees should contact the employer or the Department of Labor. Such notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to ensure that such notices are not altered, defaced or covered by other material that obscures the poster.
(2) Each employer shall provide that his employees have access to information on their exposure to toxic materials or harmful physical agents. Each employer shall provide that employees receive prompt information when they have been or are being exposed to such materials or agents in concentrations or at levels in excess of those prescribed by the applicable safety and health standards, by such means as the observation by employees of the monitoring or measuring of such materials or agents, employee access to the records of such monitoring or measuring, prompt notification by an employer to an employee who has been or is being exposed to such agents or materials in excess of the applicable standards, and information to such employee of corrective action being taken.
(3) "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theatre, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and a separate notice or notices shall be posted in each such establishment, to the extent that such notices have been furnished by the Department of Labor. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, the notice or notices required by this section shall be posted at the location to which employees report each day. Where employees do not usually work at, or report to, a single establishment, such as traveling salesmen, technicians, engineers, etc., such notice or notices shall be posted at the location from which the employees operate to carry out their activities. In all cases, such notice or notices shall be posted in accordance with the requirements of subsection (1) of this section.
(4) Copies of KRS Chapter 338, all regulations filed pursuant thereto, and all applicable standards will be available at the Department of Labor. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative for review in the establishment where the employee is employed on the same day the request is made or at the earliest time mutually convenient to the employee or his authorized representative and the employer.
(5) Any employer failing to comply with the provisions of this section shall be subject to citation and penalty in accordance with the provisions of KRS 338.991.

GEORGE R. WAGONER, Deputy Commissioner, for
JAMES R. YOCOM, Commissioner of Labor

ADOPTED: October 11, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: October 18, 1974 at 3:46 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Coordinator, Kentucky Department of Labor, Occupational Safety and Health Program, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
(803 KAR 2:070)

RELATES TO: KRS 338.101
PURSUANT TO: KRS 13.082
SUPERSEDES: OSH 104
NECESSITY AND FUNCTION: Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by KRS 338.051, the following rules and regulations are adopted, governing the authority to conduct inspections. The function of the regulation is to identify this authority for conducting occupational safety and health inspections and the procedure to be followed by the compliance officers during the conduct of the inspections.

Section 1. Authority for inspection. (1) Compliance Safety and Health Officers of the Department of Labor are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by KRS Chapter 338 and regulations issued pursuant thereto, and other records which are directly related to the purpose of the inspection.
(2) Prior to inspecting areas containing information which is classified by an agency of the United States Government, in the interest of national security, compliance safety and health officers shall have obtained the appropriate security clearance.

Section 2. Objection to inspection. Upon a refusal to permit a compliance safety and health officer, in the exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with this regulation, or to permit a representative of employees to accompany the compliance safety and health officer during the physical inspection of any workplace in accordance with 803 KAR 2:110, the compliance safety and health officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records, or interviews concerning which no objection is raised. The compliance safety and health officer shall endeavor to ascertain the reason for such refusal, and he shall immediately report the refusal and the reason therefore to the Commissioner of Labor. The Commissioner of Labor shall promptly take appropriate action including compulsory process, if necessary.

Section 3. Entry not a waiver. Any permission to enter, inspect, review records, or question any person, shall not imply or be conditioned upon a waiver of any cause of action, citation, or penalty under KRS Chapter 338. Compliance safety and health officers are not authorized to grant any such waiver.

Section 4. Conduct of inspections. (1) Subject to the provisions herein, inspections shall take place at such times and in such places of employment as the Commissioner of Labor or the compliance safety and health officer may direct. At the beginning of an inspection, compliance safety and health officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified herein which they wish to review. However, such designation of records shall not preclude access to additional records specified herein.
(2) Compliance safety and health officers shall have authority to take environmental samples and to take or obtain photographs related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment.
(3) In taking photographs and samples, compliance safety and health officers shall take reasonable precautions to ensure that such actions with flash, spark-producing, or other equipment would not be hazardous. Compliance safety and health officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and they shall wear and use appropriate protective clothing and equipment.
(4) The conduct of inspections shall be such as to preclude unreasonable disruption of the operations of the employer's establishment.
(5) At the conclusion of an inspection, the compliance safety and health officer shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the compliance safety and health officer any pertinent information regarding conditions in the workplace.
(6) Inspections shall be conducted in accordance with the requirements of this section.

GEORGE R. WAGONER, Deputy Commissioner, for
JAMES R. YOCOM, Commissioner of Labor
ADOPTED: October 11, 1974
APPROVED: ELIJAH H. HOGGE, Secretary
RECEIVED BY LRC: October 18, 1974 at 3:47 p.m.

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PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
(803 KAR 2:080)

RELATES TO: KRS 338.991(9)
PURSUANT TO: KRS 13.082
SUPERSEDES: OSH 106
NECESSITY AND FUNCTION: Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by KRS 338.051, the following rules and regulations are adopted, governing advance notice of inspections.

Section 1. Advance notice of inspection. (1) Advance notice of inspections may not be given, except in the following situations:
(a) In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible;
(b) In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection;
(c) Where necessary to assure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in the inspection; and
(d) In other circumstances where the Commissioner of Labor determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.
(2) (a) In the situations described in subsection (1) of this section, advance notice of inspections may be given only if authorized by the Commissioner of Labor, except that in cases of apparent imminent danger, advance notice may be given by the compliance safety and health officer without such authorization if the Commissioner of Labor is not immediately available. When advance notice is given, it shall be the employer's responsibility promptly to notify the authorized representative of the employees of the inspection, if the identity of such representative is known to the employer. (See 803 KAR 2:110(2) as to situation where there is no authorized representative of employees.) Upon the request of the employer, the compliance safety and health officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the compliance safety and health officer with the identity of such representative and with such other information as is necessary to enable him promptly to inform such representative of the inspection. An employer who fails to comply with his obligation under this paragraph promptly to inform the authorized representative of employees of the inspection or to furnish such information as is necessary to enable the compliance safety and health officer promptly to inform such representative of the inspection, may be subject to citation and penalty under KRS 338.991.
(b) Advance notice in any of the situations described in subsection (1) of this section shall not be given more than twenty-four (24) hours before the inspection is scheduled to be conducted, except in apparent imminent danger situations and in other unusual circumstances.
(3) KRS Chapter 338.991(9) provides that any person who gives advance notice of any inspection to be conducted under this chapter, without authority from the Commissioner, shall, upon conviction, be punished by fine of not more than $1,000 or by imprisonment for not more than six (6) months, or by both.

GEORGE R. WAGONER, Deputy Commissioner, for
JAMES R. YOCOM, Commissioner of Labor
ADOPTED: October 11, 1974
APPROVED: ELIJAH H. HOGGE, Secretary
RECEIVED BY LRC: October 18, 1974 at 3:47 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Coordinator, Kentucky Department of Labor, Occupational Safety and Health Program, Capital Plaza Tower, Frankfort, Kentucky 40601.

Plaza Tower, Frankfort, Kentucky 40601.

(5) Any class, trade, or group of non-union workers in the

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
(803 KAR 2:090)

RELATES TO: KRS 338.121
PURSUANT TO: KRS 13.082
SUPERSEDES: OSH 107
NECESSITY AND FUNCTION: Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by KRS 338.051, the following procedure has been formulated, which an employee is to follow in filing a complaint that a violation of KRS Chapter 338 exists. The function of this regulation is to outline this procedure to be followed by the employee in filing his complaint; the regulation also outlines the procedure to be followed by the Commissioner of Labor if he reviews the complaint and finds an inspection not to be warranted. Subsections (4) and (5) of Section 1 have been added, which were not a part of OSH 107. These subsections clarify the rights of the complainant after an inspection has been made as a result of his complaint.

Section 1. Complaints by employees. (1) Any employee or representative of employees who believes that a violation of KRS Chapter 338 exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Commissioner of Labor. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy shall be provided the employer or his agent by the Commissioner of Labor no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Department of Labor.

(2) If upon receipt of such notification the Commissioner of Labor determines that the complaint meets the requirements set forth in subsection (1) of this section, and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable, to determine if such alleged violation exists. Inspections under this section shall not be limited to matters referred to in the complaint.

(3) Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Commissioner of Labor in writing of any violation of KRS Chapter 338 which he has reason to believe exists in such workplace. Any such notice shall comply with the requirements of subsection (1) of this section.

(4) If, after an inspection based on a complaint, a citation is issued covering a violation or danger set forth in the complaint, a copy of the citation should be sent to the complainant at the same time it is sent to the employer.

(5) If, after an inspection based on a complaint, the director of compliance determines that a citation is not warranted with respect to a danger or violation whose existence was alleged in the complaint, the complainant must be informed in writing of such determination by letter. At the same time, the complainant should be notified of his rights of review of such determination. The complaining party may obtain review by submitting a written statement of position with the Commissioner of Labor and, at the same time, providing the employer with a copy of such statement by certified mail.

(6) KRS 338.121(3)(a) provides: "No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this chapter."

Section 2. Inspection not warranted; informal review. (1) If the Commissioner of Labor determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under Section 1, he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Commissioner of Labor and, at the same time, providing the employer with a copy of such statement by certified mail. The employer may submit an opposing written statement of position with the Commissioner of Labor and, at the same time, provide the complaining party with a copy of such statement by certified mail. Upon request of the complaining party of the employer, the Commissioner of Labor, at his discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral views presented, the Commissioner of Labor shall affirm, modify, or reverse his determination and furnish the complaining party and the employer a written notification of his decision and the reasons therefor. The decision of the Commissioner of Labor shall be final and not subject to further review.

(2) If the Commissioner of Labor determines that an inspection is not warranted because the requirements of Section 1 have not been met, he shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of Section 1.

GEORGE R. WAGONER, Deputy Commissioner, for
JAMES R. YOCOM, Commissioner of Labor
ADOPTED: October 11, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
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PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
(803 KAR 2:095)

RELATES TO: KRS 338.171
PURSUANT TO: KRS 13.082
SUPERSEDES: OSH 105
NECESSITY AND FUNCTION: Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by KRS 338.051, the following rules and regulations are adopted pertaining to an employer's trade secrets which may be encountered during the course of an inspection. The function of this regulation is to identify the procedure to be followed in protecting the employer's trade secrets.

Section 1. KRS 338.171 states that "all information obtained by the commissioner in connection with any inspection or proceeding under this chapter which might reveal a trade secret shall be considered confidential except that such information may be disclosed to those persons concerned with carrying out this chapter or when relevant in any proceedings under this chapter. In any such proceedings, the commissioner, review commission, or courts shall issue such orders as may be appropriate to protect the confidentiality of trade secrets."

GEORGE R. WAGONER, Deputy Commissioner, for
JAMES R. YOCOM, Commissioner of Labor
ADOPTED: October 11, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: October 18, 1974 at 3:47 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Coordinator, Kentucky Department of Labor, Occupational Safety and Health Program, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
(803 KAR 2:100)

RELATES TO: KRS 338.131
PURSUANT TO: KRS 13.082
SUPERSEDES: OSH 108
NECESSITY AND FUNCTION: Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by KRS 338.051, the following regulation is adopted, outlining the procedure to be followed by a compliance safety and health officer as soon as he detects an imminent danger condition.

Section 1. Imminent danger. Whenever and as soon as a compliance safety and health officer concludes on the basis of an inspection that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by KRS Chapter 338, he shall inform the affected employees and employers of the danger and that if the imminent danger is not immediately abated he is recommending a civil action to restrain such conditions or practices and for other appropriate relief in accordance with the provisions of KRS 338.133. Appropriate citations and notices of proposed penalties may be issued with respect to an imminent danger even though, after being informed of such danger by the compliance safety and health officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

GEORGE R. WAGONER, Deputy Commissioner, for
JAMES R. YOCOM, Commissioner of Labor
ADOPTED: October 11, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: October 18, 1974 at 3:48 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Coordinator, Kentucky Department of Labor, Occupational Safety and Health Program, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
(803 KAR 2:110)

RELATES TO: KRS 338.051
PURSUANT TO: KRS 13.082
SUPERSEDES: OSH 109
NECESSITY AND FUNCTION: Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by KRS 338.051, the following rules and regulations are adopted concerning the employer and employee representatives who may accompany compliance safety and health officers during the course of the inspection.

Section 1. Representatives of employers and employees. (1) Compliance safety and health officers shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the compliance safety and health officer. The compliance safety and health officer may permit additional employer representatives and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the compliance safety and health officer during each different phase of an inspection if this will not interfere with the conduct of the inspection.

(2) Compliance safety and health officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and employees for the purpose of this section. If there is no authorized representative of employees, or if the compliance safety and health officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

(3) The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the compliance safety and health officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or a safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the compliance safety and health officer during the inspection.

(4) Compliance safety and health officers may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of KRS Chapter 338 which he has reason to believe exists in the workplace to the attention of the compliance safety and health officer.

(5) Compliance safety and health officers are authorized to deny the right of accompaniment under this section to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to KRS 338.171. With regard to information classified by an agency of the U. S. Government in the interest of national security, only persons authorized to have access to such information may accompany a compliance safety and health officer in areas containing such information.

GEORGE R. WAGONER, Deputy Commissioner, for
JAMES R. YOCOM, Commissioner of Labor
ADOPTED: October 11, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
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SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Coordinator, Kentucky Department of Labor, Occupational Safety and Health Program, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
(803 KAR 2:115)

RELATES TO: KRS 338.141, 338.991
PURSUANT TO: KRS 13.082
SUPERSEDES: OSH 110
NECESSITY AND FUNCTION: Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by KRS 338.051, the following rules and regulations are adopted pertaining to the issuance of citations and the levying of penalties concurrent with the issuance of citations.

Section 1. Proposed penalties. (1) After, or concurrent with, the issuance of a citation, and within a reasonable time after the termination of the inspection, the Commissioner of Labor shall notify the employer by certified mail or by personal service by the compliance safety and health officer of the proposed penalty under KRS 338.991 or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed penalty shall be deemed to be the final order of the review commission and not subject to review by any court or agency unless, within fifteen (15) working days from the date of receipt of such notice, the employer notifies the Commissioner of Labor in writing that he intends to contest the citation or the notification of proposed penalty before the review commission.

(2) The Commissioner of Labor shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

(3) Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the compliance safety and health officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for de minimis violations which have no direct or immediate relationship to safety or health.

GEORGE R. WAGONER, Deputy Commissioner, for
JAMES R. YOCOM, Commissioner of Labor
ADOPTED: October 11, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
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SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Coordinator, Kentucky Department of Labor, Occupational Safety and Health Program, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
(803 KAR 2:120)

RELATES TO: KRS 338.141
PURSUANT TO: KRS 13.082
SUPERSEDES: OSH 111
NECESSITY AND FUNCTION: Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by KRS 338.051, the following rules and regulations are adopted, formulating the procedure to be followed by the commissioner when a citation has been issued. The function of this regulation is to spell out with clarity the procedure which must be followed by the compliance officers both as to form and content of the citation. Also, the regulation makes clear the procedure to be followed by the Commissioner of Labor in reviewing the inspection conducted by the compliance officers.

Section 1. Citations. The Commissioner of Labor shall review the inspection report of the compliance safety and health officer. If, on the basis of the report the Commissioner of Labor believes that the employer has violated a requirement of KRS Chapter 338, or any standard, rule or order promulgated pursuant to KRS Chapter 338, he shall issue to the employer either a citation or a notice of de minimis violations which have no direct or immediate relationship to safety or health. An appropriate citation or notice of de minimis violations shall be issued even though after being informed of an alleged violation by the compliance safety and health officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Any citation or notice of de minimis violations shall be issued with reasonable promptness after termination of the inspection. No citation may be issued under this section after the expiration of six (6) months following the occurrence of any alleged violation.

Section 2. Content of Citation. Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provision(s) of KRS Chapter 338, standard, rule, regulation, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violation.

Section 3. Citations Issued for Requested Inspections. If a citation or notice of de minimis violations is issued for a violation alleged in a request for inspection under 803 KAR 2:090, Section 1(1), or a notification of violation under 803 KAR 2:090, Section 1(3), a copy of the citation or notice of de minimis violations shall also be sent to the employee or representative of employees who made such request or notification.

Section 4. Informal Review of Inspection. After an inspection, if the Commissioner of Labor determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under 803 KAR 2:090, Section 1(1), or a notification of violation under 803 KAR 2:090, Section 1(3), the informal review procedures prescribed in 803 KAR 2:090, Section 2, shall be applicable. After considering all views presented, the Commissioner of Labor shall either affirm his determination, order a reinspection, or issue a citation if he believes that the inspection disclosed a violation. The Commissioner of Labor shall furnish the complaining party and the employer with written notification of his determination and the reasons therefor. The determination of the Commissioner of Labor shall be final and not subject to review.

Section 5. Citation. Every citation shall state that the issuance of a citation does not constitute a finding that a violation of KRS Chapter 338, or any standard, rule, order or regulation filed pursuant thereto, has occurred unless there is a failure to contest as provided for in KRS Chapter 338 or,

if contested, unless the citation is affirmed by the review commission.

GEORGE R. WAGONER, Deputy Commissioner, for
JAMES R. YOCOM, Commissioner of Labor
ADOPTED: October 11, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: October 18, 1974 at 3:49 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Coordinator, Kentucky Department of Labor, Occupational Safety and Health Program, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
(803 KAR 2:125)

RELATES TO: KRS 338.161
PURSUANT TO: KRS 13.082
SUPERSEDES: OSH 112
NECESSITY AND FUNCTION: Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by KRS 338.051, the following rules and regulations are adopted as they pertain to the posting of citations by the employer.

Section 1. Posting of citations. (1) Upon receipt of any citation under KRS Chapter 338, the employer shall immediately post such citation, or a copy thereof, unedited, at or near each place an alleged violation referred to in the citation occurred, except as provided below. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employers are engaged in activities which are physically dispersed (see 803 KAR 2:060) the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location (see 803 KAR 2:060), the citation may be posted at the location from which the employees operate to carry out their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material which would obscure the citation. Notices of de minimis violations need not be posted.

(2) Each citation, or a copy thereof, shall remain posted until the violation has been abated, or for three (3) working days, whichever is later. The filing by the employer of a notice of intention to contest shall not affect his posting responsibility under this section unless and until the review commission issues a final order vacating the citation.

(3) An employer to whom a citation has been issued may post a notice in the same location where such citation is posted indicating that the citation is being contested before the review commission, and such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

(4) Any employer failing to comply with the provisions of subsections (1) and (2) of this section shall be subject to citation and penalty in accordance with the provisions of KRS Chapter 338.

GEORGE R. WAGONER, Deputy Commissioner, for
JAMES R. YOCOM, Commissioner of Labor
ADOPTED: October 11, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: October 18, 1974 at 3:49 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Coordinator, Kentucky Department of Labor, Occupational Safety and Health Program, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
(803 KAR 2:130)

RELATES TO: KRS 338.101
PURSUANT TO: KRS 13.082
SUPERSEDES: OSH 113
NECESSITY AND FUNCTION: Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by KRS 338.051, the following regulation is adopted, identifying the procedure to be followed in conducting informal conferences requested by the employer, employee or representative of employees.

Section 1. Informal conferences. At the request of an affected employer, employee or representative of employees, the Commissioner of Labor may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, variance, or notice of intention to contest. The settlement of any issue at such conference shall be subject to the rules of procedure prescribed by the review commission. If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate at the discretion of the Commissioner of Labor. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Commissioner of Labor. Any party may be represented by counsel at such conference. No such conference or request for such conference shall operate as a stay of any fifteen-working-day period for filing a notice of intention to contest as prescribed in 803 KAR 2:140.

GEORGE R. WAGONER, Deputy Commissioner, for
JAMES R. YOCOM, Commissioner of Labor
ADOPTED: October 11, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: October 18, 1974 at 3:49 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Coordinator, Kentucky Department of Labor, Occupational Safety and Health Program, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
(803 KAR 2:140)

RELATES TO: KRS Chapter 338
PURSUANT TO: KRS 13.082
SUPERSEDES: OSH 114-1
NECESSITY AND FUNCTION: Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by KRS 338.051, the following rules and regulations are adopted, governing the employer and employee contests before the review commission. The function of this regulation is to inform the employer and employees of the proper procedure to be followed in contesting a citation and/or penalty issued by the Commissioner of Labor.

Section 1. Contesting procedure. (1) Any employer to whom a citation or notice of proposed penalty has been issued may, under KRS Chapter 338 notify the Commissioner of Labor in writing that he intends to contest such citation, or notice of proposed penalty before the review commission. Such notice of intention to contest shall be postmarked within fifteen (15) working days of the receipt by the employer of the notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation, the proposed penalty, or a variance. The Commissioner of Labor shall immediately transmit such notice to the review commission in accordance with the rules of procedure prescribed by the commission.

(2) Any employee or representative of employees of an employer to whom a citation has been issued may: (i) file a written notice with the Commissioner of Labor alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable; (ii) file a written notice to the Commissioner of Labor alleging that the citation and penalties are unreasonable. Such notices shall be postmarked within fifteen (15) working days of the receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed. The Commissioner of Labor shall immediately transmit such notice to the review commission in accordance with the rules of procedure prescribed by the commission.

(3) If any party is adversely affected by a variance issued under KRS 338.151 he may file an appeal to the review commission.

GEORGE R. WAGONER, Deputy Commissioner, for
JAMES R. YOCOM, Commissioner of Labor
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PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
(803 KAR 2:150)

RELATES TO: KRS 338.121(3)(b)
PURSUANT TO: KRS 13.082
SUPERSEDES: OSH 116
NECESSITY AND FUNCTION: Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by KRS 338.051, the following regulation is adopted. The function of this regulation is to identify what should be considered a reasonable time for filing employee complaints alleging discrimination or discharge.

Section 1. Reasonable Time Defined. (1) A reasonable time as used in KRS 338.121(3)(b) shall be defined to be no more than 120 days for the purpose of filing a complaint with the Commissioner of Labor.

(2) Within sixty (60) days after receipt of such complaint, the Commissioner of Labor shall make any necessary investigation, and shall take all appropriate action resulting therefrom.

GEORGE R. WAGONER, Deputy Commissioner, for
JAMES R. YOCOM, Commissioner of Labor

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APPROVED: ELIJAH M. HOGGE, Secretary
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PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
(803 KAR 2:160)

RELATES TO: KRS Chapter 338
PURSUANT TO: KRS 13.082
SUPERSEDES: OSH 119-1
NECESSITY AND FUNCTION: Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by KRS 338.051, the following procedure is set forth pertaining to the registration of carcinogens. The primary function and necessity for this regulation is to prevent exposure of all employees to certain cancer-producing substances within the Commonwealth of Kentucky.

Section 1. Definitions. The following words and terms, when used in this regulation, shall have the following meanings, unless the context clearly indicates otherwise:
(1) "Department" means the Kentucky Department of Labor.
(2) "Exposure" means ingestion, inhalation or contact with the human body or through the skin, mucous membranes or the eye.
(3) "Employer" means any entity for whom a person is employed except those employers excluded in Section 5.
(4) "Employee" means any person except those employees excluded in Section 5.
(5) "Use" means manufacture, formation as a result of a chemical reaction, research, storage, sale, transfer or other use.

Section 2. Dangerous Substances. The following dangerous substances shall be subject to the provisions of this regulation: (a) 4-Nitrobiphenyl, (b) alpha-Naphthylamine, (c) 4, 4' - Methylene bis (2-chloroaniline), (d) Methyl chloromethyl ether, (e) 3, 3' - Dichlorobensidine (and its salts), (f) bis-Chloromethyl ether, (g) beta-Naphthylamine, (h) Benzidine (and its salts), (i) 4-Aminodiphenyl, (j) Ethyleneimine, (k) beta-Propiolactone, (l) 2-Acetylaminofluorene, (m) 4-Dimethylaminoazobenzene, (n) N-Nitrosodimethylamine, and (o) Vinyl Chloride.

Section 3. Use of Dangerous Substances. (1) No employer or his agent shall use or cause to be used any substances listed in Section 2 of this regulation unless such an employer has registered that substance with the Department of Labor.
(2) Registration of the substance shall be made in writing with the Department and said registration shall include the following information:
(a) The intended use of the substance and the nature of the process involved in its processing, production, handling, use, storage, or sale by the employer.
(b) The nature and the amount of exposure to employees involved in its processing, production, handling, use, storage, or sale.
(c) A detailed description of the medical and industrial hygiene control measures used to prevent exposure to the substance.
(3) Procedure for registering:
(a) All employers using dangerous substances, as enumerated in Section 2(a) through 2(n) of this regulation, shall, by June 13, 1974, register pursuant to this section.
(b) All employers using the dangerous substance enumerated in Section 2(o) in this regulation, shall by July 1, 1974, register pursuant to this section.
(3) All employers who hereafter commence use of cancer-producing substances, as enumerated in this regulation, shall within thirty (30) days, register pursuant to this section.

Section 4. Exceptions. The provisions of this regulation shall not apply to any substance which contains one percent (1%) or less by weight of a substance listed in Section 2 of this regulation.

Section 5. Exclusions. This regulation applies to all employers, employees, and places of employment throughout the Commonwealth except the following:
(1) Employees of the United States Government.
(2) Employers, employees and places of employment over which federal agencies other than the United States Department of Labor exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

GEORGE R. WAGONER, Deputy Commissioner, for
JAMES R. YOCOM, Commissioner of Labor
ADOPTED: October 11, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
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PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
(803 KAR 2:170)

RELATES TO: KRS 338.153
PURSUANT TO: KRS 13.082
SUPERSEDES: OSH 115
NECESSITY AND FUNCTION: KRS 338.153 authorizes the granting of temporary and general variances from occupational safety and health standards to employers who can show that (1) they are unable to comply with such standards by their effective dates, or (2) they are providing conditions of employment as safe and healthful as those which would result from compliance with the terms of the standards. The following regulations delineate the purpose and scope of the variances and the procedure to be followed when an employer wishes to be granted a variance.

Section 1. Purpose and Scope. (1) This regulation contains rules of practice for administrative proceedings to grant variances and other relief under the Kentucky Occupational Safety and Health Act of 1972, KRS Chapter 338.
(2) These rules shall be construed to secure a prompt and just conclusion of proceedings subject thereto.
(3) The rules of practice in this regulation do not apply to the granting of variances under KRS 338.153(2)(c).

Section 2. Definitions. As used in this regulation, unless the context clearly requires otherwise:
(1) "Act" means KRS Chapter 338.
(2) "Person" means an individual, partnership, association, corporation, business trust, legal representative, an organized group of individuals, or an agency, authority, or instrumentality of the United States or of a state.
(3) "Party" means a person admitted to participate in a hearing conducted in accordance with Sections 14 through 24 of this regulation. An applicant for relief and any affected employee shall be entitled to be named parties. The Department of Labor, represented by the Commissioner of Labor, shall be deemed to be a party without the necessity of being named.
(4) "Affected employee" means an employee who would be affected by the grant or denial of a variance, or any of his authorized representatives, such as his collective bargaining agent.

Section 3. Petitions for Amendments to this Regulation. Any person may at any time petition the Commissioner of Labor in writing to revise, amend, or revoke any provisions of this regulation. The petition should set forth either the terms or the substance of rule desired, with concise statement of the reasons thereof and the effects thereof.

Section 4. Amendments to this Regulation. The Commissioner may at any time revise, amend, or revoke any provisions of this regulation.

Section 5. Effect of Variances. All variances granted pursuant to this regulation shall have only future effect. In his discretion, the Commissioner of Labor may decline to entertain an application for a variance on a subject or issue concerning which a citation has been issued to the employer involved and proceeding on the citation or a related issue concerning a proposed penalty or period of abatement is pending before the Kentucky Occupational Safety and Health Review Commission until the completion of such proceeding.

Section 6. Public Notice of a Granted Variance. Every final action granting a variance under this regulation shall be published in a newspaper of general circulation. Every such final action shall specify the alternative to the standard involved which the particular variance permits.

Section 7. Form of Documents; Subscription; Copies. (1) No particular form is prescribed for applications and other papers which may be filed in proceedings under this regulation. However, any applications and other papers shall be clearly legible. An original and six (6) copies of any application or other papers shall be filed. The original shall be typewritten. Clean carbon copies, or printed or processed copies are acceptable copies.
(2) Each application or other paper which is filed in proceedings under this regulation shall be subscribed by the person filing the same or by his attorney or other authorized representative.

Section 8. Variances Under KRS 338.153(2)(a) (Temporary Variances). (1) Application for variance. Any employer, or class of employers, desiring a variance from a standard, or portion thereof, authorized by KRS 338.153(2)(a), may file a written application containing the information specified in subsection (2) of this section with the Commissioner of Labor.
(2) An application filed pursuant to subsection (1) of this section shall include:
(a) The name and address of the applicant;
(b) The address of the place or places of employment involved;
(c) A specification of the standard or portion thereof from which the applicant seeks a variance;

(d) A representation by the applicant supported by representations from qualified persons having first-hand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof by its effective date and a detailed statement of the reasons therefor;
(e) A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the standard;
(f) A statement of when the applicant expects to be able to comply with the standard and of what steps he has taken and will take, with specific dates where appropriate, to come into compliance with the standard;
(g) A statement of the facts the applicant would show to establish that (i) the applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date; (ii) he is taking all available steps to safeguard his employees against the hazards covered by the standard; and (iii) he has an effective program for coming into compliance with the standard as quickly as practicable;
(h) Any request for a hearing, as provided in this regulation;
(i) A statement that the applicant has informed his affected employees of application by giving a copy thereof to their authorized representative, posting a statement, giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted, and by other appropriate means; and
(j) A description of how affected employees have been informed of the application and of their right to petition the Commissioner of Labor for a hearing.

(3) Interim order.
(a) Application. An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order may include statements of fact and arguments as to why the order should be granted. The Commissioner of Labor may rule ex parte upon the application.
(b) Notice of denial of application. If an application filed pursuant to paragraph (a) of this subsection is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by a brief statement of the grounds therefor.
(c) Notice of the grant of an interim order. If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties, and the terms of the order shall be published in a newspaper of general circulation. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

Section 9. Variances Under KRS 338.153(1) (Permanent Variances). (1) Application for variance. Any employer or class of employers desiring a variance authorized by KRS 338.153(1) may file a written application containing the information specified in subsection (2) of this section, with the Commissioner of Labor.

(2) Contents. An application filed pursuant to subsection (1) of this section shall include:
(a) The name and address of the applicant;
(b) The address of the place or places of employment involved;
(c) A description of the conditions, practices, means, methods, operations, or processes used or proposed to be used by the applicant;
(d) A statement showing how the conditions, practices, means, methods, operations, or processes used or proposed to be used would provide employment and places of employment to employees which are as safe and healthful as those required by the standard from which a variance is sought;
(e) A certification that the applicant has informed his employees of his application by (i) giving a copy thereof to their authorized representative; (ii) posting a statement giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted (or in lieu of such summary, the posting of the application itself); and (iii) by other appropriate means;
(f) Any request for a hearing, as provided in this regulation; and
(g) A description of how employees have been informed of the application and of their right to petition the Commissioner of Labor for a hearing.

(3) Interim order.
(a) Application. An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order may include statements of fact and arguments as to why the order should be granted. The Commissioner of Labor may rule ex parte upon the application.
(b) Notice of denial of application. If an application filed pursuant to paragraph (a) of this subsection is denied, the applicant shall be given prompt notice of denial, which shall include, or be accompanied by a brief statement of the grounds therefor.
(c) Notice of the grant of an interim order. If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties, and the terms of the order shall be published in a newspaper of general circulation. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

Section 10. Modification, Revocation, and Renewal of Rules or Orders. (1) Modification or revocation. An affected employer or an affected employee may apply in writing to the Commissioner of Labor for a modification or revocation of a rule or order issued under KRS 338.153. The application shall contain:
(a) The name and address of the applicant;
(b) A description of the relief which is sought;
(c) A statement setting forth with particularity the grounds for relief;
(d) If the applicant is an employer, a certification that the applicant has informed his affected employees of the application by:
1. Giving a copy thereof to their authorized representative;
2. Posting at the place or places where notices to employees are normally posted, a statement giving a summary of the application and specifying where a copy of the full application may be examined (or, in lieu of the summary, posting the application itself); and
3. Other appropriate means.
(e) If the applicant is an affected employee, a certification that a copy of the application has been furnished to the employer; and
(f) Any request for a hearing, as provided in this regulation.

(2) The Commissioner of Labor may on his own motion proceed to modify or revoke a rule or order issued under KRS 338.153. In such event, the Commissioner of Labor shall cause to be published in a newspaper of general circulation a notice of his intention, affording interested persons an opportunity to submit written data, views, or arguments regarding the proposal and informing the affected employer and employees of their right to request a hearing, and shall take such other action as may be appropriate to give actual notice to affected employees. Any request for a hearing shall include a short and plain statement of:
(a) How the proposed modification or revocation would affect the requesting party; and
(b) What the requesting party would seek to show on the subjects or issues involved.

(3) Renewal. Any final rule or order issued under KRS 338.153 may be renewed or extended as permitted by the applicable section and in the manner prescribed for its issuance.

Section 11. Action on Applications. (1) Defective applications.
(a) If an application filed pursuant to this regulation does not conform to the applicable section, the Commissioner of Labor may deny the application.
(b) Prompt notice of the denial of an application shall be given to the applicant.
(c) A notice of denial shall include, or be accompanied by, a brief statement of the grounds for the denial.
(d) A denial of an application pursuant to this subsection shall be without prejudice to the filing of another application.

(2) Adequate applications.
(a) If an application has not been denied pursuant to subsection (1) of this section, the Commissioner of Labor shall cause to be published in a newspaper of general circulation a notice of the filing of the application.
(b) A notice of the filing of an application shall include: (i) the terms, or an accurate summary, of the application; (ii) an invitation to interested persons to submit within a stated period of time written data, views, or arguments regarding the application; and (iii) information to affected employers and employees of any right to request a hearing on the application.

Section 12. Requests for Hearings on Applications. (1) Request for hearing. Within the time allowed by a notice of the filing of an application, any affected employer or employee may file with the Commissioner of Labor, in quadruplicate, a request for a hearing on the application.

(2) Contents of a request for a hearing. A request for a hearing filed pursuant to subsection (1) of this section shall include:
(a) A concise statement of facts showing how the employer or employee would be affected by the relief applied for;
(b) A specification of any statement or representation

in the application which is denied, and a concise summary of the evidence that would be adduced in support of each denial; and

(c) Any views or arguments on any issue of fact or law presented.

Section 13. Consolidation of Proceedings. The Commissioner of Labor on his own motion or that of any party may consolidate or contemporaneously consider two (2) or more proceedings which involve the same or closely related issues.

Section 14. Notice of Hearing. (1) Service. Upon request for a hearing as provided in this regulation, or upon his own initiative, the Commissioner of Labor shall serve, or cause to be served, a reasonable notice of hearing.

(2) Contents. A notice of hearing served under subsection (1) of this section shall include:

(a) The time, place, and nature of the hearing;

(b) The legal authority under which the hearing is to be held;

(c) A specification of issues of fact and law; and

(d) A designation of a hearing examiner as an authorized representative of the commissioner if the commissioner is not going to conduct the hearing.

(3) Referral to hearing examiner. A copy of a notice of hearing served pursuant to subsection (1) of this section shall be referred to the hearing examiner designated therein, together with the original application and any written request for a hearing thereon filed pursuant to this regulation.

Section 15. Manner of Service. Service of any document upon any party may be made by personal delivery of, or by mailing, a copy of the document to the last known address of the party. The person serving the document shall certify to the manner and the date of the service.

Section 16. Hearing Examiners; Powers and Duties. (1) Powers. The commissioner or a hearing examiner designated by the commissioner to preside over a hearing shall have all powers necessary or appropriate to conduct a fair, full, and impartial hearing, including the following:

(a) To administer oaths and affirmations;

(b) To rule upon offers of proof and receive relevant evidence;

(c) To provide for discovery and to determine its scope;

(d) To regulate the course of the hearing and the conduct of the parties and their counsel therein;

(e) To consider and rule upon procedural requests;

(f) To hold conferences for the settlement or simplification of the issues by consent of the parties;

(g) To make, or to cause to be made, an inspection of the employment or place of employment involved;

(h) To make decisions in accordance with KRS Chapter 338;

(i) To take any other appropriate action authorized by KRS Chapter 338 or any regulation issued pursuant thereto.

(2) Private consultation. Except to the extent required for the disposition of ex parte matters, a hearing examiner may not consult a person or a party on any fact at issue, unless upon notice and opportunity for all parties to participate.

(3) Disqualification.

(a) When a hearing examiner deems himself disqualified to preside over a particular hearing, he shall withdraw therefrom by notice on the record directed to the Commissioner of Labor.

(b) Any party who deems a hearing examiner for any reason to be disqualified to preside, or to continue to preside, over a particular hearing, may file with the Commissioner of Labor a motion to disqualify and remove the hearing examiner, such motion to be supported by affidavits setting forth all alleged grounds for disqualification. The Commissioner of Labor shall rule upon the motion.

(4) Contumacious conduct; failure or refusal to appear or obey the rulings of a presiding hearing examiner.

(a) Contumacious conduct at any hearing before the hearing examiner shall be ground for conclusion from the hearing.

(b) If a witness or a party refuses to answer a question after being directed to do so, or refuses to obey an order to provide or permit discovery, the hearing examiner may make such orders with regard to the refusal as are just and appropriate, including an order denying the application of an applicant or regulating the contents of the record of the hearing.

(c) Referral to Kentucky Rules of Civil Procedure. On any procedural question not regulated by this regulation, a hearing examiner shall be guided to the extent practicable by any pertinent provisions of the Kentucky Rules of Civil Procedure.

Section 17. Prehearing Conferences. (1) Convening a conference. Upon his own motion or the motion of a party, the hearing examiner may direct the parties or their counsel to meet with him for a conference to consider:

(a) Simplification of the issues;

(b) Necessity or desirability of amendments to documents for purposes of clarification, simplification, or limitation;

(c) Stipulations, admissions of fact, and of contents and authenticity of documents;

(d) Limitation of the number of parties and of expert witnesses; and

(e) Such other matters as may tend to expedite the disposition of the proceeding, and to assure a just conclusion thereof.

(2) Record of Conference. The hearing examiner shall make an order which recites the action taken at the conference, the amendments allowed to any documents which have been filed, and the agreements made between the parties as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements; and such order when entered controls the subsequent course of the hearing, unless modified at the hearing, to prevent manifest injustice.

Section 18. Consent Findings and Rules or Orders. (1) General. At any time before the reception of evidence in any hearings, or during any hearing a reasonable opportunity may be afforded to permit negotiation by the parties of an agreement containing consent findings and a rule or order disposing of the whole or any part of the proceeding. The allowance of such opportunity and the duration thereof shall be in the discretion of the presiding hearing examiner, after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement which will result in a just disposition of the issues involved.

(2) Contents. Any agreement containing consent findings and rule or order disposing of a proceeding shall also provide:

(a) That the rule or order shall have the same force and effect as if made after a full hearing;

(b) That the entire record on which any rule or order may be based shall consist solely of the application and the agreement;

(c) A waiver of any further procedural steps before the hearing examiner and the Commissioner of Labor; and

(d) A waiver of any right to challenge or contest the validity of the findings and of the rule or order made in accordance with the agreement.

(3) Submission. On or before the expiration of the time granted for negotiations, the parties or their counsel may:

(a) Submit the proposed agreement to the presiding hearing examiner for his consideration; or

(b) Inform the presiding hearing examiner that agreement cannot be reached.

(4) Disposition. In the event an agreement containing consent findings and rule or order is submitted within the time allowed therefor, the presiding hearing examiner may accept such agreement by issuing his decision based upon the agreed findings.

Section 19. Discovery. (1) Depositions.

(a) For reasons of unavailability or for other good cause shown, the testimony of any witness may be taken by deposition. Depositions may be taken orally or upon written interrogatories before any person designated by the presiding hearing examiner and having power to administer oaths.

(b) Application. Any party desiring to take the deposition of a witness may make application in writing to the presiding hearing examiner, setting forth: (i) the reasons why such deposition should be taken; (ii) the time when, the place where, and the name and post office address of the person before whom the deposition is to be taken; (iii) the name and address of each witness; and (iv) the subject matter concerning which each witness is expected to testify.

(c) Notice. Such notice as the presiding hearing examiner may order shall be given by the party taking the deposition to every other party.

(d) Taking and receiving in evidence. Each witness testifying upon deposition shall be sworn, and the parties not calling him shall have the right to cross-examine him. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, read to the witness, subscribed by him, and certified by the officer before whom the deposition is taken. Thereafter, the officer shall seal the deposition, with two (2) copies thereof, in an envelope and mail the same by registered mail to the presiding hearing examiner. Subject to such objections to the questions and answers as were noted at the time of taking the deposition and would be valid were the witness personally present and testifying, such deposition may be read and offered in evidence by the party taking it as against any party who was present, represented at the taking of the deposition, or who had due notice thereof.

(e) No part of a deposition shall be admitted in evidence unless there is a showing that the reasons for the taking of the deposition in the first instance exist at the time of hearing.

(2) Other discovery. Whenever appropriate to a just disposition of any issue in a hearing, the presiding hearing examiner may allow discovery by any other appropriate procedure, such as by written interrogatories upon a party, production of documents by a party, or by entry for inspection of the employment or place of employment involved.

Section 20. Hearings. (1) Order of proceeding. Except as may be ordered otherwise by the presiding hearing examiner,

or by the case, of any distilled spirits or wine, but said

the party applicant for relief shall proceed first at a hearing.

(2) Burden of proof. The party applicant shall have the burden of proof.

(3) Evidence.

(a) Admissibility. A party shall be entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct cross-examination as may be required for a full and true disclosure of the facts. Any oral or documentary evidence may be received, but a presiding examiner shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(b) Testimony of witnesses. The testimony of a witness shall be upon oath or affirmation administered by the presiding hearing examiner.

(c) Objections. If a party objects to the admission or rejection of any evidence, or to the limitation of the scope of any examination or cross-examination, or to the failure to limit such scope, he shall state briefly the grounds for such objection. Rulings on all objections shall appear in the record. Only objections made before the presiding hearing examiner may be relied upon subsequently in a proceeding.

(d) Exceptions. Formal exception to an adverse ruling is not required.

(4) Official notice. Official notice may be taken of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice or concerning which the Department of Labor by reason of its functions is presumed to be expert: Provided, that the parties shall be given adequate notice, at the hearing or by reference in the presiding hearing examiner's decision, of the matters so noticed, and shall be given adequate opportunity to show the contrary.

(5) Transcript. Hearings shall be stenographically reported. Copies of the transcript may be obtained by the parties upon written application filed with the reporter, and upon the payment of fees at the rate provided in the agreement with the reporter.

Section 21. Decisions of Hearing Examiners. (1) Proposed findings of fact, conclusions, and rules or orders. Within ten (10) days after receipt of notice that the transcript of the testimony has been filed or such additional time as the presiding hearing examiner may allow, each party may file with the hearing examiner proposed findings of fact, conclusions of law, and rule or order, together with a supporting brief expressing the reasons for such proposals. Such proposals and briefs shall be served on all other parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(2) Decision of the hearing examiner. Within a reasonable time after the time allowed for the filing of proposed findings of fact, conclusions of law, and rule or order, the presiding hearing examiner shall make and serve upon each party his decision, which shall become final upon the 20th day after service thereof, unless exceptions are filed thereto, as provided in Section 22 of this regulation. The decision of the hearing examiner shall include (i) a statement of findings and conclusions, with reasons and bases therefor, upon each material issue of fact, law, or discretion presented on the record, and (ii) the appropriate rule, order, relief, or denial thereof. The decision of the hearing examiner shall be based upon a consideration of the whole record and shall state all facts officially noticed and relied upon. It shall be made on the basis of a preponderance of reliable and probative evidence.

Section 22. Exceptions. Within twenty (20) days after service of a decision of a presiding hearing examiner, any party may file with the hearing examiner written exceptions thereto with supporting reasons. Such exceptions shall refer to the specific findings of fact, conclusions of law, or terms of the rule or order excepted to, the specific pages of transcript relevant to the suggestions, and shall suggest corrected findings of fact, conclusions of law, or terms of the rule or order. Upon receipt of any exceptions, the hearing examiner shall fix a time for filing any objections to the exceptions and any supporting reasons.

Section 23. Transmission of Record. If exceptions are filed, the hearing examiner shall transmit the record of the proceeding to the Commissioner of Labor for review. The record shall include: the application, any request for hearing thereon, motions and requests filed in written form, rulings thereon, the transcript of the testimony taken at the hearing, together with the exhibits admitted in evidence, any documents or papers filed in connection with prehearing conference, such proposed findings of fact, conclusions of law, rules or orders, and supporting reasons, as may have been filed, the hearing examiner's decision, and such exceptions, statements of objections, and briefs in support thereof, as may have been filed in the proceeding.

Section 24. Decision of the Commissioner of Labor. If exceptions to a decision of a hearing examiner are taken pursuant to Section 22 of this regulation, the Commissioner of Labor shall upon consideration thereof, together with the record references and authorities cited in support thereof, and any objections to exceptions and supporting reasons, make his decision. The decision may affirm, modify, or set aside, in whole or part, the findings, conclusions, and the rule or order contained in the decision of the presiding hearing examiner, and shall include a statement of reasons or bases for the actions taken on each exception presented.

Section 25. Motion for Summary Decision. (1) Any party may, at least twenty (20) days before the date fixed for any hearing under Sections 14 through 24 of this regulation, move with or without supporting affidavits for a summary decision in his favor on all or any part of the proceeding. Any other party may, within ten (10) days after service of the motion, serve opposing affidavits or countermove for summary decision. The presiding examiner may, in his discretion, set the matter for argument and call for the submission of briefs.

(2) The filing of any documents under subsection (1) of this section shall be with the hearing examiner, and copies of any such documents shall be served in accordance with Section 15 of this regulation.

(3) The hearing examiner may grant such motion if the pleadings, affidavits, material obtained by discovery or otherwise obtained, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision. The hearing examiner may deny such motion whenever the moving party denies access to information by means of discovery to a party opposing the motion.

(4) Affidavits shall set forth such facts as would be admissible in evidence in a Kentucky court of law and shall show affirmatively that the affiant is competent to testify to the matters stated therein. When a motion for summary decision is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of this pleading; his response must set forth specific facts showing that there is genuine issue of fact for the hearing.

(5) Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the hearing examiner may deny the motion for summary decision or may order a continuance to permit affidavits to be obtained or discovery to be had or may make such other order as is just.

(6) The denial of all or any part of a motion for summary decision by the hearing examiner shall not be subject to interlocutory appeal to the Commissioner of Labor unless the hearing examiner certified in writing (i) that the ruling involves an important question of law or policy as to which there is substantial ground for difference of opinion, and (ii) that an immediate appeal from the ruling may materially advance the ultimate termination of the proceeding. The allowance of such an interlocutory appeal shall not stay the proceeding before the hearing examiner unless the Commissioner of Labor shall so order.

Section 26. Summary Decision. (1) No genuine issue of material fact.

(a) Where no genuine issue of a material fact is found to have been raised, the hearing examiner may issue an initial decision to become final twenty (20) days after service thereof, unless, within such period of time any party has filed written exceptions to the decision. If any timely exception is filed, the hearing examiner shall fix a time for filing any supporting reasons. Thereafter, the Commissioner of Labor, after consideration of the exceptions and any supporting briefs filed therewith and of any objections to the exceptions and any supporting reasons, may issue a final decision.

(b) An initial decision and a final decision made under this subsection shall include a statement of:

1. findings and conclusions, and the reasons or bases thereof, on all issues presented; and
2. the terms and conditions of the rule or order made.

(c) A copy of an initial decision and a final decision under this subsection shall be served on each party.

(2) Hearings on issues of fact, where a genuine material question of fact is raised, the hearing examiner shall, and in any other case he may, set the case for an evidentiary hearing in accordance with Sections 14 through 24 of this regulation.

Section 27. Effect of Appeal of a Hearing Examiner's Decision. A hearing examiner's decision under this regulation shall not be operative pending a decision on appeal by the Commissioner of Labor.

Section 28. Finality for Purposes of Judicial Review. Only a decision by the Commissioner of Labor shall be deemed final agency action for purposes of judicial review.

GEORGE R. WAGONER, Deputy Commissioner, for
JAMES R. YOCOM, Commissioner of Labor

ADOPTED: October 11, 1974

APPROVED: ELIJAH M. HOGGE, Secretary

RECEIVED BY LRC: October 18, 1974 at 3:50 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Coordinator, Kentucky Department of Labor, Occupational Safety and Health Program, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control
(804 KAR 3:030)

RELATES TO: KRS 244.380, 244.450
PURSUANT TO: KRS 13.082, 241.060
SUPERSEDES: ABC Regulation 2:30
NECESSITY AND FUNCTION: This regulation applies the Kentucky Fair Trade Act to wine. As required by KRS 244.380, a minimum base cost is established and is required to be applied to all wine sales of a wholesaler.

Section 1. The Alcoholic Beverage Control Board will take into consideration and be guided by the current selling price of wine in bulk in California, the current selling prices for California wines in bulk in the principal markets of the United States, the charges for the necessary transportation and delivery of wine in bulk from the place of origin to Kentucky, all federal taxes and cost of labels, containers, crowns, caps and seals. The cost so determined will be termed the "prevailing cost" of such wine and there will be added to the costs above referred to a bottling cost mark-up of sixteen per cent (16%) of such "prevailing cost" and which price so determined will be termed the "minimum base cost." The sixteen per cent (16%) mark-up is to cover in part, but without limitation, the cost for such items as labor, salaries of executives and officers, rent, depreciation and maintenance of equipment and property, selling costs, insurance, license fee, property taxes, delivery charges (if any), shrinkage, breakage, evaporation and general overhead expenses.

Section 2. (1) Effective June 21, 1950, all Fair Trade Price filings below the minimum base price must be so amended as to comply with said minimum base cost. Filings which are above the said minimum base cost need not be submitted for refiling. Thereafter, on the first of any calendar month, the Department of Alcoholic Beverage Control may revise the minimum base cost so as to reflect any material changes in the current selling prices for California wines in bulk in the principal markets for the United States.
(2) To the above-mentioned minimum base cost shall be added all additional mark-ups set forth in KRS Chapter 244.

Section 3. Any and all regulations in conflict herewith are rescinded to the extent of such conflict.

JULIAN W. KNIPPENBERG, Chairman
Alcoholic Beverage Control Board
ADOPTED: July 1, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: October 18, 1974 at 3:52 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Alcoholic Beverage Control Board, 8th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control
(804 KAR 3:040)

RELATES TO: KRS 244.460
PURSUANT TO: KRS 13.082, 241.060
SUPERSEDES: ABC Regulation 2:40
NECESSITY AND FUNCTION: KRS 244.460 makes enumerated exceptions to the requirements of the Fair Trade Contracts for Distilled Spirits and requires an application to this department for approval of a close-out sale. This regulation establishes the procedure for filing an application for a close-out sale.

Section 1. (1) Request for close-out sale will be approved on three (3) days a year, namely, October 1, February 1, and June 1. All applications for close-outs must be received by the Department of Alcoholic Beverage Control at least ten (10) days before the date of approval.
(2) All requests for close-out sales must be made on forms prescribed by the Department of Alcoholic Beverage Control and each question contained therein must be answered under oath.
(3) Each request for close-out sale of five (5) cases or more of any one brand must be accompanied with evidence showing the merchandise has been offered to and rejected by the original consignor or vendor. A fair trade contract shall be filed with each request for a close-out.
(4) No merchandise of the size, age, proof, and brand other than that approved for close-out sale shall be offered for sale by any wholesaler for a period of twelve (12) months after date of approval.

JULIAN W. KNIPPENBERG, Chairman
Alcoholic Beverage Control Board
ADOPTED: July 1, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: October 18, 1974 at 3:53 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Alcoholic Beverage Control Board, 8th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control
(804 KAR 3:050)

RELATES TO: KRS 244.390(5)
PURSUANT TO: KRS 13.082, 241.060
SUPERSEDES: ABC Regulation 2:52
NECESSITY AND FUNCTION: KRS 244.390(5) establishes, for the purpose of minimum resale prices of distilled spirits, the entire state of Kentucky as one trading area. Since transportation charges for distilled spirits would naturally vary between areas of the state, it was necessary to establish a standard transportation cost for the state as a whole. Each fair trade contract must, therefore, include this fixed charge per case in order to treat the state as a whole as dictated by the stated KRS.

Section 1. The entire state shall constitute one trading area. To simplify the retail pricing of brands of distilled spirits and wine and to assist in the enforcement of the Fair Trade Law a fixed charge of one dollar and twenty cents ($1.20) per case is established to cover cost of transportation of distilled spirits and wine from the wholesale licensee to the retail licensee.

JULIAN W. KNIPPERBERG, Chairman
Alcoholic Beverage Control board
ADOPTED: July 1, 1974
APPROVED: ELIJAH. M. HOGGE, Secretary
RECEIVED BY LRC: October 18, 1974 at 3:53 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Alcoholic Beverage Control Board, 8th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control
(804 KAR 3:060)

RELATES TO: KRS 244.380, 244.450
PURSUANT TO: KRS 13.082, 241.060
SUPERSEDES: ABC Regulation 2:60
NECESSITY AND FUNCTION: KRS 244.380 and 244.450 establish a general basis for the Kentucky Fair Trade Law as applied to distilled spirits and wine. The Fair Trade contracts filed pursuant to these statutes require the inclusion of all taxes to arrive at a final retail price, and this regulation assures consumers that the price shown on the shelves of the retailer, or by advertising, shall be the total retail price for the product.

Section 1. No retailer shall advertise or quote any prices on distilled spirits or wine which shall not include all state and federal taxes, and no reference is to be made in any printed or painted form to any tax.

JULIAN W. KNIPPENBERG, Chairman
Alcoholic Beverage Control Board
ADOPTED: July 1, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: October 18, 1974 at 3:53 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Alcoholic Beverage Control Board, 8th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control
(804 KAR 3:070)

RELATES TO: KRS 244.380, 244.450, 244.130
PURSUANT TO: KRS 13.082, 241.060
SUPERSEDES: ABC Regulation 2:70
NECESSITY AND FUNCTION: KRS 244.130 permitting the board to establish regulations for advertising of distilled spirits, and KRS 244.380, dealing with prices under the Kentucky Fair Trade Law, are joined by the board to restrict advertising of distilled spirits and wine to the minimum resale price as contained in the fair trade contracts. This is to insure that no retailer advertises products in such a manner that would indicate the price as being below the minimum resale price required by the Kentucky Fair Trade Act.

Section 1. (1) No holder of a retail package liquor license shall advertise the price or sale, by bottle or by case, of any distilled spirits or wine in any sign, banner, writing, or other printed manner of any description visible from outside the licensed premises, or by any handbill, circular, card or other communication directed to prospective purchasers in the manner to infer or suggest special prices, reduced prices, or similar words of pecuniary appeal for the purpose of inducing the purchase of distilled spirits or wine; except the licensee may display in his window, on a card not larger than 2 1/2 x 3 inches, the sale price only of any brand or container of distilled spirits or wine offered for sale.
(2) Provided further, that a retail package liquor licensee, may advertise in any newspaper the price, by the bottle, or by the case, of any distilled spirits or wine, but said

price must not be below the minimum resale price or sold on a close-out.

JULIAN W. KNIPPENBERG, Chairman
Alcoholic Beverage Control Board

ADOPTED: July 1, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: October 18, 1974 at 3:53 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Alcoholic Beverage Control Board, 8th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control
(804 KAR 3:080)

RELATES TO: KRS 244.040
PURSUANT TO: KRS 13.082, 241.060
SUPERSEDES: ABC 2:100
NECESSITY AND FUNCTION: KRS 244.040 requires all alcoholic beverage sales in Kentucky to be for cash. This regulation is an exception to that provision and is necessitated by procedure required by the United States Government agencies for payment of their purchases, and allows a distributor selling malt beverages to a U. S. agency to defer his payment to the brewery until he receives his payment from the U. S. agency or military installation for which the purchases were made.

Section 1. A distributor, who makes a purchase of malt beverages for the specific purpose of making an immediate tax-free sale to a military or naval installation, or other United States governmental agency permitted by state law to purchase tax-free malt beverages, may be permitted to extend the time for the payment of such purchase until such time as the said distributor receives his payment from the military or naval installation for which the purchase was made.

JULIAN W. KNIPPENBERG, Chairman
Alcoholic Beverage Control Board

ADOPTED: July 1, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: October 18, 1974 at 3:52 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Alcoholic Beverage Control Board, 8th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
(805 KAR 2:010)

RELATES TO: KRS 352.050(1)
PURSUANT TO: KRS 352.050(1), 351.070(13), 13.082
SUPERSEDES: CM-Rg-1-1.01-1.13
NECESSITY AND FUNCTION: This regulation is to permit the use of diesel powered equipment in underground mines for the purpose of reducing the number of electrocutions and mine fires from electrical cables.

Section 1. General Requirements for the Use of Diesel Equipment. (1) Only diesel equipment bearing approval plates of permissibility issued by the Federal Mining Enforcement and Safety Administration and approved for use by the Kentucky Department of Mines and Minerals will be allowed in underground coal mines of the State. No diesel powered machinery may be taken into any underground coal mine of the State of Kentucky without the written approval of the Commissioner of Mines and Minerals. The approval for use shall incorporate all the requirements of these regulations. If at any time the commissioner determines that any condition or practice permitted under this approval may threaten the health or safety of the employees, he may impose additional requirements for the purpose of eliminating the condition or practice.

(2) If technical, scientific or engineering information is gained indicating that approved diesel machinery may be used in a manner which will afford workmen equal or greater protection than afforded by the provisions of these regulations, the commissioner may approve the use of the machinery in the manner which provides equal or greater protection.

(3) Mining Enforcement and Safety Administration approval of the permissibility of mobile diesel powered transportation equipment (hereinafter referred to as diesel machine(s) means only that the particular machine has met certain specific requirements of design and performance, but such approval does not guarantee that it is impossible to use a permissible machine in an unsafe manner. The manufacturer must develop equipment that will meet the particular requirements for approval, but it is the user's responsibility to see that the equipment is maintained in permissible condition and is used in a permissible manner. In addition to proper maintenance, the use of diesel machines underground involves certain other factors, such as ventilation, which are of equal importance in establishing safe operating conditions. It is absolutely essential to observe the requirements of these regulations in operating and maintaining such machines to avoid impairing their permissible status and thus defeat the protective features that are necessary for their safe use.

(4) Engine adjustments shall be verified by the manufacturer as being correct before each permissible diesel machine is operated in a coal mine.

(5) Alteration in design, substitution of components or subassemblies, or changes in conditions of operating permissible diesel machines shall not be made without prior concurrence of the Kentucky Department of Mines and Minerals and the Mining Enforcement and Safety Administration. When such changes are permitted additional engine tests and adjustments shall be required as necessary to ensure the safe operation of the particular machine in a coal mine.

Section 2. Proper Ventilation to be Maintained for the Mines in Which Diesel Powered Equipment is Used. (1) The use of diesel machines underground shall be restricted to haulageways and working places where positive (controlled flow) ventilation is maintained.

(2) The ventilating air in all mine workings where diesel machines are operated shall not contain combustible or other contaminating gases in such concentration that will affect combustion in the diesel engine by materially increasing production of toxic (poisonous) or other objectionable constituents in the engine exhaust.

(3) Each set of producing entries in which diesel powered equipment is used shall be placed on a separate split of air.

Section 3. In Mines Using Diesel Powered Equipment the Quantity of Ventilating Air Must Meet the Following Standards: (1) In addition to the amount of air required by the Kentucky Mining Law, at least 6,000 cubic feet of air per minute shall be provided for each diesel unit used in a working section of a mine. The air measurement shall be taken in the last open entry crosscut. If these locations cannot be used due to pillaring, the measurements shall be taken at the intake and return of the section. The quantity of ventilating air shall be adequate to dilute the toxic and/or objectionable constituents of the engine exhaust so that the composition of the air in each haulageway and working place connected thereto will meet authoritative standards for safe healthful working environment.

(2) The minimum quantity of ventilating air that must be supplied for a permissible diesel machine in a given time shall conform to that shown on the approval plate attached to the particular machine.

(3) The quantity of ventilating air in mine workings where diesel machines are operated shall be measured once during each working shift and a record of each measurement shall be kept in a book provided for this purpose.

(4) No person shall incorporate any device in the exhaust system of a permissible diesel machine that has not been approved in the tests that determine the permissibility of the machine.

Section 4. Maintaining Proper Quality Air in Mines That Use Diesel Powered Equipment. (1) The air supplied for ventilation where diesel machines are used in coal mines shall contain not less than 20.5 percent, by volume of oxygen (dry basis) and not more than 1.00 percent, by volume, of methane.

(2) The ventilating air in working places where diesel machines are operated shall be sampled and analyzed chemically often enough to assure that the composition of the engine intake air conforms with requirements stated in subsection (1) of this section and that the concentrations of contaminants, such as carbon dioxide, carbon monoxide, and oxides of nitrogen, when added to the ventilating air by the diesel-engine exhaust shall meet authoritative standards for safe healthful working environment.

(3) Ventilation and machine-operating conditions shall maintain the composition of the air in the pertinent mine workings so that the tolerable limits stated in subsections (1) and (2) of this section will not be exceeded.

(4) Diesel-engine exhaust shall not contain black smoke.

(5) When the conditions of the quality of air stated in subsections (1), (2), and (3) of this section are not maintained, as determined by analysis or other observation operation of diesel machines shall be stopped until the requirements of air quality are complied with.

(6) Records shall be kept of all air analyses and of any change(s) in ventilation or diesel engine adjustment resulting from the analyses.

Section 5. Maintenance of Diesel Machines to be Maintained According to the Following Rules: (1) The maintenance of diesel machines in permissible condition shall be delegated only to authorized, competent persons.

(2) Engine intake and exhaust systems shall be inspected visually at least once each working shift. Other diesel machine components shall be inspected in accordance with instruction of the manufacturer. Records shall be kept of the inspections.

(3) Maintenance, inspection and repair work shall be done in accordance with instructions of the manufacturer. Records shall be kept of maintenance, inspection and repair work.

Section 6. The Maintenance of the Engine-Fuel-Injection System. (1) Injection valves:

(a) Injection valves shall be maintained in proper operating condition. Particular attention shall be given to preventing imperfect atomization or distribution of the fuel.

(b) Replacements of worn or broken injection valves shall be identical with those on the engine when the diesel machine was approved as permissible.

(2) Fuel pump:

(a) The engine fuel pump shall be sealed or locked to

prevent tampering. The seal shall be broken only by an authorized competent person, when necessary to reset the fuel pump, after which the pump shall be resealed.

(b) Resetting of the stop limiting maximum fuel injection of the fuel pump shall be identical with the original setting provided by the manufacturer.

(c) Each shop or facility in which diesel engines are serviced shall be provided with equipment for properly measuring the quantity of fuel delivered by the fuel pump when operating at maximum fuel setting, or such adjustments shall be made only by a competent diesel service organization where such equipment is available.

(d) The fuel pump shall be set to deliver the maximum weight of fuel specified in the certifications provided by the Mining Enforcement and Safety Administration and the Kentucky Department of Mines and Minerals.

(e) When operating a diesel engine at altitudes exceeding 1,000 feet above sea level, the maximum quantity of fuel injected by the fuel pump shall be set in accordance with the liquid fuel rate-altitude table provided in the manufacturer's caution statement.

Section 7. The Procedures to Follow in Inspection and Maintenance of Engine-Intake System. (1) The engine-intake system including flame arrester(s), air cleaner, and all joints shall be inspected at intervals according to the manufacturer's general maintenance instructions.

(2) Inspection of the engine-intake system shall include tightness of all joints and cleanliness of flame-arrester surfaces.

(3) Periodic measurements shall be made of the vacuum in the engine-intake system to determine whether the air cleaner and flame arrester(s) require cleaning.

(4) The air cleaner of the engine-intake system shall be maintained in accordance with the manufacturer's instructions. The normal oil-filling level shall not be exceeded.

Section 8. When and How to Inspect and Maintain the Engine-Exhaust System. (1) The engine-exhaust system, including flame arrester(s), conditioner or cooling boxes, shutoff mechanism, water spray, and exhaust-dilution system shall be inspected at intervals according to the manufacturer's general maintenance instructions.

(2) Periodic measurements shall be made of the positive pressure in the engine-exhaust system to determine whether the exhaust flame arrester requires cleaning.

(3) The water supply for the exhaust-gas cooling system shall be replenished by an authorized person at the beginning of each working shift.

(4) When salts from evaporation of water in the exhaust-gas cooling system are deposited on auxiliaries, such as cooling boxes, conditioners and other parts of the system, such auxiliaries shall be flushed with water and cleaned to remove the salt deposits, as well as soot filtered from the exhaust gas.

(5) Float valves shall be serviced at intervals according to the manufacturer's instructions to maintain them in good operating condition.

(6) Functioning of the fuel shutoff mechanism actuated by the exhaust-gas temperature, shall be tested at least once every three (3) months. This test shall be made in a safe place--not in active face workings of a coal mine.

(7) All heated surfaces of the diesel engine shall be inspected and cleaned at intervals frequent enough to ensure that such surfaces are kept free of combustible materials, such as coal dust, diesel fuel, lubricants, and rags or waste.

(8) The exhaust-gas dilution system shall be inspected and cleaned at intervals frequent enough to ensure safe dilution of the exhaust gas when it is discharged from the diesel engine.

(9) Whenever the diesel-engine exhaust is smoky or objectionable odors are emitted in the exhaust, the cause shall be investigated immediately and corrected in accordance with the manufacturer's instruction.

Section 9. The Use and Maintenance of Electrical Components of Diesel Equipment. (1) Locks and seals. Electrical parts, such as battery boxes and headlights, shall be provided with locks and seals that are maintained where required to preserve the permissible status of a permissible diesel machine.

(2) Fastenings. Joints in motor casings, starting-switch enclosures, headlights, and other parts that are subject to arcing during normal operation shall be fastened securely. All bolts, cap screws, and other means of joining parts of casings and enclosures shall be kept in their proper places and secured tightly.

(3) Wiring and conduit.

(a) Wiring insulation shall be maintained in good condition and when worn or abraded shall be replaced with well-insulated wiring.

(b) Rubber hose, steel pipe, and other types of conduit for wiring shall be supported firmly at each end and between ends when the lengths are such as to require additional support. Conduit and other means of protecting wiring shall be kept in place and maintained in condition equivalent to that provided by the manufacturer for the permissibility tests.

(4) Headlight and instrument lenses. Lenses forming part of the explosion-proof casings of headlights or enclosures of instruments shall be held securely in place. Cracked lenses shall be replaced immediately.

(5) Overload and short-circuit protection. Tampering with fuses, relays or other means supplied by the manufacturer for overload and short-circuit protection of wiring and electrical parts shall not be permitted, nor shall the use of substitutes that nullify such protection be permitted.

(6) Battery. Battery-cell tops shall be maintained free of electrolyte and other foreign material. Connections between battery cells shall be kept tight and free of corrosion.

Section 10. Fuel Usage in Diesel Powered Equipment. (1) Specifications.

(a) The fuel for diesel engines of machines approved for service in underground mines shall conform to the equipment manufacturer's specifications for viscosity, pour point, cetane number, carbon residue and water. The flash point shall be not less than 140°F, and the Sulphur contents shall not exceed 0.5 percent by weight.

(b) Only distillate fuel shall be used in engines of permissible diesel-powered transportation equipment for underground mines.

(2) Storage and handling.

(a) Fuel taken underground shall be transported only in strong, tight metal containers that are provided with efficient closing devices.

(b) The quantity of fuel stored underground shall not exceed that required for twenty-four (24) hours operation of all diesel machines in use.

(c) Fuel taken underground and awaiting transfer to diesel machine fuel tanks shall be stored in a closed compartment, constructed of incombustible materials, and shall be kept in a well-ventilated location, the return air from which shall not pass through any active mine workings.

(d) The walls of a fuel-storage compartment shall form a liquid tight joint with the bottom of mine floor. Any opening in the fuel-storage compartment, such as a doorway, shall be provided with a sill high enough to form a catch-basin in the storage compartment to retain spilled fuel. The capacity of the catch-basin shall be large enough to hold the maximum quantity of fuel that is permitted to be stored underground.

(e) Diesel machine fuel tanks shall be filled only at the fuel-storage compartment. Fuel shall be transferred from the storage compartment to a machine fuel tank through flexible hose that is fitted with a self-closing valve.

(f) The fuel-handling system and the diesel machine shall be frame grounded when fuel is being transferred from the storage compartment to the machine fuel tank.

(g) The air vents on fuel-handling equipment shall be flameproof.

(h) When fuel is being transferred from the storage compartment to the machine fuel tank, the diesel engine shall be stopped.

(i) A supply of sand or other suitable incombustible material shall be available during the transfer of fuel from the storage compartment to the machine fuel tank for absorbing spilled fuel.

(j) All drain plugs in the fuel-handling system shall be threaded and sealed or locked in the closed position to prevent unintentional opening.

(k) Only trained authorized persons shall be permitted to handle fuel for diesel machines.

(l) In fuel-handling operations, precautions shall be observed to keep the fuel clean and free from contamination by foreign material, such as dirt, sediment and water.

(m) Fuel filters on diesel engines shall be cleaned regularly and repaired promptly as conditions require.

Section 11. Types of Fire Extinguishers Used and Their Storage. (1) Liquid carbon dioxide or pressurized dry-chemical fire extinguishers shall be installed at underground repair shops, machine barns, and fuel storage compartments.

Section 12. Maintenance of Underground Repair Shops and Machine-Storage Barns. (1) Ventilation:

(a) Underground repair shops and diesel machine storage barns shall be ventilated by a separate air split between the intake and return airways.

(b) When diesel machines are operated in underground repair shop or storage barn, or in the event of fire, arrangements shall be made to conduct the products of combustion therefrom directly to the return airway.

(2) Construction:

(a) Underground repair shops and machine-storage barns shall be lined with nonabsorbent, incombustible material. Doors or other means of closure shall be constructed of similar incombustible material.

(b) Floors of underground repair shops and machine-storage barns shall be impervious to oil and shall be so graded as to provide natural drainage to a sump or catch-basin to collect spilled oil.

(c) Spilled oil shall be cleaned up and removed from the sump or catch-basin promptly and stored in closed metal containers until disposed of on the surface.

(3) Repair operations. Welding or other operations that might create a fire hazard shall not be done unless precau-

tions are observed to prevent inadvertent ignition of diesel fuel or lubricants.

(4) Miscellaneous. A supply of sand or other incombustible material shall be kept in underground repair shops and machine-storage barns to aid in fire-fighting and to absorb spilled diesel fuel or lubricants.

Section 13. General Conditions Governing the Operation of Diesel Powered Equipment in Underground Mines. (1) The operation of diesel equipment in underground coal mines in Kentucky shall be under the supervision of a foreman holding a Kentucky Mine Foreman Certificate.

(2) Not more than two (2) diesel shuttle cars will be permitted to operate at the same time in a single air split. Provided, however, that the Commissioner of Mines and Minerals may if he determines that the safety or health of the employees will not be jeopardized, permit additional shuttle cars to be used.

(3) No diesel equipment will be permitted to operate in any section of a mine where room entries exceed three thousand feet in depth.

(4) The engine of a shuttle car shall be shut down at all times when not in use (that is, it must not be allowed to idle more than absolutely necessary).

(5) If the engine exhaust becomes more noticeable than normal, the equipment shall be removed from the faces and shut down until the proper repairs can be made to correct this condition.

(6) All employees working in sections where diesel equipment is used shall be furnished with self-rescue respirators which they shall carry at all times while on duty in the mine.

(7) No person who works in close proximity to mobile diesel equipment throughout the shift shall be permitted to work more than a ten-hour continuous shift in any twenty-four hours.

(8) Access to all company records such as maintenance, repairs, fuels, ventilation, etc., pertaining to the use of the underground diesel equipment shall be made available to representatives of the Kentucky Department of Mines and Minerals upon request. The mine operator shall keep and make available other pertinent records as prescribed by the Kentucky Department of Mines and Minerals.

(9) The operation of any diesel machine in any manner or under any condition that does not comply with the requirements of these regulations shall be considered by the Department as voiding its approval for underground use.

(10) Terminology used in these regulations is consistent with that of KRS 351.010 and 352.010 unless the context requires otherwise.

H. N. KIRKPATRICK, Commissioner

ADOPTED: September 19, 1974
APPROVED: October 9, 1974 ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: October 18, 1974 at 3:58 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Commissioner, Department of Mines and Minerals, P.O. Box 680, Lexington, Kentucky 40501.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
Office of the State Fire Marshal
(806 KAR 50:150)

RELATES TO: KRS 236.030
PURSUANT TO: KRS 13.082
SUPERSEDES: PSfty-BSR-I, PSfty-BSR-II, PSfty-BSR-III
NECESSITY AND FUNCTION: KRS 236.030 requires the Commissioner, upon advisement of the Board of Boiler Rules, to fix reasonable standards for the safe construction, installation, inspection and repair of boilers and pressure piping. This proposed regulation sets forth those standards and related administrative procedures.

Section 1. Definitions, as used in the Boiler Safety Rules: (1) "Act" shall mean the Kentucky Boiler Safety Act, KRS Chapter 236.

(2) "Department" shall mean the Department of Insurance.

(3) "Commissioner" shall mean the Commissioner of Insurance.

(4) "Board of Boiler Rules" shall mean the Board created by the Act and empowered to make, alter, amend, and interpret rules and regulations for the safe construction, installation, inspection, and repair of boilers and associated pressure piping within this Commonwealth.

(5) "Boiler Inspection Section" shall mean the agency within the Department of Insurance which administers the provisions of KRS Chapter 236.

(6) "Chief inspector" shall mean the person employed by the Commonwealth of Kentucky who shall supervise the work of the boiler inspectors and office staff under the general supervision of the commissioner and perform such other duties as may be prescribed.

(7) "Boiler inspector" shall mean any person employed by the Commonwealth of Kentucky for the purpose of inspecting boilers in accordance with provisions of the Act. Qualifying requirements are set forth in KRS 236.070 and 236.090. These requirements shall determine the applicants' ability to pass the National Board of Boiler and Pressure Vessel Inspectors examination. Successful completion of this written examination and granting of a National Board Commission is a requisite for permanent appointment as a boiler inspector employed by the Commonwealth of Kentucky. (See also Section 2, subsection (6).)

(8) "Special boiler inspector" shall mean any person employed by an insurance company authorized to insure boilers in this Commonwealth and who holds a commission as provided for in KRS 236.080.

(9) "Owner or user" shall mean any person, firm, or corporation owning or operating any boiler within this Commonwealth.

(10) "Internal inspection" shall mean an inspection made when a boiler is shut down.

(11) "External inspection" shall mean an inspection made when a boiler is in operation.

(12) "Inspection certificate" shall mean the certificate issued by the department to the owner or user following an inspection of a boiler as provided for in KRS 236.120, otherwise known and referred to as an operating certificate.

(13) "Commission" shall mean the written credential issued by the department to an inspector or special inspector under the provisions of KRS 236.070 or 236.080.

(14) "ASME boiler and pressure vessel code" shall mean the Power Boiler Code, Section I; the Nuclear Vessel Code, Section III; and Heating Boiler Code, Section IV, of the American Society of Mechanical Engineers with amendments and interpretations thereto made and approved by the Council of the Society, whose headquarters are at 345 East 47th Street, New York, New York, 10017, and from whom copies of the code with all amendments and interpretations can be obtained.

(15) "National Board (NB)" shall mean the National Board of Boiler and Pressure Vessel Inspectors whose headquarters are at 1155 North High Street, Columbus, Ohio, 43201, and who have also issued a National Board Inspection Code.

(16) "Code boiler (or standard boiler)" shall mean a boiler which bears the ASME symbol stamp, and the national board stamp. (See also subsection (37), this section.)

(17) "Noncode boiler (or nonstandard boiler)" shall mean a boiler that does not bear the ASME, or the national board stamp. (See also subsection (37), this section.)

(18) "Secondhand boiler" shall mean a boiler of which both the location and ownership have been changed after primary use.

(19) "Existing installations" shall mean and include any boiler constructed, installed, placed in operation, or contracted for before July 1, 1962.

(20) "Reinstalled boiler" shall mean a boiler removed from its original setting and re-erected at the same location or erected at a new location without change of ownership.

(21) "Condemned boiler" shall mean a boiler that has been inspected and declared unsafe or disqualified by legal requirements by an inspector qualified to take such action who has applied a stamping or marking designating its rejection.

(22) "Major repair" shall mean such repairs as would affect the strength of a boiler.

(23) "Approved" shall mean approved by the Board of Boiler Rules and the Commissioner of Insurance.

(24) "Boiler" shall mean a closed vessel intended for use in heating liquids by the direct or indirect application of heat to generate steam or other vapor to be used externally to itself and shall include power boilers, high temperature water boilers, hot water heating boilers, hot water supply boilers, steam jacketed steam kettles and autoclaves.

(25) "Power boiler" shall mean a steam or vapor boiler operating at a pressure of more than fifteen (15) lbs. per square inch gauge.

(26) "Low pressure heating boiler" shall mean a boiler operated at pressures not exceeding fifteen (15) lbs. per square inch gauge for steam or at pressures not exceeding 160 lbs. per square inch and temperatures not exceeding 250 degrees Fahrenheit for water.

(27) "High temperature water boiler" shall mean a boiler heating water at a temperature above 250 degrees Fahrenheit or a working pressure or safety relief valve setting above 160 P.S.I.

(28) "Miniature boiler" shall mean any boiler which does not exceed any of the following:

(a) Sixteen (16) inches inside diameter of shell.
(b) Twenty (20) square feet heating surface.
(c) Five (5) cubic feet gross volume.
(d) One hundred (100) lbs. P.S.I. maximum allowable working pressure.

(29) "Hot water supply boiler" shall mean a fired vessel furnishing hot water to be used externally to itself (such as domestic hot water supply) at pressures not exceeding 160 lbs. P.S.I. and temperatures not exceeding 250 degrees Fahrenheit. (See limitations set forth in subsection (39) of this section.)

(30) "Hot water storage tank" shall mean a pressure vessel, unfired but directly connected to and subject to the same pressures as a companion hot water supply boiler, the combination being used to heat and store hot water for use externally to itself.

(31) "Fired jacketed steam kettles" shall mean vessels in which steam pressure is generated and shall be classed as a boiler.

(32) "Expansion tank" shall mean a pressure vessel, unfired but directly connected to a hot water heating boiler to absorb or cushion expansion therein and subjected to comparable pressures with the boiler itself.

(33) "Nuclear vessel" shall mean a pressure vessel designed and constructed in accordance with Section III ASME Code. (See also subsection (37), this section.)

(34) "Nuclear energy system" shall mean that portion of a power plant that serves the purpose of producing and controlling output of thermal energy from nuclear fuel.

(35) "Pressure piping" shall mean any piping, (steam, vapor or water) carrying pressures emanating from a power or heating

boiler and of substantially the same pressures and temperatures as encountered in the boiler. It includes code piping as covered under ASME Boiler Code, Sections I and IV plus those specifications set forth in USA Standard Code for Pressure Piping B31.1 (Revised) published by American Society of Mechanical Engineers.

(36) "Underwriters laboratory label" shall mean the label of the Underwriters Laboratories, Inc., or other electrical testing laboratories, approved by the Board of Boiler Rules which must be affixed to all electric fired boilers. The label is to be applied on the completed unit or assembly by the manufacturer plus the American Society of Mechanical Engineers and National Board symbol stamping when required by this regulation.

(37) "State special" shall mean a boiler of any type or size defined under this section or under these rules and regulations and which carries neither the ASME symbol nor National Board stamping may be acceptable to the Boiler Section provided the manufacturer, installer, or owner can prove conclusively to the satisfaction of the Chief Inspector that the standard to which the boiler is built is at least equivalent to the applicable ASME Code. Acceptable methods of proof will be as set forth in Section 2, subsection (2) of this regulation.

(38) "State" or "Commonwealth" as used herein shall be synonymous.

(39) Hot water supply boilers, code limitations: Hot water supply boilers coming under jurisdiction of the Kentucky Boiler Safety Act, KRS Chapter 236, are those vessels not exempted under the Act and which fall under ASME Code limitations. Code limitations are as stated in ASME Code, Section IV, paragraph HG 102.2 and are quoted herewith:

"Hot water supply boilers which are directly fired with oil, gas or electricity are considered outside the jurisdiction of Section IV of the Code when none of the following limitations is exceeded:

(a) Heat input of 200,000 BTU per hour.
(b) Water temperature of 200 degrees Fahrenheit.
(c) Nominal water containing capacity of 120 gallons.

Except that such hot water supply boilers shall be equipped with safety devices in accordance with the requirements of paragraph HG 400.2 of the ASME Code, Section IV."

Section 2. Administration. (1) Manufacturers Data Report to be Filed:

(a) Manufacturers data report on boilers which are to be operated in this state, unless exempted by the Act, shall be filed with the National Board and copies forwarded to the bureau.
(b) Manufacturers data reports on all boilers of steel construction, regardless of pressure, unless exempted by the Act, shall be filed with the National Board and copies forwarded to the bureau.
(c) Details of boilers of special design (not fully complying with ASME Codes) shall be submitted to the boiler section and approval secured before construction or field erection is started.

(2) When boilers or pressure vessels are designed and fabricated according to the requirements of the applicable sections of the ASME Boiler and Pressure Vessel Code, but are not stamped with the ASME code symbol stamp, individual handling is required for their installation. The prospective owner or user who desires jurisdiction authority acceptance must pursue the following procedure in each individual case.

(a) Prior to construction of the boiler or pressure vessel the proposed owner, user, or his authorized agent shall make written application for permission to install the boiler or pressure vessel in the State of Kentucky. The application may be by letter or application permit form of the jurisdiction and shall be directed to the Chief Boiler Inspector, 314 Capitol Plaza Tower, Frankfort, Kentucky 40601.
(b) He shall submit with the application letter or application permit the following data, material and information to establish ASME Boiler and Pressure Vessel Code equivalency:

1. Detailed shop drawings and welding details of the proposed construction. All material shall be in the English language and U.S.A. units of measurements as used in the ASME Boiler Pressure Vessel Codes.
2. Design calculation and supporting data which include pressure (psi), temperature (deg. F.), use and other service conditions.
3. Specifications for all material to be used in construction. These should conform to the applicable ASME standards or their suitable equivalent. If reference is made to a standard or specification of a country other than the U.S.A., please attach a copy and indicate how the material is considered equivalent.
4. Copies of: All welding procedures to be used, welding qualification test reports for all procedures to be used, and performance test reports for each welding operator or welder to be used. The procedures and tests required in this subsection shall be made in accordance with the ASME Boiler and Pressure Vessel Code, Section IX, "Welding Qualifications."
5. Where the design exceeds ASME code limitation, recognized engineering practices shall be used and identified in the submittal.
6. Design drawings and calculations shall be certified by a professional engineer holding a license acceptable to the boiler inspection section.
7. The manufacturer of the vessel shall identify the inspection agency whose personnel will make the shop inspections and sign the manufacturers' data reports for the proposed vessel.
8. The shop inspection agency shall furnish the qualifications and experience of the individual inspector or inspectors assigned to make the shop inspections, and shall give his jurisdiction commission number.

(c) All details mentioned in paragraphs (a) through (b) inclusive, above, must be acceptable to the Boiler Inspection Section, State of Kentucky.
(d) When the boiler or pressure vessel is completed, a manufacturers' data report signed by the manufacturer and shop inspector shall be submitted to the jurisdictional authorities containing the equivalent type data required by the ASME Boiler and Pressure Vessel Code. (Do not use ASME data report forms.)
(e) The vessel will be inspected by a qualified boiler and pressure vessel inspector in the employ of the bureau upon arrival in the State of Kentucky, and before installation, to make certain the above provisions have been complied with and that the vessel is properly marked and stamped for identification.

(3) Inspection of Boilers:

(a) All power boilers shall be inspected annually internally and externally while not under pressure and shall also be inspected annually externally while under pressure. One of the above inspections shall be a certificate inspection.
(b) All low pressure heating boilers shall be inspected biannually both internally and externally where construction will permit. One (1) of the above inspections shall be a certificate inspection.
(c) A grace period of two (2) months beyond the periods specified in paragraphs (a) and (b) of this subsection may elapse between inspections.
(d) Power boilers operated in such a manner that experience indicates internal corrosion of deposits would not be anticipated may have the internal inspection period extended by the boiler inspection section if requested in writing by the owner or user and if circumstances warrant.

(4) Installation Inspection or First Inspection and Stamping of Boilers:

(a) Upon completion of installation or at the time of first inspection, a Commonwealth of Kentucky serial number will be assigned to the boiler or water heater, applied as follows:

1. Steel boilers will be stamped with the letters "KY" followed by the state serial number assigned. Stamping will be applied in the immediate area of code stamping on the boiler and will be in letters and figures not less than five-sixteenths (5/16) inch in height. A metal tag may additionally be used showing identical lettering and serial number as used in the stamping, this tag to be securely affixed in the area of manufacturer's name plate or data plate.
2. Cast iron boilers shall have securely attached to the boiler (preferably adjacent to the manufacturer's data plate or in the most conspicuous area) a metal tag not less than one (1) inch in height which shall have the letters "KY" and the state serial number stamped thereon.
3. Hot water boilers shall have securely attached to the heater (preferably adjacent to the manufacturer's data plate or in most conspicuous area) a metal tag not less than one (1) inch in height which shall have the letters "KY" and the state serial number stamped thereon.

(b) New installations completed subsequent to July 1, 1970, are subject to inspection as set forth in the Act. Such installations will be inspected for conformance with applicable ASME Codes and these rules and regulations and additionally will be subject to inspection of pressure piping carrying steam, vapor or water pressures emanating from the boiler, as follows:

1. Power boiler piping shall be inspected in all segments of the system carrying substantially the same pressures and temperatures encountered in the boiler itself. Inspection shall be to the extent necessary to secure compliance with engineering design, material specifications, fabrication, assembly and test requirements of Section I, ASME Boiler Code, for that piping between the boiler and the first (or second) stop valve and requirements of USA Standard Code for Pressure Piping (USAS 31.1 or subsequent revisions) for pressure piping beyond Section I, ASME Code limits.
2. The installing contractor, where welded assembly has been used, must be able to present for the inspector's review, his welding procedures and proof of qualification of his welding operators. The contractor is responsible for the quality of the welding done by his organization.
3. Visual inspection of welding performed by qualified welders is normally deemed sufficient unless codes or engineering specifications state otherwise, or unless the inspector wishes to augment this visual inspection with other nondestructive tests including radiography. All tests or retests required by the

inspector shall be at the owner's or contractor's expense.

4. The inspector may accept signed certification of the contractor regarding satisfactory hydrostatic tests performed on piping or he may witness such tests himself. He may also, if he deems it expedient, require such tests to be performed in his presence.
5. Heating boiler piping shall be inspected in all segments of the system carrying substantially the same pressure and temperature as the boiler itself. Inspection shall be to the extent necessary to assure good fitup, assembly, tightness and support of the system. Welded joints shall be visually inspected for soundness of the weld and freedom from undercutting, cracking and other surface imperfections.
6. Hot water supply boiler installations shall be inspected for conformance with Section IV, ASME Code.

(5) Notification of Inspection: The owner or user shall prepare each boiler for internal inspection and shall prepare for and apply a hydrostatic pressure test whenever necessary, on the date specified by the inspector, which date shall not be less than seven (7) days after the date of notification.

(6) Examinations for commission:

(a) Examinations for commission as boiler inspector shall be given by the Department of Insurance, Boiler Section, four (4) times each year; namely, the first Wednesday of the months of March, June, September, and December. Special examinations will be held when considered necessary by the department. Qualifications shall be set forth in KRS 236.070 and 236.090 of the Act and Section 1, subsection (7) of this regulation.

(b) Application for employment as an inspector shall be in writing, upon a form to be furnished by the commissioner, stating the school education of the applicant, a list of his employers, his period of employment and position held with each employer. Applications containing willful falsification or untruthful statements shall be rejected. If the applicant's history and experience meet with the approval of the Board of Boiler Rules, he shall be given a written examination, prepared by the National Board of Boiler and Pressure Vessel Inspectors in accordance with their by-laws, Article IV, dealing with the construction, installation, operation, maintenance, and repair of boilers and their appurtenances. The applicant shall be accepted or rejected for permanent status on the merits of this examination.

(7) Examination Fees: The Commonwealth shall be reimbursed for the actual cost incurred by the Board of Boiler Rules in monitoring the National Board examination. Should there be more than one (1) applicant taking this National Board examination, the cost shall be shared equally by each company or individual represented. The parties shall be notified after the examination has been given as to the cost. Checks for the examination fee shall be made payable to the department, board or boiler section.

(8) Commissions:

(a) Upon the request of a boiler insurance company, authorized to do business in this Commonwealth, a commission as a special boiler inspector and an identifying commission card shall be issued by the department to an inspector in the employ of such insurance company provided the inspector has successfully passed the written examination as set forth in subsection (6) of this section or holds a commission as outlined in subsection (9) of this section.

(b) The commission and the identifying commission card shall be returned to the department when the inspector to whom the commission was issued is no longer in its employ, or at the request of the department.

(c) The commission issued to such boiler inspector may be suspended by the department and may be revoked upon ten (10) days notice to the inspector and to the employer of such inspector for incompetency or untrustworthiness; for willful falsification of any matter or statement contained in his application, or in the report of an inspection; or for other sufficient reasons; but the holder of such commission shall be entitled to a hearing before the department before the revocation of said commission.

(9) Reciprocal Commissions:

(a) Upon the request of a boiler insurance company, authorized to do business in this Commonwealth, a commission and identifying commission card as special boiler inspector shall be issued by the department to an inspector in the employ of such insurance company provided the inspector is at least twenty-five (25) years of age, has the experience prescribed in subsection (6) of this section, and holds either:

1. A certificate of competency, or
2. A commission issued by a state which has adopted the ASME Boiler and Pressure Code, or
3. A commission issued by the National Board of Boiler and Pressure Vessel Inspectors.

(b) Application for a reciprocal commission shall be made on a form to be furnished by the department and shall be accompanied by a photostatic copy of the applicant's state or national board commission or certificate of competency, and a fee of ten dollars ($10).

(10) Inspectors to Have No Other Interests: Inspectors shall not be engaged in the sale of any article or device that is related to boilers and shall devote their full time to inspection work.

(11) Inspection Reports: Inspectors shall submit to the department an inspection report on each boiler subject to inspection. Complete data shall be submitted on each boiler on a form suggested by the National Board Inspection Code at the time of the first internal inspection. Subsequent internal inspection shall be reported on a form suggested by the National Board Inspection Code. Reports shall be submitted within thirty (30) days of the date of the inspection. External inspections shall be reported on a form suggested by the National Board Inspection Code immediately when hazardous conditions affecting the safety of the boiler are found to exist.

(12) Insurance Companies to Notify the Department of New, Cancelled, or Suspended Risks: All insurance companies shall notify the department within thirty (30) days of all boiler risks written, cancelled, not renewed, or suspended because of unsafe conditions.

(13) Insurance Companies to Notify the Department of Defective Boilers: If a special boiler inspector, upon the first inspection of a boiler, finds that the boiler or any of the appurtenances are in such condition that his company refuses insurance, the company shall immediately notify the department and submit a report of the defects.

(14) Defective Conditions Disclosed at Time of External Inspections: If, upon an external inspection, there is evidence of a leak or crack, enough of the covering of the boiler shall be removed to satisfy the inspector in order that he may determine as to the safety of the boiler; or, if the covering cannot be removed at that time, he may order the operation of the boiler stopped until such time as the covering can be removed and proper examination made.

(15) Owner to Notify the Department in Case of Accident: When an accident occurs which serves to render a boiler inoperative, the owner or user shall immediately notify the department, and submit a detailed report of the accident. In case of serious accident, such as explosion, notice shall be given immediately by telephone, telegraph, or messenger and neither the boiler nor any of the parts thereof shall be removed or disturbed before an inspection has been made by an inspector, except for the purpose of saving a human life.

(16) Inspection Certificate Fees:

(a) If a boiler shall, upon inspection, be found to be suitable and to conform to this regulation, the owner or user shall pay directly to the department a fee of two dollars ($2) for each boiler required to be inspected under this Act before an inspection certificate shall be issued.

(b) If the owner or user of each boiler required to be inspected refuses to allow an inspection to be made or refuses to pay the above fee, the inspection certificate shall be suspended by the department until the owner or user complies with the requirements.

(c) The owner or user who causes a boiler to be operated without possessing a valid certificate of inspection shall be subject to the penalties provided for in KRS 236.990.

(d) Certificates shall be posted under glass in the room containing the boiler inspected or, in the case of a portable boiler, shall be kept in a metal container, either fastened to the boiler or kept in a tool box accompanying the boiler.

(17) Validity of Inspection Certificates: An inspection certificate, issued in accordance with KRS 236.120, shall be valid until expiration unless, some defect or condition affecting the safety of the boiler is disclosed. A certificate issued for a boiler inspected by a special boiler inspector shall be valid only if the boiler for which it was issued continues to be insured by a duly authorized insurance company.

(18) Suspension of Certificate of Operation: If, upon inspection, a boiler is found to be in such condition that it is unsafe to operate, the inspection certificates shall be suspended by the department. Any person, firm, partnership, or corporation causing such objects to be operated shall be subject to the penalties provided for in KRS 236.990.

(19) Condemned Boilers:

(a) Any boiler having been inspected and declared unsafe by the chief or boiler inspector shall be stamped with an arrowhead stamp having an overall length of one-half (1/2) inch and width of three-eights (3/8) inch on either side of the letters "XX" and the letters "KY", as shown by the following facsimile, which will designate a condemned boiler: XX KY XX.

(b) Any person, firm, partnership, or corporation using or offering for sale a condemned boiler for operation within this Commonwealth shall be subject to the penalties in KRS 236.990.

(20) Nonstandard Boilers:

(a) Shipment of nonstandard boilers or hot water supply boilers into this Commonwealth for use is prohibited, provided same are not exempted under the Act.

(b) A Nonstandard boiler or hot water supply boiler now in use in this Commonwealth, if removed from the Commonwealth, may not be brought in and reinstalled.

(21) Secondhand Boilers: Before a secondhand boiler can be shipped into this Commonwealth, an inspection shall be made by a boiler inspector, or a special inspector holding a national

board commission, and the data submitted by him shall be filed by the owner or user of the boiler with the department for approval.

(22) Reinstalled Boilers: In any case where a boiler within the Commonwealth is moved and reinstalled, the fittings and appliances must comply with the ASME Boiler and Pressure Vessel Code.

(23) Factors of Safety for Existing Installations: The inspector is authorized to increase factors of safety if the condition of the boiler warrants it. If the owner or user does not concur with the inspector's decision, he may appeal to the department who may request a joint inspection by the chief inspector and the boiler inspector or special inspector. Each inspector shall render his report to the department, who shall render the final decision, based upon the data contained in all the inspectors' reports.

(24) Major Repairs: Where a major repair is necessary, an inspector shall be called for consultation and advice as to the best method of making such repair; after such repair is made, it shall be subject to the approval of the inspector. Repairs to all boilers, and their appurtenances, shall conform to the requirements of the National Board of Boiler and Pressure Vessel Inspectors Inspection Code.

(25) Repairs by Welding: Welding repairs shall be performed in accordance with the rules recommended by the National Board of Boiler and Pressure Vessel Inspectors Inspection Code.

(26) Riveted Patches: Riveted patches shall be designed and installed in accordance with the rules recommended by the National Board of Boiler and Pressure Vessel Inspectors Inspection Code.

(27) Removal of Safety Appliances: No person, except under the direction of an inspector, shall attempt to remove or shall do any work, upon any safety appliance, while a boiler is in operation. Should any of these appliances be repaired during an outage of a boiler, they must be reinstalled and in proper working order before the object is again placed in service.

(28) Inspection Fees: The installing contractor, owner or user of any boiler not exempted under the Act and required to be inspected by a boiler inspector, shall pay to the department following inspection of the boiler, fees in accordance with KRS 236.130.

(29) Other Inspection Fees:

(a) Shop inspections made by boiler inspectors at the request of a boiler manufacturer, installer, engineering contractor, or owner shall be charged for at the following rates:

1. $75 for one-half (1/2) day of four (4) hours or less.
2. $100 for one (1) day of over four (4) hours.
3. $120 for eight (8) hours or any part thereof on Saturdays, Sundays, or public holidays.
4. $15 per hour for overtime in excess of eight (8) hours in any one (1) day.

Plus itemized expenses to include mileage, lodging, meals and incidentals. These charges shall not void regular fees for inspection and certificate when the boiler or boilers are completed.

(b) Charges for inspection of second-hand equipment shall be at the rates specified above plus charges for mileage, lodging, meals and incidentals. These charges shall not void regular fees for inspection and certificate when the boiler or boilers are reinstalled.

Section 3. New Installations, Power Boilers: (1) Requirements:

(a) No boiler, except reinstalled boilers and those exempted by the Act, shall hereafter be installed in this Commonwealth unless it has been constructed, inspected and stamped in conformity with ASME Boiler and Pressure Vessel Code for Power Boilers and is approved, registered, and inspected in accordance with the requirements of this regulation.

(b) A boiler having the standard stamping of another state that has adopted a standard of construction equivalent to the standard of the Commonwealth of Kentucky may be accepted by the department; provided, however, that the person desiring to install the boiler shall make application for the installation and shall file with this application the manufacturer's data report covering the construction of the boiler in question. (See also "State Specials" Section 1, subsection (37) of this regulation.)

(c) All new boiler installations, including reinstalled boilers shall be installed in accordance with the requirements of the latest revision of the ASME Boiler and Pressure Vessel Code for Power Boilers and this regulation.

(d) Where special designs are not covered by said code, their construction may be determined by the manufacturer in cooperation with the purchaser, subject to the approval of the chief inspector and the Board of Boiler Rules. Upon completion of the installation, all boilers and pressure piping shall be inspected as set forth in Section 2 of this regulation.

Section 4. Existing Installations, Power Boilers: (1) Maximum Allowable Working Pressure for Standard Boilers: The maximum allowable working pressure for standard boilers shall be determined in accordance with the applicable provision of the edition of the ASME Boiler and Pressure Vessel Code for Power Boilers under which they were constructed and stamped.

(2) Maximum Allowable Working Pressure for Nonstandard Boilers:

(a) The maximum allowable working pressure on the shell of a nonstandard boiler or drum shall be determined by the strength of the weakest section of the structure, computed from the thickness of the plate, the tensile strength of the plate, the efficiency of the longitudinal joint or tube ligaments, the inside diameter of the weakest course and the factor of safety allowed by this regulation.

(TS times t times E) divided by (R times FS) equals maximum allowable working pressure in psig.
Where:
TS = ultimate tensile strength of shell plates psi.
t = minimum thickness of shell plate, in weakest course, in inches.
E = efficiency of longitudinal joint.

For riveted construction, E shall be determined by rules given in Paragraph PR-15 of ASME Boiler and Pressure Vessel Code for Power Boilers.

For tube ligaments, E shall be determined by rules given in Paragraph PG-53 of ASME Boiler and Pressure Vessel Code for Power Boilers.

For seamless construction, E shall be considered one hundred percent (100%).

R = inside radius of the weakest course of the shell or drum in inches.
FS = factor of safety permitted.

(b) Tensile Strength: When the tensile strength of steel of wrought iron shell plates is not known, it shall be taken at 55,000 psi for steel and 45,000 psi for wrought iron.

(c) Crushing Strength of Mild Steel: The resistance to crushing of mild steel shall be taken at 95,000 psi of cross section area.

(d) Strength of Rivets in Shear: When computing the ultimate strength of rivets in shear, the following values in pounds psi of the cross sectional area of the rivet shank shall be used:

Iron rivets in single shear.....38,000 lbs.
Iron rivets in double shear.....76,000 lbs.
Steel rivets in single shear.....44,000 lbs.
Steel rivets in double shear.....88,000 lbs.

When the diameter of the rivet holes in the longitudinal joints of a boiler is not known, the diameter and cross sectional area of rivets, after driving, may be selected from the following table or as ascertained by cutting out one (1) rivet in the body of the joint:

TABLE-SIZES OF RIVETS BASED ON PLATE THICKNESS

Thickness of plate	1/4"	9/32"	5/16"	11/32"	3/8"	13/32"
Diameter of rivet after driving	11/16"	11/16"	3/4"	3/4"	13/16"	13/16"
Thickness of plate	7/16"	15/32"	1/2"	9/16"	5/8"	———
Diameter of rivet after driving	15/16"	15/16"	15/16"	1-1/16"	1-1/16"	———

(e) Factors of Safety: The following factors of safety shall be increased by the inspector if the condition and safety of the boiler demand it; the lowest factor of safety permissible on existing installations shall be four point five (4.5) excepting for horizontal return tubular boilers having continuous longitudinal lap seams more than twelve (12) feet in length where the factor of safety shall be eight (8), and when this latter type of boiler is removed from its existing setting, it shall not be reinstalled for pressure in excess of fifteen (15) lbs. psig. Reinstalled or secondhand nonstandard boilers shall have a minimum factor of safety of six (6) when the longitudinal seams are of lap riveted construction, and minimum factor of safety of five (5) when the longitudinal seams are of butt and double strap construction.

(3) Age Limit of Fire Tube Boilers: The age limit of a horizontal return tubular, flue, or cylinder boiler having a longitudinal lap joint and operating at a pressure in excess of fifty (50) lbs. psig shall be twenty (20) years.

attached in a manner to prevent the valve from being | size. The inlet opening shall have an inside diame-

(4) Welded Boilers: Boilers having either longitudinal or circumferential seams of fusion welded construction shall have been constructed and stamped in accordance with the rules and regulations of the ASME Boiler and Pressure Vessel Code of Power Boilers or shall have the standard stamping of a state that has adopted a standard of construction equivalent to the standards of the ASME Boiler and Pressure Vessel Code for Power Boilers.

(5) Cast Iron Headers and Mud Drums: The maximum allowable working pressure on a water tube boiler, the tubes of which are secured to cast iron or malleable iron headers, or which have cast iron mud drums, shall not exceed 160 lbs. psig.

(6) Pressure on Cast Iron Boilers: The maximum allowable working pressure for any cast iron boiler, except for hot water boilers, shall be fifteen (15) lbs. psig.

(7) Safety Valve Requirements:

(a) The use of weight-lever safety valves is prohibited and these valves shall be replaced by safety valves that conform to the requirements of the ASME Boiler and Pressure Vessel Code for Power Boilers.

(b) Safety valves having either the seat or disc of cast iron shall not be used.

(c) Each boiler shall have at least one (1) safety valve, and, if it has more than 500 square feet of water heating surface, it shall have two (2) or more safety valves.

(d) Safety valves and safety relief valves shall be installed with their spindles vertical.

(e) The method of computing the steam generating capacity of the boiler shall be as given in paragraph A-12 of the ASME Boiler and Pressure Vessel Code for Power Boilers. The safety valve or valves shall be connected to the boiler, independent of any other steam connection, and attached to the boiler, without intervening pipe or fittings. Where alteration is required to conform to this regulation, owner and users shall be allowed one (1) year in which to complete the work. No valve of any description shall be placed between the safety valve and the boiler, nor on the discharge pipe (if used) between the safety valve and atmosphere. When a discharge pipe is used, it shall be full size and fitted with an open drain to prevent water lodging in the upper part of the safety valve or discharge pipe and supported independently of the safety valve. When an elbow is placed on a safety valve or discharge pipe, it shall be located close to the safety valve outlet. All safety valve discharges shall be so located or piped so as not to endanger persons using walkways or platforms used to control the main valves of boilers or steam headers.

(f) The safety valve capacity of each boiler shall be such that the safety valve or valves will discharge all the steam that can be generated by the boiler without allowing the pressure to rise more than six (6) percent above the maximum allowable working pressure.

(g) For each boiler, one (1) or more safety valves on the boiler proper shall be set at or below the maximum allowable working pressure. If additional valves are used, the highest pressure setting shall not exceed the maximum allowable working pressure by more than three (3) percent. The complete range of pressure settings of all the saturated steam safety valves on a boiler shall not exceed ten (10) percent of the highest pressure to which any valve is set. When two (2) or more boilers operating at different pressures and safety valve settings are interconnected, the lower pressure boilers or interconnected piping shall be equipped with safety valves of sufficient capacity to prevent overpressure considering the generating capacity of all boilers. In those cases where the boiler is supplied with feed water directly from pressure mains without the use of feeding apparatus (not to include return traps), no safety valve shall be set at a pressure greater than ninety-four (94) percent of the lowest pressure obtained in the supply main feeding the boiler.

(h) The relieving capacity of the safety valves on any boiler may be checked by one (1) of the three (3) following methods, and, if found to be insufficient, additional capacity shall be provided.

1. By making the accumulation test, which consists of shutting off all other steam discharge outlets from the boiler and forcing the fires to the maximum. The safety valve capacity shall be sufficient to prevent a pressure in excess of six (6) percent above the maximum allowable working pressure. This method should not be used on a boiler with a superheater or reheater.
2. By measuring the maximum amount of fuel that can be burned and computing the corresponding evaporative capacity (steam generating capacity) upon the basis of the heating valve of this fuel. These computations shall be made as outlined in the Appendix of the ASME Boiler and Pressure Vessel Code for Power Boilers.
3. By determining the maximum evaporative capacity by measuring the feed water.
4. When either of the methods outlined in subparagraphs 1. or 2. is employed, the sum of the safety valve capacity shall be equal to or greater than the maximum evaporative capacity (maximum steam generating capacity) of the boiler. The minimum safety valve or safety relief valve relieving capacity for other than electric boilers shall be determined on the basis of the pounds of steam generated per hour per square foot of boiler heating surface and water wall heating surface, as given in the following table:

MINIMUM POUNDS OF STEAM
PER HOUR PER SQUARE FOOT OF SURFACE

	Fire Tube Boilers	Water Tube Boilers
Boiler heating surface		
Hand fired	5	6
Stoker-fired	7	8
Oil-, gas-, or pulverized-fuel-fired	8	10
Waterwall heating surface		
Hand-fired	8	8
Stoker-fired	10	12
Oil-, gas-, or pulverized-fuel-fired	14	16

a. When a boiler is fired only by a gas having a heat value not in excess of 200 BTU per cubic foot, the minimum safety valve or safety relief valve relieving capacity may be based on the values given for hand-fired boiler above.

b. The minimum safety valve or safety relief valve relieving capacity for electric boilers shall be three and one-half (3-1/2) pounds per hour per kilowatt input.

(8) Boiler Feeding and Feed Piping:

(a) All boilers shall have a feed supply which will permit the boiler to be fed at any time while under pressure.

(b) Except as provided for below, boilers having more than 500 square feet of water-heating surface shall have at least two (2) means of feeding water. Each source of feeding shall be capable of supplying water to the boiler at a pressure of three (3) percent higher than the highest setting of any safety valve on the boiler.

(c) For boilers that are fired with solid fuel not in suspension and for boilers whose setting or heat source can continue to supply sufficient heat to cause damage to the boiler if the feed supply is interrupted, one such means of feeding shall be steam operated.

(d) Boilers fired by gaseous, liquid, or solid fuel in suspension may be equipped with a single means of feeding water provided means are furnished for the immediate shut off of heat input if the water feed is interrupted. For boilers having a water-heating surface of not more than 100 square feet, the feed piping and connection to the boiler shall not be smaller than one-half (1/2) inch pipe size. For boilers having a water-heating surface more than 100 square feet, the feed piping and connection to the boiler shall not be less than three-fourths (3/4) inch pipe size.

(e) High temperature water boilers shall be provided with means of adding water to the boiler or system while under pressure. The feed water shall be introduced into the boiler in such a manner that it will not be discharged close to riveted joints of shell, or furnace sheets, or directly against surfaces exposed to gases at high temperature, or direct radiation from the fire.

(f) The scale on the dial of the pressure or altitude gauge shall be graduated to not less than one and one-half (1-1/2) times the maximum allowable working pressure. The gauge shall be provided with effective stops for the indicating pointer at the zero-point and at the maximum pressure point. Pressure or altitude gauge connections shall be of nonferrous composition when smaller than one (1) inch size and longer than five (5) feet between the gauge and point of connection of pipe to boiler, and also when smaller than one-half (1/2) inch pipe size and shorter than five (5) feet between the gauge and point of connection of pipe to boiler.

(9) Thermometers: Each hot water heating boiler shall have a thermometer so located and connected that it shall be easily readable when observing the water pressure or altitude. The thermometer shall be so located that it shall, at all times, indicate the temperature in degrees fahrenheit of the water in the boiler at or near the outlet.

(10) Temperature Combustion Regulators: A temperature combustion regulator, which will control the rate of combustion to prevent the temperature of the water from rising above 250 degrees fahrenheit, at or near the outlet, or a thermometer device which will relieve the pressure on the boiler when the temperature exceeds 250 degrees fahrenheit, shall be used on all hot water heating and hot water supply boilers automatically fired.

(11) Bottom Blowoff and/or Bottom Drain Valves: Each boiler shall have a bottom blowoff pipe connection fitted with

a gate, cock, or "Y" type valve, connected with the lowest water space practicable and of a size as shown in chart, sub-section (5) of Section 5.

(12) Steam Gauges: Each steam boiler shall have a steam pressure gauge connected to the steam space of the boiler itself or on steam pipe near the boiler. The graduations of the steam gauge shall not be less than fifteen (15) lbs. nor more than thirty (30) lbs.

(13) Water Gauge Class and Gauge Cocks:

(a) Each steam boiler shall have at least one (1) water gauge glass attached to the water column or boiler by means of valved fittings. The lower fitting shall be equipped with a drain cock. The lowest visible part of the glass shall be above the heating surfaces in the primary combustion chamber.

(b) The lower water gauge fitting shall be equipped with a drain cock of the straight-way type with opening not less than one-fourth (1/4) inch diameter to facilitate cleaning. If the drain cock does not comply with this requirement, the boiler shall have two (2) or more gauge cocks located within the visible length of the glass, except when such boiler is fitted with two (2) water gauge glasses.

(14) Water Levels - Steel Boilers: The lowest visible part of the water gauge glass shall not be lower than the lowest safe water line recommended by the boiler manufacturer and approved by his authorized shop inspection agency.

(15) Cast Iron Boilers: The front section of cast iron boilers shall have marked in the casing the normal water level, except this marking may be omitted when the water gauge fittings are connected to tapped openings provided in the boiler by the manufacturer for that purpose.

(16) Stop Valves and Check Valves: If a boiler may be closed off from the heating system by closing a steam stop valve, there shall be a check valve in the condensate return line between the boiler and the system. If any part of a heating system may be closed off from the remainder of the system by closing a steam stop valve, there shall be a check valve in the condensate return pipe between the boiler and the system.

(17) Feed Water Connections: Feed water connections shall be independent of any water gauge connections and be made to the condensate return pipe or reservior of the condensate return pump. There should be a stop valve and a check valve in the feed water line at the boiler.

(18) Return Pump: Each condensate return pump, where practicable, shall be provided with an automatic water level control set to maintain the water level within the limits of two (2) gauge cocks.

(19) Return Piping:

(a) For arrangements of return piping, feed water lines, pump return lines, headers, and drip legs, copies can be obtained from the Office of Fire Marshal.

(b) Washout openings may be used for return pipe connections and the washout plug (or close nipple and cap) placed in a tee so the plug or cap is directly opposite and as close as possible to the opening in the boiler.

(20) Repairs and Renewals of Fittings and Appliances: Whenever repairs are made to fittings or appliances, or it becomes necessary to replace them, the work must comply with the ASME Boiler and Pressure Vessel Code.

(21) Gas fired boilers shall be equipped with a furnace flame control so located and connected that in the case of a flame failure the gas fuel will be completely cut off and require manual reset and purging time delay that will purge the furnace thoroughly before relighting.

(22) Expansion or Cushion Tanks:

(a) All hot water heating systems shall be so installed that there will be no opportunity for the fluid-relief column to freeze or to be accidentally shut off.

(b) If the system is equipped with an open expansion tank, and indoor overflow from the upper portion of the expansion tank must be provided, in addition to the open vent, the indoor overflow to be carried within the building to a suitable plumbing fixture, or to the basement. If the system is of the closed type, an airtight tank, or other suitable air cushion, must be installed that will be consistent with the volume and capacity of the system.

Section 5. New Installations, Heating Boilers:

(1) Requirements:

(a) No heating boiler, except reinstalled boilers and those exempted by these Rules and Regulations, shall hereafter be installed in this Commonwealth unless it has been constructed, stamped, and inspected in conformity with the ASME Boiler and Pressure Vessel Code for Heating Boilers, and is approved, registered, and inspected in accordance with the requirements of this regulation. (See also "State Specials" Section 1, subsection (37).)

(b) All new heating boiler installations, including reinstalled boilers, must be installed in accordance with the requirements of the latest revision of the ASME Boiler and Pressure Vessel Code for Heating Boilers and this regulation.

(2) Safety Valve Requirements for Steam Boilers:

(a) Each steam boiler shall have one (1) or more officially rated safety valve of the spring-pop type adjusted and sealed to discharge at a pressure not to exceed fifteen (15) lbs. psi. Seals shall be attached in a manner to prevent the valve from being taken apart without breaking the seal. The safety valves shall be arranged so that they cannot be reset to relieve at a higher pressure than the maximum allowable working pressure of the boiler. For iron and steel bodied valves exceeding two (2) inch pipe size, the drain hole, or holes, shall be tapped not less than three-eighths (3/8) inch pipe size.

(b) No safety valve for a steam boiler shall be smaller than three-fourths (3/4) inch unless the boiler and radiating surfaces consist of a self-contained unit. No safety valve shall be larger than four and one-half (4-1/2) inches. The inlet opening shall have an inside diameter equal to, or greater than, the seat diameter.

(c) The minimum relieving capacity of valve, or valves, shall be governed by the capacity-marking on the boiler.

(d) The minimum valve capacity in pounds per hour shall be the greater of that determined by dividing the maximum BTU output at the boiler nozzle obtained by the firing of any fuel for which the unit is installed by 1,000, or shall be determined on the basis of the pounds of steam generated per hour per square foot of boiler heating surface as given in the following table. In many cases, a greater relieving capacity of valves will have to be provided than the minimum specified by these rules. In every case, the requirements of paragraph (e) of this subsection shall be met.

MINIMUM POUNDS OF STEAM PER HOUR
PER SQUARE FOOT OF HEATING SURFACE

Boiler Heating Surface	Fire Tube Boilers	Water Tube Boilers
Hand fired	5	6
Stoker fired	7	8
Oil, gas or pulverized fuel fired	8	10

1. When a boiler is fired only by a gas having a heat valve not in excess of 200 BTU per cubic foot, the minimum safety valve or safety relief valve relieving capacity may be based on the values given for hand fired boilers.
2. The minimum safety valve or safety relief valve relieving capacity for electric boilers shall be three and one-half (3-1/2) pounds per hour per kilowatt input.
3. For heating surface determination see ASME Code for Heating Boilers, Paragraph HG-403.

(e) The safety valve capacity for each steam boiler shall be such that with the fuel-burning equipment installed and operated at maximum capacity, the pressure cannot rise more than five (5) lbs. above the maximum allowable working pressure.

(f) When operating conditions are changed, or additional boiler heating surface is installed, the valve capacity shall be increased, if necessary, to meet the new conditions and be in accordance with paragraph (e) of this subsection. The additional valves required, on account of changed conditions, may be installed on the outlet piping provided there is no intervening valve.

(3) Safety Relief Valve Requirements for Hot Water Heating Boilers and Hot Water Supply Heaters:

(a) Each hot water heating boiler shall have at least one (1) officially rated pressure relief valve, set to relieve at or below the maximum allowable working pressure of the boiler. Each hot water supply heater shall have at least one (1) officially rated safety relief valve of the automatic-reseating type, set to relieve at or below the maximum allowable pressure of the boiler. Safety relief valves officially rated as to capacity shall have pop action when tested by steam. When more than one (1) safety relief valve is used on either hot water heating or hot water supply boilers, the additional valve or valves shall be officially rated and may be set within a range not to exceed six (6) lbs. psi above the maximum allowable working pressure exceeding sixty (60) lbs. psi and ten (10) percent for those having a maximum allowable working pressure exceeding sixty (60) lbs. psi. Safety relief valves shall be spring loaded. Safety relief valves shall be so arranged that they cannot be reset at a higher pressure than the maximum permitted in this paragraph.

(b) No materials liable to fail due to deterioration or vulcanization when subjected to saturated steam temperature corresponding to capacity test pressure shall be used for any part.

(c) No safety relief valve shall be smaller than three-fourths (3/4) inch, nor larger than four and one-half (4-1/2) inches, standard pipe size, except that boilers having a heat input not greater than 15,000 BTU per hour may be equipped with a rated safety relief valve of one-half (1/2) inch standard pipe size. The inlet opening shall have an inside diame-

ter approximately equal to, or greater than, the seat diameter. In no case shall the minimum opening through any part of the valve be less than one-fourth (1/4) inch diameter, or its equivalent area.

(d) The required steam relieving capacity, in pounds per hour, of the pressure relieving device, or devices, on a boiler shall be the greater of that determined by dividing the maximum output in BTU at the boiler nozzle obtained by the firing of any fuel for which the unit is installed by 1,000, or shall be determined on the basis of pounds of steam generated per hour, per square foot of boiler heating surface, as given in the foregoing table. In many cases a greater relieving capacity of valves will have to be provided than the minimum specified by these rules. In every case, the requirements of paragraph (f) of this subsection shall be met.

(e) When operating conditions are changed, or additional boiler heating surface is installed, the valve capacity shall be increased, if necessary, to meet the new conditions and shall be in accordance with paragraph (f) of this subsection. The additional valves required, on account of changed conditions, may be installed on the outlet piping provided there is no intervening valve.

(f) Safety-relief valve capacity for each boiler shall be such that, with the fuel burning equipment installed and operated at maximum capacity, the pressure cannot rise more than six (6) lbs. psi above the maximum allowable working pressure for pressure up to and including sixty (60) lbs. psi and ten (10) percent of maximum allowable working pressures over sixty (60) lbs. psi.

(g) Safety valves and safety relief valves shall be located in the top or side of the boiler in the highest practicable part of the boiler, but in no case lower than the lowest permissible water level. Coil or header type boilers or hot water supply boilers shall have the safety valve or safety relief valve located on the steam or hot water outlet end.

(h) Safety valves or safety relief valves shall be installed with their spindles vertical.

(4) Water Gauge Glasses:

(a) Each steam boiler shall have one (1) or more water gauge glasses attached to the water column, or boiler, by means of valved fittings not less than one-half (1/2) inch pipe size, with the lower fitting provided with a drain valve of the type with opening not less than one-fourth (1/4) inch diameter to facilitate cleaning. Gauge glass replacement shall be possible under pressure. Water glass fittings may be attached directly to a boiler.

(b) The lowest visible part of the water gauge glass shall be at least one (1) inch above the lowest permissible water level recommended by the boiler manufacturer. With the boiler operating at this lowest permissible water level, there shall be no danger of overheating any part of the boiler.

(c) Transparent material other than glass may be used for the water gauge provided that the material will remain transparent and has proved suitable for the pressure, temperature, and corrosive conditions expected in service.

(5) Bottom Blowoff or Drain Valves:

(a) Each boiler shall have a bottom blowoff or drain pipe connection fitted with a valve or cock connected with the lowest water space practicable, with the minimum size of blow-off piping and valves as shown in the following table:

SIZE OF BOTTOM BLOWOFF PIPING AND VALVES

Minimum Required Safety or Safety-Relief Valve Capacity Pounds of Steam Per Hour	Blowoff Valves Size, Inches
Up to 500	3/4
501 to 1,250	1
1,251 to 2,500	1 1/4
2,501 to 6,000	1 1/2
6,001 and larger	2

(b) To determine the discharge capacity of safety-relief valves in terms of BTU, the relieving capacity in pound of steam per hour is multiplied by 1,000.

(c) Any discharge piping connected to bottom blowoff and/or bottom drain connection shall be full size to the point of discharge. All blow-off valves are to be piped full size without reducing to a drain, sump or outside atmosphere so as to prevent injury to personnel.

(6) Expansion or Cushion Tanks:

(a) If the system is of the closed type, an airtight tank or system of tanks, as required, or other suitable air cushion shall be installed that is consistent with the volume and capacity of the system and shall be suitably designed for a hydrostatic test pressure of two and one-half (2-1/2) times the allowable working pressure or safety valve setting of the system. Expansion tanks for systems designed to operate at or above fifty (50) P.S.I. shall be constructed in accordance with ASME Code, Section VIII. Provision must be made for draining the tank without emptying the system. All hot water heating systems shall be so installed that there will be no opportunity for the fluid-relief column to freeze or to be accidentally shut off.

(b) If the system is equipped with an open expansion tank, an indoor overflow from the upper portion of the expansion tank must be provided, in addition to the open vent, the indoor overflow to be carried within the building to a suitable plumbing fixture, or to the basement.

(c) The required minimum capacity of the expansion or cushion tank may be determined from the following tables, or from the following formula:

EXPANSION TANK CAPACITIES FOR GRAVITY HOT WATER SYSTEMS

Square Feet of Equivalent Direct Radiation Installed	Gallon Tank
Up to 350	18
Up to 450	21
Up to 650	24
Up to 900	30
Up to 1,100	35
Up to 1,400	40
Up to 1,600	2-30
Up to 1,800	2-30
Up to 2,000	2-35
Up to 2,400	2-40

1. For systems with more than 2,400 square feet of installed equivalent direct water radiation, the required capacity of the cushion tank shall be increased on the basis of one gallon tank capacity per thirty-three (33) square feet of additional equivalent directed radiation.

EXPANSION TANK CAPACITIES FOR FORCED HOT WATER SYSTEMS

System Volume Gallons	Tank Capacity Gallons
100	15
200	30
300	45
400	60
500	75
1,000	150
2,000	300

2. Includes volume water in boiler, radiation and piping, not including expansion tank. A procedure for estimating system volume and for determining expansion tank sizes for other design conditions may be referred to in Chapter 10 of the 1964 edition of the ASHRAE Guide and Date Book—Applications. The minimum capacity of the closed type expansion tank may be determined from the preceding tables or from the following formula where the necessary information is available:

$$V_t = \frac{(0.00041\ T - 0.0466)\ V_s}{\frac{Pa}{Pf} - \frac{Pa}{Po}}$$

Where:
Vt = minimum volume of tanks, gallons;
Vs = volume of system, not including tanks, gallons;
T = average operating temperature, degrees Fahrenheit;
Pa = atmospheric pressure, psia;
Pf = fill pressure, psia;
Po = maximum operating pressure, psia.

(7) Inspection: Upon completion of the installation, all boilers and associated pressure piping shall be inspected by an authorized boiler inspector as set forth in Section 2 (4).

(8) Water Sealing Loop: It is recommended that the return water connection to all low pressure steam heating boilers supplying a gravity return heating system be so arranged as to form what is known as the "water line return" so that the water cannot be forced out of the boiler below the safe water level.

Section 6. Existing Installations, Heating Boilers: (1) ASME Code Boilers: The maximum allowable working pressure of a boiler built in accordance with the ASME Code shall, in no case, exceed the pressure indicated by the manufacturer's identification stamped or cast upon the boiler or upon a plate secured to it.

(2) Noncode Riveted Boilers: The maximum allowable working pressure on the shell of a noncode riveted heating boiler shall be determined in accordance with Section 4, subsection (1), covering existing installations—power boilers, except that, in no case, shall the maximum allowable working pressure of a steam heating boiler exceed fifteen (15) pounds or a hot water boiler exceed 160 pounds at a temperature not exceeding 250 degrees Fahrenheit.

(3) Noncode Welded Boilers: The maximum allowable working pressure of a noncode steel or wrought iron heating boiler of welded construction shall not exceed fifteen (15) pounds. For other than steam service, the maximum allowable working pressure shall be calculated in accordance with Section IV of the ASME Code.

(4) Noncode Cast Iron Boilers:

(a) The maximum working pressure of a noncode boiler, composed principally of cast iron, shall not exceed fifteen (15) pounds for steam service or thirty (30) pounds for hot water service.

(b) The maximum allowable working pressure of a noncode boiler having cast iron shell or heads and steel or wrought iron tubes shall not exceed fifteen (15) pounds for steam service or thirty (30) pounds for water service.

(5) General: If, in the judgment of the inspector, a steam heating boiler is unsafe for operation at the pressure previously approved, the pressure shall be reduced, proper repair made, or the boiler retired from service.

(6) Safety Valves: Each steam heating boiler shall be provided with one (1) or more safety valves with total area of not less than one (1) square inch for each five (5) square feet of grate area, or equivalent, if grates are not used. It is further provided that the steam relieving capacity of the safety valve, or valves on any boiler shall be sufficient to prevent a boiler pressure greater than twenty (20) pounds. If there is any doubt as to the capacity of the safety valve, an accumulation test shall be run. No stop valve of any description shall be located between a boiler and its safety valve; nor in the safety valve discharge pipe. The safety valve may be located on a main steam pipe connection at the boilers.

(7) Safety Relief Valves: Each hot water heating boiler or hot water supply heater shall have one (1) or more relief valves of the spring-loaded type without disc guides on the pressure side of the valve. The valves shall be set to relieve at a pressure at or below the maximum allowable working pressure of the boiler and so arranged that they cannot be reset to relieve at a higher working pressure of the boiler. Each relief valve shall have a substantial device which will positively lift the disc from its seat one-sixteenth (1/16) inch when there is no pressure on the boiler. Such valves shall be BTU rated and shall bear the ASME and national board stamp.

(8) Pressure or Altitude Gauges:

(a) Each hot water heating boiler shall have a pressure or altitude gauge connected to it or to its flow connection in such a manner that it cannot be shut off from the boiler except by a cock with tee or lever handle, placed on the pipe near the gauge. The handle of the cock shall be parallel to the pipe in which it is located when the cock is open.

(b) The feed pipe to the boiler shall be provided with a check valve near the boiler and a valve or cock between the check valve and the boiler. When two (2) or more boilers are fed from a common source, there shall also be a globe or regulating valve on the branch to each boiler between the check valve and source of supply. Whevever globe valves are used on feed piping, the inlet shall be under the disc of the valve. The valve shall be located as close to the boiler as it practicable.

(c) When deaerating heaters are not employed, it is recommended that the temperature of the feed water be no less than 120 degrees Fahrenheit to avoid the possibility of setting up localized stress. Where deaerating heaters are employed, it is recommended that the minimum feed water be no less than 215 degrees Fahrenheit so that dissolved gases may be thoroughly released.

(9) Fusible Plugs: Fire actuated fusible plugs, if used, shall conform to the requirements of the ASME Boiler and Pressure Vessel Code for Power Boilers. (A-19, A-20 and A-21.)

(10) Water Columns, Gauge Glasses, and Gauge Cocks:

(a) No outlet connections, except for damper regulator, feed water regulator, low-water fuel cutout, drains, steam gauges, or such apparatus that does not permit the escape of an appreciable amount of steam or water therefrom shall be placed on the piping that connects the water column to the boiler. The minimum size of the steam and water connection to the water column shall be one (1) inch pipe size and each water column shall be provided with a valved drain of at least three-fourth (3/4) inch pipe size, the drain to be piped to a safe location.

(b) Each boiler shall have three (3) or more gauge cocks, located within the range of the visible length of the water glass, except when the boiler has two (2) water glasses with independent connections to the boiler, located on the same horizontal lines and not less than two (2) feet apart. Boilers not over thirty-six (36) inches in diameter in which the heating surface does not exceed 100 square feet have but two (2) gauge cocks. Electric boilers operating at pressures not exceeding 400 psi need not be fitted with gauge cocks. The gauge cock connections shall be not less than one-half (1/2) inch pipe size.

(c) For all installations where the water gauge glass or glasses are more than thirty (30) feet from the boiler operating floor, it is recommended that water level indicating or recording gauges be installed at eye height from the operating floor.

(11) Pressure Gauges:

(a) Each boiler shall have a pressure gauge connected to the steam space or to the water column or its steam connection. The pressure gauge shall be connected to a siphon or equivalent device of sufficient capacity to keep the gauge tube filled with water and so arranged that the gauge cannot be shut off from the boiler except by a cock placed near the gauge and provided with a tee or lever handle arranged to be parallel to the pipe in which it is located when the cock is open. The dial of the pressure gauge shall be graduated to approximately double the pressure at which the safety valve is set, but, in no case to less than one and one-half (1-1/2) times this pressure.

(b) When a pressure gauge connection longer than eight (8) feet becomes necessary, a shutoff valve may be used near the boiler provided the valve is of the outside screw and yoke type and is locked or wired open. The line shall be ample size with provision for free blowing.

(c) Each boiler shall be provided with a one-fourth (1/4) inch nipple and globe valve connected to the steam space for the exclusive purpose of attaching a test gauge when the boiler is in service so that the accuracy of the boiler pressure gauge may be ascertained.

(12) Stop Valves:

(a) Each outlet from a boiler (except safety valve connections) shall be fitted with a stop valve located as close as practicable to the boiler.

(b) When boilers provided with manholes are connected to a common main, the steam or high temperature water connection from each boiler shall be fitted with two (2) stop valves having an ample free blow drain between them. The discharge of this drain shall be visible to the operator while manipulating the valves and shall be piped clear of the boiler setting. The stop valves shall consist preferably of one (1) automatic nonreturn valve (set next to the boiler) and a second valve of the outside screw and yoke type to be installed in accordance with the ASME Power Boiler Code.

(13) Blowoff Piping:

(a) The construction of the setting around each blowoff pipe shall permit free expansion and contraction. Careful attention shall be given to the problem of sealing these setting openings without restricting the movement of the blowoff piping. All blowoff piping, when exposed to furnace heat, shall be protected by firebrick or other heat resisting material, so constructed that the piping may be readily inspected.

(b) When the maximum allowable working pressure exceeds 100 psig, blowoff piping shall be extra heavy from the boiler to the valve or valves, and shall be run full size without use of reducers or bushings. The piping shall be extra heavy wrought iron or steel and shall not be galvanized. All fittings between the boiler and the blowoff valve shall be steel or extra heavy fittings of malleable iron. In case of renewal of blowoff pipe or fittings, they shall be installed in accordance with this regulation for new installations.

(14) Blowoff Valves:

(a) Straight-run globe valves of the ordinary type and valves or such types that dams or pockets can exist for the collection of sediment shall not be used on such connections. Straightway Y-type globe valves or angle valves may be used in vertical pipes, or they may be used in horizontal runs of piping provided they are so constructed or installed that the lowest edge of the opening through the seat is at least twenty-five (25) percent of the inside diameter below the center line of the valve.

(b) The blowoff valve or valves and the pipe between them and the boiler shall be of the same size except where a larger pipe for the return of condensation is used as provided for by the ASME Boiler and Pressure Vessel Code for power boilers. On all boilers, except those used for high temperature water, traction, and/or portable purposes, when the allowable working pressure exceeds 100 psi, each bottom blowoff pipe shall have two (2) slow-opening valves, or one (1) slow-opening valve and a quick-opening valve, or a cock complying with the requirements of the ASME Boiler and Pressure Vessel Code for power boilers.

(c) If a blowoff cock is used, the plug shall be held in place by a guard or gland. The plug shall be distinctly marked in line with the passage. By slow-opening valve is meant a valve which requires at least five (5) 360-degree turns of the operating mechanism to change from full-closed to full-opening and vice versa.

(d) On a boiler having multiple blowoff pipes, a single

pipes, a single master valve may be placed on the common blowoff pipe from the boiler, in which case only one (1) valve on each individual blowoff is required. In such a case, either the master valve, or the individual valves, or cocks shall be of the slow-opening valves, or a slow-opening valve and a quick-opening valve, or cock may be combined in one body and may be used provided the combined fitting is the equivalent to two (2) independent slow-opening valves, or a slow-opening valve and a quick-opening valve or cock and provided further that the failure of one to operate cannot affect the operation of the other. The bottom blowoff pipes of ever traction and/or portable boiler shall have at least one (1) slow-opening or quick-opening blowoff valve or cock conforming to the requirements of the ASME Boiler and Pressure Vessel Code for power boilers. Only one (1) blowoff valve, which shall be of a slow-opening type is required on forced circulation and electric boilers having a normal water content not exceeding 100 gallons.

(15) Piping:

(a) Piping connected to the outlet of a boiler, which comes with the code requirements, shall be attached by:

1. Screwing into a tapped opening with a screwed fitting or a valve at the other end.
2. Screwing each and into tapered flanges, fittings, or valves with or without rolling or peening.
3. Bolted joints, including those of the van stone type.
4. Expanding into grooved holes, seal welding, if desired. Pipe which is expanded, rolled, or peened shall be made from open-hearth or electric-furnace steel.

(b) Blowoff piping of fire-tube boilers shall be attached by 1. (above), if exposed to products of combustion, or by 1., 2., or 3. (above), if not so exposed. Fusion welding for sealing purposes at the junction of bolted joints may be used.

(c) Welding may be used to attach piping to nozzles or fittings if the rules for fusion welding or forge welding are followed. All welded piping external to the boiler, from the boiler out to the first stop valve, in a single installation, and out to the second stop valve when two (2) or more boilers with manholes are connected to a common steam or high temperature water main or header, shall be installed by a manufacturer or contractor authorized to use any one of the American Society of Mechanical Engineers code symbol stamps for pressure piping, power boilers, or assembly stamps. The piping or fittings, adjacent to the welded joint fartherest from the boiler shall be stamped with the pressure piping, power boiler, or assembly code symbol stamp of the American Society of Mechanical Engineers when approved by the inspector.

Section 7. Nuclear Vessels: (1) ASME, National Board Stamping: All nuclear vessels covered under the scope of Section III, ASME Boiler and Pressure Vessel Code, shall be constructed, stamped and installed in accordance with the rules and regulations of the latest edition of the ASME Code, Section III, together with the appendix and amendments thereto. Such vessels shall be registered with the National Board and so stamped. (See also "State Specials" Section 1, subsection (37) of this regulation.)

(2) Responsibilities of Parties Involved:

(a) The various parties involved in the work of producing vessels under Section III of the ASME Code have definite responsibilities in meeting code requirements. The owner requiring that a vessel or vessels be designed, constructed, tested and certified to be a code vessel in compliance with the code shall provide or cause to be provided a diagram of each vessel, a specification, related to operating conditions in such detail as will provide a complete basis for design, construction and inspection in accordance with the code. The diagram to be treated as a data report form attached to the other data forms to create a master report which will be registered with the Boiler Inspection Section, Department of Insurance, Frankfort.

(b) Design Specifications Certified: The design specification shall be certified as to compliance with the above requirements and Section III, ASME Code, by a registered professional engineer experienced in nuclear pressure vessel design.

(3) Inspections and Tests:

(a) It is the duty of the inspector to make all inspections specified by the ASME Code, Section III, and in addition such other inspections and tests as in his judgment are necessary to verify that the equipment is fabricated and installed in accordance with requirements of the code.

(b) Inspections and tests of nuclear vessels shall be made only by a national board inspector qualified as an inspection specialist, nuclear, under Section III, ASME Code.

(4) Field Inspections:

(a) Upon completion of installation such vessels and associated piping shall be inspected by a national board inspector qualified as engineering specialist, nuclear, under Article N-612, Section III, ASME Code, and commissioned to inspect pressure vessels in this Commonwealth. At the time of initial inspection a vessel composed of two (2) or more pressure retaining compartments shall constitute one complete unit for the purpose of assigning and stamping the serial number thereon as set forth in Section 2, subsection (4) of this regulation.

(b) Recurring Inspections: Recurring inspections of nuclear vessels in service will be made only by an inspector or inspectors qualified as above. Such inspections shall be conducted in strict adherence to methods and precautions set forth in the Nuclear In-service Inspection Code.

Section 8. General Requirements: (1) Inspection of Boilers:

(a) All boilers, unless otherwise exempt by this regulation and which are subject to regular inspections as provided for in Section 2, subsection (3), shall be prepared for such inspections, or hydrostatic tests whenever necessary, by the owner or user when notified by an Inspector.

(b) The owner or user shall prepare each for internal inspection, and shall prepare for and apply the hydrostatic test whenever necessary, on the date specified by the inspector, which date shall be not less than seven (7) days after the date of notification.

(c) The owner or user shall prepare a boiler for internal inspection in the following manner:

1. Water shall be drawn off and the boiler thoroughly washed.
2. All manhole and handhole plates, washout plugs, and plugs in water column connections shall be removed, the furnace and combustion chambers thoroughly cooled and cleaned.
3. All grates of internally fired boilers shall be removed.
4. At each annual inspection, brickwork shall be removed as required by the inspector in order to determine the condition of the boiler, headers, furnace, supports, or other parts.
5. The steam guage shall be removed for testing.
6. Any leakage of steam or hot water into the boiler shall be cut off by disconnecting the pipe or valve at the most convenient point.

(d) If the boiler is jacketed so that the longitudinal seams of shells, drums, or domes cannot be seen, enough of the jacketing, setting wall, or other forms or casing or housing shall be removed so that the size of the rivets, pitch of the rivets, and other data necessary to determine the safety of the boiler may be obtained, provided such information cannot be determined by other means.

(e) If a boiler has not been properly prepared for an internal inspection, or the owner or user fails to comply with the requirements for hydrostatic test as set forth in this regulation, the inspector may decline to make the inspection or test, and the inspection certificate shall be withheld until the owner or user complies with the requirements.

(2) Lap Seam Crack: The shell or drum of a boiler in which a lap seam crack is discovered along a longitudinal riveted joint shall be immediately discontinued from use. If the boiler is not more than fifteen (15) years of age, a complete new course of the original thickness may be installed at the discretion of the inspector and after approval by the chief inspector. Patching is prohibited. "Lap seam crack" is meant the typical crack frequently found in lap seams, extending parallel to the longitudinal joint and located either between or adjacent to rivet holes.

(3) Hydrostatic Pressure Tests:

(a) A hydrostatic pressure test, when applied to boiler or unfired pressure vessels of riveted or welded construction shall not exceed one and one-half (1-1/2) times the maximum allowable working pressure. During the hydrostatic pressure test, the safety valve or valves shall be removed, or each valve disc shall be held down by means of a testing clamp and not by applying additional load to the spring with the compression screw. The minimum temperature of the water used to apply a hydrostatic test shall not be less than seventy (70) degrees fahrenheit and the maximum temperature shall not exceed 160 degrees fahrenheit.

(b) When hydrostatic test is to be applied to existing installations, the pressure shall be as follows:

1. For all cases involving the question of tightness, the pressure shall be equal to the release pressure of the safety valve or valves having the lowest release setting.
2. For all cases involving the question of safety, the pressure shall be equal to one and one-half (1-1/2) times the maximum allowable working pressure, except for locomotive type boilers in which case it shall be one and one-fourth (1-1/4) times the maximum allowable working pressure.

(4) Low Water Fuel Cutoff and/or Water-Feeding Device:

(a) Each automatically fired steam or vapor-system boiler shall have an automatic low-water fuel cutoff so located as to automatically cut off the fuel supply when the water falls to the lowest part of the water guage glass. If a water-feeding device is installed, it shall be so constructed that the water

inlet valve cannot feed water into the boiler through the float chamber and so located as to supply requisite feed water.

(b) Such a fuel cutoff or water-feeding device may be attached directly to a boiler. A fuel cutoff or water-feeding device may also be installed in the tapped openings available for attaching a water glass direct to a boiler, provided the connections are made to the boiler with nonferrous tees or Y's not less than one-half (1/2) inch pipe size between the boiler and the water glass so that the water glass is attached directly and as close as possible to the boiler; the run of the tee and Y shall take the water glass fittings, and the side outlet or branch of the tee or Y shall take the fuel cutoff or water-feeding device. The ends of all nipples shall be reamed to full-size diameter.

(c) Fuel cutoffs and water-feeding devices embodying a separate chamber shall have a vertical drain pipe and a blowoff valve not less than three-fourths (3/4) inch pipe size, located at the lowest point in the water equalizing pipe connections so that the chamber and the equalizing pipe can be flushed and the device tested.

(5) Safety Appliances: No person shall remove or tamper with any safety appliance prescribed by this regulation, except for the purpose of making repairs. The resetting of safety valves shall be done in the presence of an authorized inspector or by the valve manufacturer.

(6) Blowoff Tanks:

(a) Blowoff piping from a power boiler, or a miniature boiler, shall not discharge directly into a sewer. A blowoff tank shall be used where conditions do not provide an adequate and safe open discharge. Blowoff tanks hereafter installed, if of metal, shall have a plate thickness of not less then three-eights (3/8) inch and shall be designed for a minimum working pressure of fifty (50) psi guage. The outlet from the blowoff tank shall be twice the area of the inlet pipe and made to extend internally within eight (8) inches from the bottom of the tank.

(b) A vent pipe, at least four (4) times the area of the inlet pipe shall lead to the outer atmosphere. Vents shall be as direct as possible to the outer air and discharge at a safe location. There shall be no valve or other possible obstructions, such as water pockets between the tank and the discharge end of the vent pipe.

(c) All pipe connections between the tank and the boiler shall be as direct as possible and shall conform to Par. PG-58 and PG-59, ASME Boiler and Pressure Vessel Code, Section 1. For convenience, in cleaning the tank, a manhole, or an excess opening, shall be provided.

(d) Where a blowoff tank is not vented as specified above, it shall be constructed for a pressure equal to that allowed on the boiler to which it is attached or shall be equipped with a safety valve or valves of sufficient capacity to prevent the pressure from exceeding the safe working pressure of the tank.

(e) As an alternate to the above, blowoff facilities may conform to the provision set forth in the pamphlet titled, "Boiler Blowoff Equipment," published by the National Board of Boiler and Pressure Vessel Inspections, whose address is 1155 North High Street, Columbus, Ohio 43201.

(7) Location of Discharges to Atmosphere: The discharge of safety valves, blowoff pipe, and other outlets shall be located so as to prevent injury to personnel.

(8) Pressure Reducing Valves:

(a) Where pressure reducing valves are used, one (1) or more relief or safety valves shall be provided on the low pressure side of the reducing valve in case the piping or equipment on the low pressure side does not meet the requirements for the full initial pressure. The relief or safety valves shall be located adjoining to, or as close as possible to, the reducing valve. Proper protection shall be provided to prevent injury or damage caused by the escaping steam from the discharge of relief or safety valves if vented to the atmosphere. The combined discharge capacity of the relief valve shall be such that the pressure rating of the lower pressure piping or equipment shall not be exceeded in case the reducing valve sticks open.

(b) The use of hand-controlled bypasses around reducing valves is permissible. The bypass, if used around a reducing valve, shall not be greater in capacity than the reducing valve unless the piping or equipment is adequately protected by relief valves or meets the requirements of the high pressure system.

(c) It is mandatory that a pressure guage be installed on the low pressure side of a reducing valve.

(9) Electric Boilers: All appliances required for electric boilers shall be attached in accordance with the following rules:

(a) The grounding of the shell shall be permanently fastened on some part of the boiler and shall be grounded in accordance with the current National Electrical Code.

(b) A suitable screen or guard shall be provided around high tension bushings and a sign posted warning of high voltage. This screen, or guard, shall be so located that it will be impossible for anyone working around the boiler to accidentally come in contact with the high tension circuits. When adjusting safety valves, the power circuit to the boiler shall be open.

(c) The boiler may be under pressure, but the power line shall be open while the operator is making the necessary adjustments.

(d) Each KW of electrical energy consumed by an electric boiler operating at maximum rating shall be considered the equivalent of one (1) square foot of heating surface.

(10) Clearance:

(a) When boilers are replaced, or new boilers installed, in either existing or new building, a minimum height of at least three (3) feet shall be provided between the top of the boiler proper and the ceiling.

(b) All boilers shall be so located that adequate space will be provided for the proper operation of the boiler and its appurtenances, for the inspection of all surfaces, tubes, water walls, economizer, piping, valves, and other equipment, and for their necessary maintenance and repair.

(11) Shop and Field Inspection: Any new power boiler or steel heating boiler being constructed for installation in the Commonwealth of Kentucky shall be shop inspected in accordance with the provisions of the applicable section of the ASME Boiler and Pressure Vessel Code, and shall be stamped ASME and National Board and applicable copies of data sheets supplied to the bureau. This shall not apply where shop inspection is not required by the ASME Boiler and Pressure Vessel Code. (See Section 2, subsections (1) and (2).)

(12) Inspection of Secondhand Equipment: Charges for inspection of secondhand equipment shall be at the rate provided for in Section 2, subsection (27)(a), of this regulation.

(13) Emergency Devices for Certain Installations: Installations of power boilers or heating boilers in hospitals, rest homes, schools, mental institutions or old people's homes shall comply with provisions of ASME Code, Section IV, Article HG-634, regarding remote emergency cutoff switches. Each installation should be judged on its own merits from a standpoint of accessibility of electrical power cutouts to the boiler or boilers in case of fire or heavy smoke emission. If installed cutout switches are not adjacent to boiler room entryways, then emergency cutout switches must be provided as outlined in HG-634, Section 4, ASME Code.

(14) Conditions Not Covered by this Regulation: In any condition not covered by this regulation the ASME Boiler and Pressure Vessel Code for New Installations shall apply. Should any section, subsection, sentence, clause, phrase, provision, or exemption of this regulation be declared unconstitutional or invalid for any reason, such invalidity shall not affect the remaining portion or provision hereof.

HAROLD B. McGUFFEY, Commissioner
ADOPTED: September 12, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: October 18, 1974 at 3:56 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: State Fire Marshal's Office, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
(807 KAR 1:010)

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 278.310(2), 13.082
SUPERSEDES: PSC:Proc-1
NECESSITY AND FUNCTION: KRS 278.310(2) provides that all hearings and investigations before the commission or any commissioner shall be governed by rules adopted by the commission. This regulation is to prescribe requirements with respect to formal and informal proceedings before the commission.

Section 1. General Offices and Hearings. (1) The commission will be in continuous session for the performance of administrative duties.

(2) Meetings of the commission for the consideration of all matters requiring formal hearings will be held on such days, at such hours and at such places as the commission may designate.

(3) Notice of hearing will be given by the secretary to parties to proceedings before the commission, except when a hearing is not concluded on the day appointed therefor and verbal announcement is made by the presiding commissioner of an adjourned date. Verbal announcements so made shall be deemed due notice of continued hearing.

Section 2. Secretary to Furnish Information. (1) Upon request, the secretary of the commission will advise any party as to the form of a petition, complaint, answer, application or other paper desired to be filed; and he will make available from the commission's files, upon request, any document or record pertinent to any matter before the commission.

(2) The secretary may reject for filing any document which on its face does not comply with the rules and regulations of the commission.

Section 3. General Matters Pertaining to All Formal Proceedings. (1) Address of the Commission. All communications should be addressed to "Public Service Commission, Frankfort, Kentucky."

(2) Case Numbers and Styles. Each matter coming formally before the commission will be known as a case and will receive a number and style, descriptive of the subject matter. Such number and style shall be placed on all subsequent papers in such case.

(3) Form of Papers Filed. All pleadings and applications filed with the commission in formal proceedings shall be printed or typewritten on one side of the paper only, and typewriting shall be double spaced.

(4) Signing of Pleadings. Every pleading of a party represented by an attorney shall be signed by at least one (1) attorney of record in his individual name and shall state his address. Except when otherwise specifically provided by statute, pleadings need not be verified or accompanied by affidavit.

(5) Amendment. At its discretion, the commission may allow any complaint, application, answer or other paper to be amended or corrected or any omission supplied therein.

(6) Witnesses and Subpoenas.

(a) Upon the application of any party to a proceeding, subpoenas requiring the attendance of witnesses for the purpose of taking testimony may be signed and issued by a member of the commission.

(b) Subpoenas for the production of books, accounts, papers or records (unless directed to issue by the commission on its own authority) will be issued only at the discretion of the commission, or any commissioner, upon application in writing, stating as nearly as possible the books, accounts, papers or records desired to be produced.

(7) Service of Process. When any party has appeared by attorney, service upon such attorney will be deemed proper service upon the party.

(8) Parties and Intervention. In any formal proceeding, any corporation, association, body politic or person authorized by law to become a party to a proceeding before the commission, may by timely motion request that he or it be granted leave to intervene. The motion shall set forth the grounds for the request, including the status and interest of the movant. If the commission, after opportunity has been given to the party or parties to such proceeding to be heard on such intervention, be of the opinion that the movant is entitled to be made a party, it shall so order. Leave thus granted will entitle the intervenor to have notice of and to appear at the taking of testimony, to produce and cross-examine witnesses and to be heard in person or by counsel in the proceeding.

Section 4. Hearings and Rehearings. (1) When Hearings will be Granted. Except as otherwise determined in specific cases, the commission will grant a hearing in the following classes of cases:

(a) When an order to satisfy a complaint or to make answer thereto has been made and the corporation or person complained of has not satisfied the complaint to the satisfaction of the commission.

(b) When application has been made in a formal proceeding.

(2) Publication of Notice. Upon the filing of any application the commission may, in its discretion, give all other corporations or persons who may be affected thereby an opportunity to be heard by service upon them of a copy of the petition or by publication of the substance thereof, at the expense of the applicant, for such length of time and in such newspaper or newspapers as the commission may designate. In such cases the form of notice will be prepared by the secretary of the commission, and a proof of the publication thereof must be filed at or before the hearing.

(3) Investigation on Commission's Own Motion. The commission may at any time, on its own motion, make investigations and order hearings into any act or thing done or omitted to be done by any public utility, which the commission may believe is in violation of any provision of law or of any order or regulation of the commission. It may also through its own experts or employees, or otherwise, obtain such evidence as it may consider necessary or desirable in any formal proceeding in addition to the evidence presented by the parties.

(4) Conferences with Commission Staff. In order to provide opportunity for settlement of a proceeding or any of the issues therein, an informal conference with the commission staff may be arranged through the secretary of the commission either prior to, or during the course of hearings in any proceeding, at the request of any party.

(5) Conduct of Hearings. Hearings will be conducted before the commission or a commissioner or before a person directed by order of the commission to conduct a specific hearing.

(6) Stipulation of Facts. By a stipulation in writing, filed with the secretary, the parties to any proceeding or investigation by the commission may agree upon the facts or any portion of the facts involved in the controversy, which stipulation shall be regarded and used as evidence at the hearing.

(7) Testimony. All testimony given before the commission will be given under oath or affirmation.

(8) Objections and Exceptions. When objections are made to the admission or exclusion of evidence before the commission, the grounds relied upon shall be stated briefly. Formal exceptions are unnecessary and will not be taken to rulings therein.

(9) Transcript of Evidence. The commission will cause to be made a stenographic record of all public hearings, and such copies of the transcript thereof as it requires for its own purposes. Participants desiring copies of such transcripts may obtain the same from the official reporter upon payment of the fees fixed therefor.

(10) Briefs and Petitions for Rehearing. All briefs and petitions for rehearing in any proceeding must be accompanied with notice, showing service upon all other parties or their attorneys, and, in addition to the filed original, ten (10) copies of each such document shall be furnished for the use of the commission.

(11) Filing of Briefs. All briefs must be filed within the time fixed, and the commission may refuse to consider any brief filed thereafter. Applications for extensions of time to fil briefs must be made to the commission in writing.

(12) Form of Briefs. All briefs filed with the commission shall be in the form prescribed by the Court of Appeals of Kentucky.

Section 5. Documentary Evidence. (1) If documentary evidence is offered, the commission, in lieu of requiring the originals to be filed may, in its discretion, accept certified, or otherwise authenticated, copies of such documents or such portions of the same as may be relevant, or may require such evidence to be transcribed as a part of the record.

(2) Where relevant and material matter offered in evidence by any party is embraced in a book, paper or document containing other matter not material or relevant, the party must plainly designate the matter so offered. If such immaterial matter unnecessarily encumbers the record, such book, paper or document will not be received in evidence, but may be worded for identification, and if properly authenticated, the relevant and material matter may be read into the record, or, if the commission, or commissioner conducting the hearing, so directs, a true copy of such matter in proper form shall be received as an exhibit, and like copies delivered by the parties offering same to opposing parties, or their attorneys, appearing at the hearing, who shall be offered opportunity to examine such book, paper or document, and to offer evidence in like manner other portions thereof if found to be material and relevant.

(3) Whenever practicable the sheets of each exhibit and the lines of each sheet shall be numbered and if the exhibit consists of two (2) or more sheets, the first sheet or title page shall contain a brief statement of what the exhibit purports to show, with reference by sheet and line to illustrative or typical examples contained in the exhibit. Wherever practicable, rate comparisons and other such evidence shall be condensed into tables.

(4) Except as may be expressly permitted in particular instances, the commission will not receive in evidence or consider as a part of the record any book, paper or other document for consideration in connection with the proceeding after the close of the testimony.

(5) Upon motion of any party to a proceeding, any case in the commission's files or any document on file with the commission, at the discretion of the commission may be made a part of the record by "reference only." By reference only, the case or document made a part of the record will not be physically incorporated into the record. Upon action in the Franklin Circuit Court, excerpts from any case or part only of any document may be made, at the instance of any party, a part of the record before such court,

Section 6. Financial Exhibit. Whenever in these rules it is provided that a financial exhibit shall be annexed to the application, the said exhibit shall cover operations for a twelve-month period, said period ending not more than ninety (90) days prior to the date the application is filed. The said exhibit shall disclose the following information in the order indicated below:

(1) Amount and kinds of stock authorized.

(2) Amount and kinds of stock issued and outstanding.

(3) Terms of preference of preferred stock whether cumulative or participating, or on dividends or assets or otherwise.

(4) Brief description of each mortgage on property of applicant, giving date of execution, name of mortgagor, name of mortgagee, or trustee, amount of indebtedness authorized to be secured thereby, and the amount of indebtedness actually secured, together with any sinking fund provisions.

(5) Amount of bonds authorized, and amount issued, giving the name of the public utility which issued the same, describing each class separately, and giving date of issue, face value, rate of interest, date of maturity and how secured, together with amount of interest paid thereon during the last fiscal year.

(6) Each note outstanding, giving date of issue, amount, date of maturity, rate of interest, in whose favor, together with amount of interest paid thereon during the last fiscal year.

(7) Other indebtedness, giving same by classes and describing security, if any, with a brief statement of the devolution or assumption of any portion of such indebtedness upon or by person or corporation if the original liability has been transferred, together with amount of interest paid thereon during the last fiscal year.

(8) Rate and amount of dividends paid during the five (5) previous fiscal years, and the amount of capital stock on which dividends were paid each year.

(9) Detailed income statement and balance sheet.

Section 7. Applications. (1) Contents of Application. All applications must be by petition in writing. The petition must set forth the full name and post office address of the

applicant, and must contain fully the facts on which the application is based, with a request for the order, authorization, permission or certificate desired and a reference to the particular provision of law requiring or providing for same.

(2) Number of Copies. At the time the original application is filed, ten (10) additional copies must also be filed, and where parties interested in the subject matter of the application are named therein, there shall be filed an additional copy for each named party and such other additional copies as may be required by the secretary.

(3) Articles of Incorporation. If the applicant is a corporation, a certified copy of its articles of incorporation, and all amendments thereto, if any, shall be annexed to the application. If applicant's articles of incorporation and amendments thereto, if any, have already been filed with the commission in some prior preceeding, it will be sufficient if this fact is stated in the application and reference is made to the style and case number of the prior proceeding.

Section 8. Applications for Certificates of Public Convenience and Necessity. (1) Application to bid on a franchise pursuant to KRS 278.020(3). Upon application to the commission by any utility for a certificate of convenience and necessity authorizing applicant to bid on a franchise, license or permit offered by any governmental agency, the applicant shall submit with its application, the following:

(a) A copy of its Articles of Incorporation. (See Section 7(3) of this regulation.)
(b) The name of the governmental agency offering the franchise.
(c) The type of franchise offered.
(d) A statement showing the need and demand for service. Should the applicant be successful in acquiring said franchise, license or permit, it shall file a copy thereof with the commission.

(2) New Construction or Extension. When application is made by any public utility, person, firm, or corporation for a certificate that the present or future public convenience or necessity requires, or will require, the construction or extension of any plant, equipment, property or facility, the applicant, in addition to complying with Section 7 of this regulation, shall submit the following data, either in the application or as exhibits attached thereto.

(a) The facts relied upon to show that the proposed new construction is or will be required by public convenience or necessity.
(b) Copies of franchises or permits, if any, from the proper public authority for the proposed new construction or extension, if not previously filed with the commission.
(c) A full description of the proposed location, route, or routes of the new construction or extension, including a description of the manner in which same will be constructed, and also the names of all public utilities, corporations, or persons with whom the proposed new construction or extension is likely to compete.
(d) Three (3) maps to suitable scale (preferably not more than two (2) miles per inch) showing the location or route of the proposed new construction or extension, as well as the location to scale of any like facilities owned by others located anywhere within the map area with adequate identification as to the ownership of such other facilities.
(e) The manner in detail in which it is proposed to finance the new construction or extension.
(f) An estimated cost of operation after the proposed facilities are completed.
(g) All other information necessary to afford the commission a complete understanding of the situation.

(3) Extensions in the Ordinary Course of Business. No certificate of public convenience and necessity will be required for extensions that do not create wasteful duplication of plant, equipment, property or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general area in which the utility renders service or contiguous thereto, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

(4) Renewal Applications. Insofar as procedure is concerned, applications for a renewal of a certificate of convenience and necessity will be treated as an original application.

Section 9. Application or Notice for Authority to Adjust Rates. (1) When any public utility seeks to adjust any rate, toll, charge, or rental, so as to alter any classification, contract, practice, rule or regulation as to result in any change in any rate, toll, charge, or rental, the applicant, in addition to complying with the provisions of Section 7 of this regulation, shall submit the following data either in the application or attached thereto as exhibits:

(a) Financial exhibit. (See Section 6 of this regulation.)
(b) A schedule of the present rates, tolls, charges, or rentals, in effect, and and the changes which it is desired to make, shown in comparative form.
(c) A description of applicant's property, including a statement of the net original cost of the property (estimated if not known) and the cost thereof to applicant.
(d) A statement in full of the reason why the adjustment is required.
(e) A statement setting forth estimates of the effect that the new rate or rates will have upon the revenues of the utility, the total amount of money resulting from the increase or decrease, the percentage of increase or decrease, and the effect upon average consumer bills.

(2) In all cases involving a general increase in rates, in addition to the information required in subsection (1) above, complete financial data for the twelve (12) months corresponding to the test period used by the utility in its case shall be submitted at the hearing or prior thereto unless such information is contained in reports on file with the commission. Such data shall include:

(a) Monthly beginning and ending balances of the following accounts. Where apportionments are necessary to obtain the jurisdictional portions of these accounts, it will be sufficient to furnish the average of monthly averages of these accounts after separation.
1. All plant accounts and related reserves.
2. Prepayments.
3. Construction work in progress.
4. Retirement work in progress.
5. Plant acquisition adjustments.
6. Material and supplies.
(b) Total amount of interest charged to construction.
(c) An analysis of customer's bills in such detail that the revenues from the present and proposed rates can be readily determined.
(d) Details of any apportionment used.
(e) Monthly revenues and operating expenses.

Section 10. Application for Authority to Issue Securities, Notes, Bonds, Stocks or Other Evidences of Indebtedness. (1) When application is made by any public utility for an order authorizing the issuance of securities, notes, bonds, stocks or other evidences of indebtedness payable at periods of more than two (2) years from the date thereof, under the provisions of KRS 278.300, said application, in addition to complying with the requirements of Section 7 of this regulation, shall contain:

(a) A general description of applicant's property and the field of its operation, together with a statement of the original cost of the same and the cost to the applicant. If it is impossible to state the original cost, the facts creating such impossibility shall be stated.
(b) The amount and kinds of stock, if any, which the utility desires to issue, and, if preferred, the nature and extent of the preference; the amount of notes, bonds or other evidences of indebtedness, if any, which the utility desires to issue, with terms, rate of interest and whether and how to be secured.
(c) The use to be made of the proceeds of the issue of such securities, notes, bonds, stocks or other evidence of indebtedness with a statement indicating how much is to be used for the acquisition of property, the construction, completion, extension or improvement of facilities, the improvement of service, the maintenance of service and the discharge or refunding of obligations.
(d) The property in detail which is to be acquired, constructed, improved or extended with its cost, a detailed description of the contemplated construction, completion, extension or improvement of facilities set forth in such a manner that an estimate of cost may be made, a statement of the character of the improvement of service proposed, and of the reasons why the service should be maintained from its capital. Whether any contracts have been made for the acquisition of such property, or for such construction, completion, extension or improvement of facilities, or for the disposition of any of the securities, notes, bonds, stocks or other evidences of indebtedness which it proposes to issue or the proceeds thereof, and if any contracts have been made, copies thereof shall be annexed to the petition.
(e) If it is proposed to discharge or refund obligations, a statement of the nature and description of such obligations including their par value, the amount for which they were actually sold, the expenses associated therewith, and the application of the proceeds from such sales. If notes are to be refunded, the petition must show the date, amount, time, rate of interest, and payee of each and the purpose for which their proceeds were expended.
(f) Such other facts as may be pertinent to the application.

(2) The following exhibits must be filed with the application:

(a) Financial exhibit. (See Section 6 of this regulation.)
(b) Copies of trust deeds or mortgages, if any, unless they have already been filed with the commission, in which case reference should be made, by style and case number, to the proceeding in which the trust deeds or mortgages have been filed.
(c) Maps and plans of the proposed property and constructions together with detailed estimates in such form that they can be checked over by the commission's engineering division. Estimates must

be arranged according to the uniform system of accounts prescribed by the commission for the various classes of utilities.

Section 11. Formal Complaints. (1) Contents of Complaint. Each complaint shall be headed "Before the Public Service Commission of Kentucky", shall set out the names of the complainant and the name of the defendant, and shall state:

(a) The full name and post office address of the complainant.

(b) The full name and post office address of the defendant.

(c) Fully, clearly, and with reasonable certainty, the act or thing done or omitted to be done, of which complaint is made, with a reference, where practicable, to the law, order, or section, and subsections, of which a violation is claimed, and such other matters, or facts, if any, as may be necessary to acquaint the commission fully with the details of the alleged violation. The complainant shall set forth definitely the exact relief which is desired. (See Section 14(1) of this regulation.)

(2) Signature. The complaint shall be signed by the complainant or his attorney, if any, and if signed by such attorney, shall show his post office address. Complaints by corporations or associations, or any other organization having the right to file a complaint, must be signed by its attorney and show his post office address. No oral or unsigned complaints will be entertained or acted upon by the commission.

(3) Number of Copies Required. At the time the complainant files his original complaint, he must also file copies thereof equal in number to ten (10) more than the number of persons or corporations to be served.

(4) Procedure on Filing of Complaint.

(a) Upon the filing of such complaint, the commission will immediately examine the same to ascertain whether it establishes a prima facie case and conforms to this regulation. If the commission is of the opinion that the complaint does not establish a prima facie case or does not conform to this regulation, it will notify the complainant or his attorney to that effect, and opportunity may be given to amend the complaint within a specified time. If the complaint is not so amended within such time or such extension thereof as the commission, for good cause shown, may grant, it will be dismissed.

(b) If the commission is of the opinion that such complaint, either as originally filed or as amended, does establish a prima facie case and conforms to this regulation, the commission will serve an order upon such corporations or persons complained of under the hand of its secretary and attested by its seal, accompanied by a copy of said complaint, directed to such corporation or person, and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of such order, provided that the commission may, in particular cases, require the answer to be filed within a shorter time.

(5) Satisfaction of the Complaint. If the defendant desires to satisfy the complaint, he shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief which he is willing to give. Upon the acceptance of this offer by the complainant and the approval of the commission, no further proceedings need be taken.

(6) Answer to Complaint. If satisfaction be not made as aforesaid, the corporation or person complained of must file an answer to the complaint, with certificate of service on other parties endorsed thereon, within the time specified in the order or such extension thereof as the commission, for good cause shown, may grant. The answer must contain a specific denial of such material allegations of the complaint as controverted by the defendant and also a statement of any new matter constituting a defense. If the answering party has no information or belief upon the subject sufficient to enable him to answer an allegation of the complaint, he may so state in his answer and place his denial upon that ground. (See Section 14(2) of this regulation.)

Section 12. Informal Complaints. (1) Informal complaints must be made in writing. Matters thus presented are, if their nature warrants, taken up by correspondence with the public utility complained against in an endeavor to bring about satisfaction of the complaint without formal hearing.

(2) No form of informal complaint is prescribed, but in substance it must contain the essential elements of a complaint, including the name and address of complainant, the correct name and post office address of the utility against whom complaint is made, a clear and concise statement of the facts involved, and the relief requested.

(3) In the event of failure to bring about satisfaction of the complaint because of the inability of the parties to agree as to the facts involved, or from other causes, the proceeding is held to be without prejudice to the complainant's right to file and prosecute a formal complaint whereupon the informal proceedings will be discontinued.

Section 13. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

Section 14. Forms. (1) In all practice before the commission, the following forms shall be followed insofar as practicable:

(a) Formal Complaint
(b) Answer
(c) Application
(d) Notice of Adjustment of Rates

(2) Forms of Formal Complaint.

Before the Public Service Commission of Kentucky

(Insert name of complainant) Complainant	)	
vs.	)	No. _____ (To be inserted by the secretary of the commission)
(Insert name of each defendant) Defendant	)	

COMPLAINT

The complaint of (here insert full name of each complainant) respectfully shows:

(a) That (here state name, occupation and post office address of each complainant).

(b) That (here insert full name, occupation and post office address of each defendant).

(c) That (here insert fully and clearly the specific act or thing complained of, such facts as are necessary to give a full understanding of the situation, and the law, order, or rule, and the section or sections thereof, of which a violation is claimed).

WHEREFORE, complainant asks (here state specifically the relief desired).

Dated at _____, Kentucky, this ____ day of _____, 19___.

_____
(Name of each complainant)

_____
(Name and address of attorney, if any)

(3) Form of Answer to Formal Complaint.

Before the Public Service Commission of Kentucky

(Insert name of each complainant) Complainant	)	
vs.	)	No. _____ (To be inserted by the secretary of the commission)
(Insert name of each defendant) Defendant	)	

ANSWER

The above-named defendant, for answer to the complaint in the proceeding, respectfully states:

(a) That (here follow specific denials of such material allegations as are controverted by the defendant and also a statement of any new matter constituting a defense. Continue lettering each succeeding paragraph).

WHEREFORE, the defendant prays that the complaint be dismissed (or other appropriate prayer).

_____
(Name of defendant)

_____
(Name and address of attorney, if any)

(4) Form of Application.

Before the Public Service Commission of Kentucky

In the matter of the application of (here insert name of each applicant) for (here insert desired order, authorization, permission or certificate, thus: "Order authorizing issue of stocks and bonds")	)	No. _____ (To be inserted by the secretary of the commission)

APPLICATION

The petition of (here insert name of each applicant) respectfully shows:

(a) That applicant is engaged in the business of (here insert nature of business and territorial extent thereof).

(b) That the post office address of each applicant is _____.

(c) That (here state fully and clearly the facts required by these rules, and any additional facts which applicant desires to state).

WHEREFORE, applicant asks that the Public Service Commission of the Commonwealth of Kentucky make its order authorizing applicant to (here state specifically the action which the applicant desires the commission to take).

Dated at _____, Kentucky, this ____ day of _____, 19___.

_____
(Name of applicant)

_____
(Name and address of attorney, if any)

(5) Form of Notice to the Commission of Adjustment of Rates.

Before the Public Service Commission of Kentucky

In the matter of adjustment of rates of the (state name of corporation).	No._____ (To be inserted by the secretary of the commission).

The (here insert name of company) informs the commission that it is engaged in the business of (set out character of business) in (set out place of operation) and does hereby propose to adjust its rates, effective the ____ day of _____, 19___, in conformity with the attached schedule.

(See Section 9 of this regulation for required information.)

_____
(Name and address of company)

_____
(Name and address of attorney)

WILLIAM A. LOGAN, Chairman

ADOPTED: August 20, 1974
APPROVED: September 29, 1974 ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: October 18, 1974 at 4:00 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary, Public Service Commission, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
(807 KAR 2:010)

RELATES TO: KRS Ch. 278
PURSUANT TO: KRS 278.280(2), 13.082
SUPERSEDES: PSC:Gen-1
NECESSITY AND FUNCTION: KRS 278.280(2) provides that the commission shall prescribe rules for the performance of any service or the furnishing of any commodity by any utility. This regulation establishes general rules which apply to electric, water, gas and telephone utilities.

Section 1. General Provisions. (1) The adoption of regulations by the commission shall not preclude the commission from altering or amending the same in whole or in part, or from requiring any other or additional service, equipment, facility, or standards, either upon request, or upon its own motion, or upon the application of any utility. No regulation of the commission shall in any way relieve a utility from any of its duties under the laws of this state.

(2) Whenever standards or codes are referred to in the commission's regulations it is understood that utilities employing competent corps of engineers are not to be prohibited thereby from continuing or initiating experimental work and installations which tend to improve, decrease the cost of, or increase the safety of their service.

Section 2. Definition. (1) In addition to the definitions as set out in KRS 278.010, the following definition shall be used in interpreting the commission's regulations:

(2) The word "customer" means any person, firm, corporation or body politic supplied service by any electric, gas, water or telephone utility.

Section 3. Reports. (1) Financial and Statistical Reports: Every utility shall file annually a financial and statistical report upon forms to be furnished by the commission. Said report shall be based upon the accounts set up in conformity with the commission's order adopting uniform classification of accounts for utilities. This report shall be filed on or before March 31, each year. For good cause shown, the commission may, upon application in writing, allow a reasonable extension of time for such filing.

(2) Report of Meters, Customers and Refunds. Every utility shall make periodical reports on such forms as may be prescribed, of meter tests, number of customers and amount of refunds.

(3) Other Reports. Every utility shall make such other reports as the commission may at its discretion from time to time require.

(4) All records and reports shall be retained in accordance with the Uniform System of Accounts unless otherwise specified herein.

Section 4. Service Information. (1) The utility shall, on request, give its customers or prospective customers such information as is reasonably possible in order that they may secure safe, efficient and continuous service. The utility shall inform its customers of any change made or proposed in the character of its service which might affect the efficiency, safety, or continuity of operation.

(2) Prior to making any substantial change in the character of the service furnished, which would affect the efficiency, adjustment, speed or operation of the equipment or appliances of any customer, the utility shall obtain the approval of the commission. The application shall show the nature of the change to be made, the number of customers affected, and the manner in which they will be affected.

(3) The utility shall inform each applicant for service of the type, class and character of service that is available to him at his location.

Section 5. Special Rules or Requirements. (1) No utility shall establish any special rule or requirement without first obtaining the approval of the commission or proper application.

(2) A customer who has complied with the regulations of the commission shall not be denied service for failure to comply with the rules of the utility which have not been made effective in the manner prescribed by the commission.

Section 6. Meter Readings and Information. (1) Information on Bills. Each bill rendered periodically by water, gas and electric utilities shall show the class of service, the present and last preceding meter readings, the date of the present reading, the number of units consumed, the meter constant, if any, the net amount for service rendered, all taxes, the adjustments, if any, and the gross amount of the bill. The date after which a penalty may apply to the gross amount must be indicated. Estimated or calculated bills shall be distinctly marked as such. The rate schedule under which the bill is computed shall be furnished under one of the following methods:

(a) By printing rate schedule on the bill.
(b) By publishing in a newspaper of general circulation once each year or when rate is changed.
(c) By mailing to each customer once each year or when rate is changed.
(d) By providing a place on each bill where a customer may indicate his desire for a copy of the applicable rates and furnishing same by return first class mail.

(2) Meter Readings. The registration of each meter shall read in the same units as used for billing unless a conversion factor be shown on the billing forms and if the meter does not read direct, the constant shall be plainly marked on the face of the meter dial.

(3) Flat Rates. Flat rates for unmetered service shall approximate as close as possible the utility's rates for metered service and the rate schedule shall clearly set out the basis upon which consumption is estimated.

(4) Utilities now using or desiring to adopt mechanical billing or other billing systems of such a nature as to render compliance with all of the terms of subsection (1) of this section impracticable, may make application to the commission for relief from part of these terms. For good cause shown, the commission may allow the omission of part of these requirements. Each utility shall submit the form of bill to be used by it to the commission for its approval.

Section 7. Deposits. (1) A utility may require from any customer or applicant for service a minimum cash deposit or other guaranty to secure payment of bills of an amount not to exceed two twelfths (2/12) of the estimated annual bill of such customer or applicant, where bills are rendered monthly or an amount not to exceed three-twelfths (3/12) of the estimated annual bill of such customer or applicant, where bills are rendered bimonthly or an amount not to exceed four-twelfths (4/12) of the estimated bill of such customer or applicant where bills are rendered quarterly.

(2) The utility shall issue to every customer from whom a deposit is received a certificate of deposit, showing the name of the customer, location of initial premises occupied, date and amount of the deposit.

Section 8. Complaints. Upon complaint to the utility by a customer either at its office or in writing, the utility shall make a prompt and complete investigation and advise the complainant thereof. It shall keep a record of all such complaints concerning its utility service which shall show the name and address of the complainant, the date and nature of the complaint, and the adjustment or disposition thereof.

Section 9. Bill Adjustment. (1) Whenever a meter in service is found upon periodic request or complaint test to be more that two percent (2%) fast, additional tests shall be made at once to determine the average error of the meter. Said tests shall be made in accordance with the commission's regulation applicable to the type of meter involved.

(2) If the result of tests on a customer's meter shows an average error greater than two percent (2%) fast, then the

customer's bill, for the period during which the meter error is known to have existed, shall be recomputed and the account adjusted on the basis of the test. In the event the period during which the meter error existed is unknown, then the customer's bill shall be recomputed for one-half (1/2) of the elapsed time since the last previous test but in no case to exceed twelve (12) months. (See exception in subsection (5) of this section)

(3) If the result of tests on a customer's meter shows an average error greater than two percent (2%) slow, then the customer's bill, for the period during which the meter error is known to have existed, may be recomputed and the account adjusted on the basis of the test. In the event the period during which the meter error existed is unknown, then the customer's bill may be recomputed for one-half (1/2) of the elapsed time since the last previous test but in no case to exceed twelve (12) months.

(4) It shall be understood that when a meter is found to have an error in excess of two percent (2%) fast or slow the figure for calculating the amount of refund or the amount to be collected by the utility shall be that percentage of error as determined by the test; i.e., it is the duty of the utility to maintain the accuracy of its measuring devices as nearly one hundred percent (100%) as is commercially practicable. Therefore, percent error shall be that difference as between one hundred percent (100%) and that amount of error as is indicated by the test.

(5) The burden of maintaining measuring equipment so that it will register accurately is upon the utility; therefore, if meters are found upon test to register fast and if time for periodic test has overrun to the extent that one-half (1/2) of the time elapsed since the last previous test exceeds twelve (12) months, the refund shall be for the twelve (12) months as specified in subsection (2) of this section and in addition thereto, a like refund for those months exceeding the periodic test period; provided, however, that the commission may relieve the utility from this requirement in any particular case in which it is shown that the failure to make the periodic test was due to causes beyond the utility's control.

(6) Each utility shall make a reasonable attempt to determine if the amount of consumption for the current billing period for each customer is unduly excessive. If a comparison of consumption indicates a necessity therefor, a test of the customer's meter shall be made, and if the meter is found to register incorrectly to the customer's prejudice more than two percent (2%), the utility shall recalculate the customer's bills in accordance with the foregoing provisions.

(7) When a meter is tested and it is found necessary to make a refund or back bill a customer, the customer shall be notified in substantially the following form:

On_____, 19___, the meter bearing identification No._____installed in your building located at_____ (Street and Number) in_____ (City) was tested at_____ (On premises or elsewhere) and found to register_____ (Percent fast or slow). The meter was tested on_____ (Periodic, Request, Complaint) test.

Based upon this we herewith_____ (Charge or Credit) you with the sum of $_____, which amount has been noted on your regular bill.

Section 10. Customer's Discontinuance of Service. (1) Any customer desiring service discontinued or changed from one address to another shall give the utility three (3) days' notice in person or in writing, provided such notice does not violate contractual obligations.

(2) Upon request that service be reconnected at any premises subsequent to the initial installation or connection to its service lines, the utility may, subject to subsection (3) of this section, charge the applicant an amount not to exceed the actual average cost as approved by this commission of making such reconnection.

(3) Any utility desiring to establish a reconnection charge under the provisions of subsection (2) above, shall submit for commission approval a formal application setting out (a) the actual average cost of making such reconnections, and (b) the effect of such charges on the utility's revenues.

Section 11. Discontinuance of Service. (1) The utility may refuse or discontinue to serve an applicant or customer under the following conditions:

(a) For noncompliance with its rules and regulations. However, no utility shall discontinue or refuse service to any customer or applicant for violation of its rules or regulations without first having made a reasonable effort to induce the customer or applicant to comply with its rules and regulations as filed with the commission. After such effort on the part of the utility, service may be discontinued or refused only after the customer shall have been given at least forty-eight (48) hours written notice of such intention, mailed to his last known address.

(b) When a dangerous condition is found to exist on the customer's or applicant's premises, the service may be cut off without notice or refused, provided that the utility shall notify the customer or applicant immediately of the reasons for the discontinuance or refusal and the corrective action to be taken by the applicant or customer before service can be restored.

(c) When a customer or applicant refuses or neglects to provide reasonable access to the premises for the purpose of installation, operation, meter reading, maintenance or removal of utility property the utility may discontinue or refuse service only after the customer or applicant shall have been given at least fifteen (15) days' written notice of such intention.

(d) A utility shall not be required to furnish service to any applicant or customer when such applicant or customer is indebted to the utility for service furnished until such applicant or customer shall have paid such indebtedness.

(e) A utility may refuse or discontinue service to a customer or applicant if the customer or applicant does not comply with state, municipal or other codes, rules and regulations applying to such service.

(2) The utility may discontinue service under the following conditions:

(a) For nonpayment of bills. However, no utility shall discontinue service to any customer for nonpayment of bills (including delayed charges) without first having made a reasonable effort to induce the customer to pay same. The customer shall be given at least forty-eight (48) hours written notice prior to discontinuance of service and the burden shall be on the utility to show the date and time of the receipt of the written notice by the customer. In any event service shall not be discontinued before twenty (20) days after the mailing date of the original bill. Service shall not be discontinued if there are reasonable grounds to believe that such discontinuance will, under the circumstances, endanger human life, or constitute a serious threat to human health.

(b) For fraudulent or illegal use of service. When the utility has discovered evidence that by fraudulent or illegal means a customer has obtained unauthorized service or has diverted the service for unauthorized use or has obtained service without same being properly measured, the service to the customer may be discontinued without notice. The utility shall not be required to restore service until the customer has complied with all rules of the utility and regulations of the commission and the utility has been reimbursed for the estimated amount of the service rendered and the cost to the utility incurred by reason of the fraudulent use.

(3) It shall be the duty of the utility before making service connections to a new customer to ascertain the condition of the meter and service facilities for such customer in order that prior fraudulent use of the facilities, if any, will not be attributed to the new customer, and the new customer shall be afforded the opportunity to be present at such inspection. The utility shall not be required to render service to such customer until all defects in the customer-owned portion of the service, if any, shall have been corrected.

(4) Reconnection. For all cases of refusal or discontinuance of service as herein defined, where the cause for refusal or discontinuance has been corrected and all rules and regulations of the utility and the commission have been complied with, the utility shall promptly render service to the customer or applicant.

(5) When advance notice is required, such notice may be given by the utility by mailing by U. S. mail, postage prepaid, to the last known address of the applicant or customer.

Section 12. Special Charges. (1) A utility may make a reasonable charge for each of the following trips:

(a) To read a meter when the customer has failed to read the meter for three (3) consecutive billing periods. This pertains only to those utilities whose customers ordinarily read their own meters.

(b) To collect a delinquent bill. This trip may be made only after written notice has been sent to the customer stating that if the bill is not paid by a certain date, the service will be disconnected.

(c) To reconnect a service that has been disconnected for nonpayment of bills or for violation of the utility's rules and regulations. This charge may include the cost of disconnecting the service.

(2) The charges, however, shall be applied uniformly throughout the entire area served by the utility, shall be incorporated in the utility's rules and regulations, shall be subject to the approval of the commission, and shall yield only enough revenue to pay the expenses incurred in rendering these services.

Section 13. Meter Testing. (1) All electric, gas and water utilities furnishing metered service shall provide meter standards and test facilities as more specifically set out under PSC Elec-1, PSC Gas-1, and PSC Water-1.

(2) A utility may have all or part of its testing of meters performed by another utility or agency approved by the commission for such purpose. Each utility having tests made by another agency or utility shall notify the commission of said arrangements in detail to include make, type and serial number of standards used to make said checks or tests.

(3) No utility shall place in service any basic measurement standard required by these rules unless it has been calibrated by the Public Service Commission's Meter Standards Laboratory.

All utilities or agencies making tests or checks for utility purposes shall notify the commission promptly of the adoption or deletion of any basic standards requiring calibration by the commission.

(4) Each electric, gas and water utility or agency doing meter testing for a utility shall have in its employ metermen certified by this commission. These certified metermen shall perform such tests as may be necessary to determine the accuracy of the utility's meters and to adjust the utility's meters to the degree of accuracy required by the regulations of the commission.

(5) A utility or agency desiring to have its employees certified as metermen shall submit the names on the commission's form entitled "Application for Appointment of Metermen" and after compliance with the requirements as noted in this form, the applicant may be certified as a meterman and furnished with a card authorizing him to perform meter tests.

Section 14. Access to Property. The utility shall at all reasonable hours have access to meters, service connections and other property owned by it and located on customer's premises for purposes of installation, maintenance, meter reading, operation or removal of its property at the time service is to be terminated. Any employee of the utility whose duties require him to enter the customer's premises shall wear a distinguishing uniform or other insignia, identifying him as an employee of the utility, or carry on his person a badge or other identification which will identify him as an employee of the utility, the same to be shown by him upon request.

Section 15. Meter Test Records. (1) (a) Test Cards. A complete record of all meter tests and adjustments and data sufficient to allow checking of test calculations shall be recorded by the meterman. Such record shall include: Information to identify the unit and its location; the date of tests; the reason for such tests; readings before and after the test; a statement of "as found" and "as left" accuracies sufficiently complete to permit checking of the calculations employed; indications showing that all required checks have been made; a statement of repairs made, if any; the identifying number of the meter; the type and capacity of the meter; and the constant of the meter. (b) The complete record of tests of each meter shall be continuous at least two (2) periodic tests and in no case less than two (2) years.

(2) (a) History Cards. Each utility shall keep numerically arranged and properly classified card records giving for each meter owned and used by the utility for any purpose the identification number, date of purchase, name of manufacturer, serial number, type, rating, and the name and address of each customer on whose premises the meter has been in service with date of installation and removal. These card records shall also give condensed information concerning all tests and adjustments including dates and general results of such adjustments. The card records shall be of such character that a system can be used that will record the date of the last test and indicate the proper date for the next periodic test required by the applicable regulation of the commission. (b) When the records required above are kept in a readily available form posting to the history card is not necessary.

(3) Sealing of Meters. Upon completion of adjustment and test of any meter under the provisions of the regulations of the commission, the utility shall affix thereto a suitable seal in such a manner that adjustments or registration of the meter cannot be tampered with without breaking the seal. The seal shall be of a type acceptable to the commission.

Section 16. Pole Identification. (1) Each utility owning poles or other structures supporting the company's wires, shall mark every pole or structure located within a built up community with the initials or other distinguishing mark by which the owner of every such structure may be readily determined. For the purpose of this rule the term "built up community" shall mean urban areas and those areas immediately adjacent thereto.

(2) Identification marks may be of any type but must be of a permanent material and shall be of such size and so spaced and hereafter maintained so as to be easily read from the surface of the ground at a distance of six (6) feet from the structure.

(3) When utilities structures are located outside of a built-up community only every tenth structure need be so marked.

(4) All junction structures shall bear the identification mark and structure number of the owner.

(5) Poles need not be marked if they are clearly and unmistakably identifiable as the property of the utility.

(6) Each utility shall either number their structures and maintain a numbering system or use some other method of identification so that each structure in the system may be easily identified.

(7) The requirements herein shall apply to all existing structures and those hereafter erected and to all changes in ownership.

Section 17. System Maps and Records. (1) Each utility shall have on file at its principal office located within the state and shall file upon request with the commission a map or maps of suitable scale of the general territory it serves or holds itself ready to serve showing the following:

(a) Operating districts.
(b) Rate districts.
(c) Communities served.
(d) Location and size of transmission lines, distribution lines and service connections.
(e) Location and layout of all principal items of plant.
(f) The date of construction of all items of plant by year and month.

(2) In each division or district office there shall be available such information relative to the utility's system as will enable the local representative to furnish necessary information regarding the rendering of service to existing and prospective customers.

(3) In lieu of showing the above information on maps a card record or suitable means may be used. For all construction the records shall also show the date of construction by month and year.

Section 18. Location of Records. All records required by the regulations of the commission shall be kept in the principal office of the utility or other acceptable safe storage place, and shall be made available to representatives, agents or employees of the commission upon reasonable notice and at all reasonable hours.

Section 19. Request Tests. Each utility shall make a test of any meter upon written request of any customer provided such request is not made more frequently than once each twelve (12) months. The customer shall be given the opportunity of being present at such request tests. If such tests show that the meter was not more than two percent (2%) fast, the utility may make a reasonable charge for the test, the amount of such charge to be set out in the utility's rules and regulations filed with the commission, and subject to the approval of the commission.

Section 20. Complaint Tests. (1) Any customer of the utility may request a meter test by written application to the commission accompanied by payment of such fee for the test as prescribed below. Such request may not be made more frequently than once each twelve (12) months. Upon receipt of such request, the commission will notify the utility to leave the customer's meter in place until completion of such test.

(2) If a meter tested upon complaint of a customer is found to register more than two percent (2%) fast, the cost of such test shall be borne by the customer. However, if the meter shall be found to register more than two percent (2%) fast, the cost of such test shall be borne by the utility and the amount of the deposit made by the customer shall be refunded.

(3) The charges fixed by the commission for making such tests are as follows:

(a) Electric. Direct current and single phase alternating current watt hour meters operating on circuits of not more than 250 volts:

Amperes Rated Capacity	Fee
30 and under	$ 2
Over 30 to 100	4
Each additional 50 amperes or factor thereof	1

Polyphase a.c. watt hour meters and single phase or direct current watt hour meters operating on circuits of over 250 volts with or without instrument transformers:

Kilowatts Rated Capacity	Fee
5 KW and under	$ 2
Over 5 to 25	4
Over 25 to 100	8
Over 100 to 500	16

Plus one-half of the cost of transportation of the commission representative between the office of the commission and the point of test.

(b) Gas. Displacement type meters operating on distribution system pressures:

Capacity in Cu. Ft. Per Hour	Fee
1000 cu. ft. per hour and under	$ 4
Over 1000 to 10,000	8
Over 10,000 to 100,000	12

Plus one-half of the cost of transportation of the commission representative between the office of the commission and the point of test.

(c) Water.

Size	Fee
Outlet 1 inch or less	$ 4
Outlet over 1 inch to 2 inches	6
Outlet over 2 inch to 3 inches	8
Outlet over 3 inch to 4 inches	10

Plus one-half of the cost of transportation of the commission's representative between the office of the commission and the point of test.

(d) For meters of a size or capacity not shown herein, the commission will fix a suitable fee upon application.

Section 21. Safety Program. (1) Each utility shall adopt and execute a safety program, fitted to the size and type of its operations. As a minimum, the safety program shall:

(a) Require employees to use suitable tools and equipment in order that they may perform their work in a safe manner.

(b) Instruct employees in safe methods of performing their work.
(c) Instruct employees who, in the course of their work are subject to the hazard of electrical shock, asphyxiation or drowning, in accepted methods of artificial respiration.

Section 22. Inspection of Systems. (1) Each utility shall adopt procedures for inspection to assure safe and adequate operation of its facilities and compliance with Public Service Commission rules. These procedures shall be filed with the commission.

(2) Each electric utility shall make systematic inspections of its system in the manner set out below for the purpose of insuring that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but in no event less frequently than is set forth below for various classes of facilities and types of inspection.

(a) At intervals not to exceed six (6) months:
1. Production facilities regularly operated and manned; continuous surveillance, monitoring and inspection as a part of operating procedure.
2. Unmanned production facilities including peaking units not on standby status; units shall be operated and inspected and all monitoring devices shall be checked to determine that there is no evidence of abnormality.
3. Substations where the primary voltage is 69 KV or greater; examination for the purpose of discovering damage to or deterioration of components including structures and fences; checking of all gauges and monitoring devices.
4. Underground network transformers and network protectors in vaults located in buildings or under sidewalks, examination for leaks, condition of case, connections, temperature and overloading.
5. Electric lines operating at 69 KV or greater (including insulators, conductors and supporting facilities).

(b) At intervals not to exceed one (1) year:
1. Production facilities maintained on a standby status; also inspection and examination prior to any start up, except remotely controlled facilities.
2. Substations where the primary voltage is less than 69 KV but is 15 KV or greater.

(c) At intervals not to exceed two (2) years:
1. Electric lines operating at voltages of less than 69 KV (including insulators, conductors and supporting facilities).

(d) Other Facilities:
1. Utility buildings inspected for compliance with safety codes at intervals not greater than one (1) year.
2. Construction equipment inspected for defects, wear and operational hazards at intervals not greater than quarterly.

(e) On the receipt of a report of a potentially hazardous condition made by a qualified employee or public official or by a customer:
1. All portions of the system (including those listed above) which are the subject of the report.
2. Appropriate records shall be kept by each utility to identify the inspections made, deficiencies found and action taken to correct such deficiencies.

(3) Each gas utility shall make systematic inspections of its system for the purpose of insuring that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but in no event less frequently than is prescribed or recommended in the Department of Transportation, Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, for the various classes of facilities as defined in said standards, in accordance with the inspection procedures described therein.

(4) The following maximum time intervals are prescribed for (i) certain inspections provided for in Department of Transportation, Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, with respect to which intervals are not specified and (ii) certain additional inspections not provided for in such code.

(a) At intervals not to exceed one (1) year:
1. Production wells, storage wells and well equipment; visual inspection and examination of all exterior components.
2. Pressure limiting stations, relief devices and pressure regulating stations, including vaults.
3. The curb box on service shall be inspected for accessibility.

(b) Other Facilities:
1. Utility buildings inspected for compliance with safety codes at least annually.
2. Construction equipment inspected for defects, wear and operational hazards at least quarterly.

(c) At intervals not to exceed the periodic meter test intervals:
1. Individual residential customer service regulators, vents and relief valve vents shall be checked for satisfactory operation.

(d) At intervals of meter change:
1. The curb box on service shall be inspected for operable condition.

(e) On the receipt of a report of a potentially hazardous condition made by a qualified employee or public official or by a customer:
1. All portions of the system (including those listed above) which are the subject of the report.
2. Appropriate records shall be kept by each utility to identify the inspections made, deficiencies found and action taken to correct such deficiencies.

(5) (a) Each telephone utility shall make systematic inspections of its system in the manner set out below for the purpose of insuring that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but in no event less frequently than is set forth below for various classes of facilities and types of inspection.
1. Aerial plant: Inspection for electrical hazards, proper clearance for electric facilities and climbing safety – Every two (2) years.
2. Underground plant: Inspection for presence of gas, proper clearance from electric facilities and safe working conditions – At least annually.
3. Station equipment and connections: Inspection for external electrical hazards, damaged instruments or wiring, appropriate protection from lightning and safe location of equipment and wiring – When on customer's premises.
4. Utility buildings: Inspection for compliance with safety codes – At least annually.
5. Construction equipment: Inspection for defects, wear and operational hazards – At least quarterly.

(b) On the receipt of a report of a potentially hazardous condition made by a qualified employee or public official or by a customer:
1. All portions of the system (including those listed above) which are the subject of the report.
2. Appropriate records shall be kept by each utility to identify the inspections made, deficiencies found and action taken to correct such deficiencies.

(6) (a) Each water utility shall make systematic inspections of its system in the manner set out below for the purpose of insuring that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but in no event less frequently than is set forth below for various classes of facilities and types of inspection.
1. Source of Supply:
a. Dams, physical and structural, annually.
b. Intake structures, physical and structural, annually.
c. Traveling screens, physical and structural and safety of operation, annually.
2. Purification:
a. Sedimentation basins filters and clear wells, physical and structural and safety of operation, annually.
b. Chemical feed equipment, for proper and safe operation, annually.
c. Pumping equipment including electric power wiring and controls, for proper and safe operation, annually.
d. Hydrants, for proper and safe operation, annually.
e. Utility buildings, inspection for compliance with safety codes, annually.
f. Construction equipment, inspection for defects, ear and operational hazards, quarterly.
g. Mains and valves, leaks, annually.

(b) On the receipt of a report of a potentially hazardous condition made by a qualified employee or public official or by a customer:
1. All portions of the system (including those listed above which are the subject of the report.
2. Appropriate records shall be kept by each utility to identify the inspections made, deficiencies found and action taken to correct such deficiencies.

Section 23. Reporting of Accidents. Each utility shall notify the commission of any accident which results in death or serious injury to any person or substantial property damage. Prompt notice of fatal accidents shall be given to the commission by telephone or telegraph.

Section 24. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

WILLIAM A. LOGAN, Chairman

ADOPTED: August 20, 1974
APPROVED: September 29, 1974 ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: October 18, 1974 at 3:59 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary, Public Service Commission, Capital Plaza Tower, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
(902 KAR 2:010)

RELATES TO: KRS 211.180, 214.010, 214.020
PURSUANT TO: KRS 13.082, 211.090(1)(c), 195.040
SUPERSEDES: CDS-1
NECESSITY AND FUNCTION: KRS 211.180 mandates the Department for Human Resources to implement a statewide program for the detection, prevention and control of communicable diseases. This regulation insures uniform definitions and methods of control for communicable diseases throughout the Commonwealth.

Section 1. The "definitions" and "methods of control" as set forth in the 1970 edition of the booklet "Control of Communicable Diseases in Man", published by the American Public Health Association, are hereby adopted for the Commonwealth of Kentucky. A copy of this publication shall be on file in the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky, and open to public inspection, and is available from the American Public Health Association, 1015 Eighteenth Street, N.W., Washington, D.C. 20036.

APPROVED: JOHN P. BELL, MD, Chairperson
Council on Health Services

ACCEPTED: STANLEY HAMMONS, MD, Commissioner

LAUREL TRUE, Secretary

ADOPTED: October 10, 1974
RECEIVED BY LRC: October 17, 1974 at 4:11 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, Capitol Annex, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
(902 KAR 2:020)

RELATES TO: KRS 211.180, 214.010
PURSUANT TO: KRS 13.082, 211.090(1)(c), 195.040
SUPERSEDES: CDS-2
NECESSITY AND FUNCTION: KRS 211.180 mandates the Department for Human Resources to implement a statewide program for the detection, prevention and control of communicable diseases. This regulation is being repromulgated in order to effectuate uniform reporting of cases of communicable diseases in accordance with the provisions of KRS 214.010.

Section 1. Reportable Diseases; Time of Reporting. Because of their public health significance, the following diseases are hereby declared to be reportable diseases within the time periods specified below. All cases shall be reported.

(1) Diseases to be reported within twenty-four (24) hours. The following diseases shall be reported within twenty-four (24) hours of suspicion of diagnosis:

(a) Diseases for which routine immunization is recommended: diphtheria, whooping cough (pertussis), poliomyelitis (paralytic or non-paralytic), measles (rubeola), tetanus, rubella, mumps.

(b) Others: anthrax, botulism, cholera, infectious hepatitis, malaria, ophthalmia neonatorum, gonococcal; meningococcal infections, plague, relapsing fever, rabies in human, salmonellosis, shigellosis, smallpox, syphilis, infectious; tuberculosis, typhoid fever, typhus, yellow fever, any suspected food-borne illness and a suspected epidemic of any disease.

(2) Diseases to be reported within seven (7) days of suspicion of the diagnosis.

(a) All communicable diseases listed in the 1970 edition of the American Public Health Association publication, "Control of Communicable Diseases in Man," except as otherwise provided in this regulation.

(b) Other selected non-communicable diseases: animal bites (by species), rheumatic fever, encephalitis, post-infectious; rubella, congenital; syphilis, non-infectious; complications of any immunization.

(3) Diseases to be reported collectively, on a weekly basis: chickenpox, influenza, conjunctivitis, scarlet fever, streptococcal pharyngitis; gastroenteritis, non-food-borne, non-epidemic.

Section 2. Reporting of Diseases. (1) Physicians. Each and every physician in active practice within the State of Kentucky shall report to the local health department of the county in which the physician practices the identifying and pertinent epidemiological, clinical and laboratory information of any confirmed or suspected case under his care of any disease listed as reportable in Section 1 of this regulation. Cases of venereal disease shall be reported in a confidential manner according to the provisions of the regulation of the Department for Human Resources relating to venereal diseases.

(2) Reporting of Diseases by Others. The head of a family, midwife, nurse, superintendent, or person in charge of a hospital, laboratory, other institution or dispensary, superintendent, principal, teacher or other person in charge of any public, private, or parochial school, or any person in charge of any group of persons, shall report immediately any of the diseases listed as reportable to the local health department in whose jurisdiction the disease occurs.

(3) Reporting of Communicable Diseases in Animals. It shall be the duty of every person having knowledge of the existence of an animal of any species apparently afflicted with rabies, anthrax, erysipelas, leptospirosis, brucellosis, tuberculosis, psittacosis, or other disease known to be communicable to man to report the pertinent information immediately to the local health department.

Section 3. Transmission of Reports to the Department for Human Resources. The reports of cases of reportable disease required by this regulation shall be transmitted from local health departments to the Department for Human Resources within the time intervals stated in this regulation. Where there is no local health department or when for any reason the local health department is unable to receive or transmit any report of any reportable disease, the report shall be submitted directly to the Department for Human Resources.

APPROVED: JOHN P. BELL, MD, Chairperson
Council on Health Services

ACCEPTED: STANLEY HAMMONS, MD, Commissioner

LAUREL TRUE, Secretary

ADOPTED: October 10, 1974
RECEIVED BY LRC: October 17, 1974 at 4:11 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, Capitol Annex, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
(902 KAR 2:030)

RELATES TO: KRS 211.180, 214.010, 214.020
PURSUANT TO: KRS 13.082, 211.090(1)(c), 195.040
SUPERSEDES: CDS-3
NECESSITY AND FUNCTION: KRS 211.180 mandates the Department for Human Resources to implement a statewide program for the detection, prevention and control of communicable diseases. This regulation insures delineation of authority and responsibility for proper investigation and control of communicable diseases throughout the Commonwealth.

Section 1. Community Control Procedures. (1) Inspections. Authorized local health department or Department for Human Resources personnel shall inspect any premises that they have reasonable grounds to believe are in a condition conducive to the spread of any communicable disease.

(2) Control Procedures. Local health departments or the Department for Human Resources shall:

(a) Make or cause to be made such investigations as may be necessary for the purpose of securing data regarding clinical diagnosis, reservoir, and time, place and source of infection and contacts.

(b) Establish and maintain quarantine, isolation or other measures as required by law or by regulations of the Department for Human Resources relating to communicable desease control.

(c) Provide, or cause to be provided, for the instruction of persons affected and their attendants in the proper methods of such concurrent and terminal disinfection as may be required by the Deaprtment for Human Resources or local board of health having jurisdiction.

(d) Afford all contacts of persons suffering from those diseases for which there is a reliable and approved means of immunization the opportunity to be immunized.

(e) Make inquiry or investigation to see that control measures are being properly observed during the period of communicability.

(f) Introduce such other measures, not inconsistent with law or the regulations of the Department for Human Resources and the local board of health having jurisdiction, as are necessary because of widespread infection or threatened epidemic.

(3) Uncertain Diagnosis. Whenever a case of unrecognized illness shall be reported to, or otherwise brought to the attention of the local health department or Department for Human Resources which upon investigation presents symptoms of a communicable disease but in which sufficient time has not elapsed to render a positive diagnosis, the local health department or the Department for Human Resources may establish the control measures applicable in actual cases of the suspected communicable disease, until such time as a positive diagnosis can be established. If the disease proves to be non-communicable the temporary control measures shall be terminated at once.

Section 2. Control Procedures by Attending Physician. (1) Isolation by Attending Physician. It shall be the duty of every physician, immediately upon discovering a case or suspected case of any communicable disease, for which isolation procedures are specified, to secure such isolation of the patient as will minimize the possibility of spread of the disease.

(2) Submission of laboratory specimens. It shall be the duty of each and every physician who shall be in attendance on any person having or reasonably suspected as having any of the diseases specified as reportable, to submit suitable specimens to a laboratory approved by the Department for Human Resources for examination, when such examination is deemed necessary by local health department or Department for Human Resources authorities, for investigation or control of such disease.

Section 3. Isolation of Persons in Institutions. Every institution which provides for care or treatment of the ill shall be provided with at least one (1) isolation ward or room so related to the rest of the building as to make proper isolation therein practicable.

APPROVED: JOHN P. BELL, MD, Chairperson
Council on Health Services

ACCEPTED: STANLEY HAMMONS, MD, Commissioner

LAUREL TRUE, Secretary

ADOPTED: October 10, 1974
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DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
(902 KAR 2:040)

RELATES TO: KRS 211.180, 214.010, 214.020
PURSUANT TO: KRS 13.082, 211.090(1)(c), 195.040
SUPERSEDES: CDS-4
NECESSITY AND FUNCTION: KRS 211.180 mandates the Department for Human Resources to implement a statewide program for the detection, prevention and control of communicable diseases. This regulation insures that selected individuals and groups who serve as potential sources of certain communicable diseases are under proper medical surveillance in order to prevent outbreaks of such diseases among their contacts.

Section 1. Carriers. Any person who is a carrier of the infectious agents of Asiatic cholera, amoebic dysentery, bacillary dysentery, diphtheria, tuberculosis, typhoid, paratyphoid fever or any other communicable disease shall be subject to the special supervision of the local health department or Department for Human Resources, and every physician and local health department shall report such carriers immediately to the Department for Human Resources.

Section 2. Selected Groups. The Department for Human Resources or individual local health departments may require periodic medical examinations for selected occupational groups including barbers, beauticians, school teachers and employees, and others who come into intimate contact with the public and potentially serve as sources of infection.

APPROVED: JOHN P. BELL, MD, Chairperson
Council on Health Services

ACCEPTED: STANLEY HAMMONS, MD, Commissioner

LAUREL TRUE, Secretary

ADOPTED: October 10, 1974
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DEPARTMENT FOR HUMAN RESOURCES
Bureau For Health Services
(902 KAR 2:050)

RELATES TO: KRS 211.180, 214.020
PURSUANT TO: KRS 13.082, 211.090(1)(c), 195.040
SUPERSEDES: CDS-5
NECESSITY AND FUNCTION: KRS 211.180 mandates the Department for Human Resources to implement a statewide program for the detection, prevention and control of communicable diseases. This regulation insures the application of control procedures necessary to prevent transmission of communicable diseases after the sources of infection are identified.

Section 1. Property. Whenever any private or public property has been implicated as a possible reservior or possible source of infection of any communicable disease, the local health department or the Department for Human Resources shall take such measures as are necessary to secure adequate cleaning, disinfection, or other control procedures necessary to insure cessation of transmission.

Section 2. Persons. Whenever any person has been implicated as a possible reservior or possible source of infection of any communicable disease, the local health department or the Department for Human Resources shall employ such measures as are necessary to secure adequate isolation, restriction of employment or other control procedures that may be necessary to insure cessation of transmission of infection.

Section 3. Corpses. Whenever any corpse has been implicated as a possible reservior or possible source of infection of any communicable disease, the local health department or the Department for Human Resources shall take such measures as are necessary to insure cessation of transmission of infection.

Section 4. Animals. Whenever any wild or domestic animal or animal population has been implicated as a possible reservior or possible source of infection of any disease which is communicable to humans, the local health department or the Department for Human Resources shall take such measures as are necessary to insure cessation of transmission of infection.

APPROVED: JOHN P. BELL, MD, Chairperson
Council on Health Services

ACCEPTED: STANLEY HAMMONS, MD, Commissioner

LAUREL TRUE, Secretary

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DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
(902 KAR 2:060)

RELATES TO: KRS 158.035, 211.180, 214.032, 214.034, 214.036
PURSUANT TO: KRS 13.082, 211.090(1)(c), 195.040
SUPERSEDES: CDS-6
NECESSITY AND FUNCTION: KRS 211.180 mandates the Department for Human Resources to implement a statewide program for the detection, prevention and control of communicable diseases. KRS 214.034 requires the establishment of immunization schedules by the Department for Human Resources. This regulation specifies the ideal schedule for mandatory immunization and is in keeping with the latest scientific information on the topic.

Section 1. Schedule for Required Immunizations. Vaccines against diphtheria (D), tetanus (T), pertussis (P), poliomyelitis (Trivalent OPV) and measles shall be administered according to the following schedule:

(1) Initial Series:
2 months of age.....DPT - Trivalent OPV
6 weeks later.....DPT - Trivalent OPV
6 weeks later.....DPT - Trivalent OPV
12 months of age.....Measles
15-18 months of age.....DPT - Trivalent OPV

(2) Booster Doses:
Shortly before starting school.....DPT - Trivalent OPV
12-14 years of age.....Td
Thereafter at 10 year intervals.....Td

Section 2. Variance from Immunization Schedule. The individual physician or local health department shall have the authority to alter the immunization schedule when indicated for any individual vaccinee or to suit any unusual local conditions.

APPROVED: JOHN P. BELL, MD, Chairperson
Council on Health Services

ACCEPTED: STANLEY HAMMONS, MD, Commissioner

LAUREL TRUE, Secretary

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DEPARTMENT FOR HUMAN RESOURCES
Bureau For Health Services
(902 KAR 2:070)

RELATES TO: KRS 258.005 to 258.085, 258.990(1)(2)
PURSUANT TO: KRS 13.082, 211.090(1)(c), 195.040
SUPERSEDES: CDS-7-1
NECESSITY AND FUNCTION: KRS 258.005 to 258.085 and 258.990(1)(2) authorize the Department for Human Resources to administer a statewide rabies control program. The purpose of this regulation is to establish uniform procedures for the diagnosis, prevention, and control of rabies.

Section 1. Brands and Types of Approved Vaccine. The Department for Human Resources hereby approves all brands and types of anti-rabies vaccine approved by the U.S. Department of Agriculture administered in accordance with the manufacturers' instructions; provided, however, that vaccines certified to induce at least three (3) year immunity shall be used exclusively in mass immunization clinics sponsored by local health departments or by the Department for Human Resources.

Section 2. Vaccination Schedule. The vaccination schedule for all dogs shall be as follows: (1) All dogs six (6) months of age and older shall be vaccinated against rabies.
(2) Dogs initially vaccinated prior to one (1) year of age shall be revaccinated one (1) year later regardless of the type of vaccine used.
(3) Thereafter the period of time required for revaccination is extended to three (3) years provided vaccines certified to induce immunity of that duration are used. Dogs vaccinated with other types of vaccines shall be revaccinated annually.

Section 3. Vaccination Tags. Vaccination tags shall reveal the type of vaccine administered. The word "live" shall be used to designate modified live virus vaccines of either chick embryo or of various tissue culture origins.

Section 4. Dogs Brought into State. All dogs brought into Kentucky, except those brought in for exhibition purposes for

a period not to exceed thirty (30) days, shall be vaccinated against rabies within six (6) months prior to date of entry.

Section 5. Destroying an Animal Exhibiting Positive Signs of Rabies. Dogs showing active signs of rabies or suspected of having rabies shall be confined under competent observation for such a time as may be necessary to determine a diagnosis as specified in KRS 258.085. If confinement is impossible or impracticable, such dog shall be destroyed. Whenever an animal exhibits positive signs of rabies it shall be killed in such a manner as to preserve the brain intact. The animal shall not be shot or clubbed in the head nor shall strychnine or other chemical poisons be used. Wild animals suspected of rabies shall be sacrificed and their heads submitted to the laboratory immediately.

Section 6. Sending Heads of Ownerless Animals to the Laboratory. In the event the ownership of a rabies suspect animal is unknown, the expense of forwarding the head of the animal to the laboratory shall be borne by the local health department. Animal heads shall be submitted in a manner prescribed by the Department for Human Resources. Whole animals, dead or alive, shall not be accepted.

Section 7. Rabies Vaccination Permits for Owners and Operators of Licensed Kennels. (1) The Department for Human Resources may issue permits to owners and operators of licensed kennels to vaccinate dogs owned by them upon satisfactory passage of an examination prescribed by the Department.
(2) The Department for Human Resources shall forthwith revoke any permit issued under this regulation upon finding that the permittee had vaccinated dogs not owned by him.
(3) Permits issued under this regulation shall authorize the use of inactivated (killed virus) vaccine only.
(4) Permits issued under this regulation may be renewed each year unless suspended, revoked or cancelled.
(5) No permit issued under this section shall create a permanent or vested property interest in the permittee, and same may be cancelled whenever the Department for Human Resources determines that a need no longer exists.

Section 8. Rabies Vaccination Permits for Qualified Persons. (1) In the event the rabies control program in a particular county is not being conducted to the satisfaction of the Department for Human Resources and the services of graduate licensed veterinarians are not available, unlicensed persons with veterinary medical experience may be selected and trained by the Department for Human Resources and issued temporary permits to vaccinate dogs against rabies.
(2) No permit issued under this section shall create a permanent or vested property interest in the permittee and same may be cancelled whenever the Department for Human Resources determines that a need no longer exists.

Section 9. CHR-1 and CHR-2 are hereby repealed.

APPROVED: JOHN P. BELL, MD, Chairperson
Council on Health Services

ACCEPTED: STANLEY HAMMONS, MD, Commissioner

LAUREL TRUE, Secretary

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DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
(902 KAR 2:080)

RELATES TO: KRS 211.180, 214.010, 214.160, 214.170, 214.185, and 402.120 to 402.180
PURSUANT TO: KRS 13.082, 211.090(1)(c), 195.040
SUPERSEDES: VD-1-1
NECESSITY AND FUNCTION: KRS 211.180 mandates the Department for Human Resources to implement a statewide program for the detection, prevention and control of communicable diseases. The purpose of this regulation is to establish uniform procedures for the diagnosis, prevention, treatment, and control of venereal disease.

Section 1. Definitions. As used in this regulation: (1) "Approved Serology Laboratory" means a laboratory that has been evaluated and certified by the Department for Human Resources for performing serological tests for syphilis, in compliance with Kentucky's premarital and prenatal laws (KRS 402.120 et seq., and 214.160 et seq.).
(2) "Venereal Disease" means syphilis, gonorrhea, chancroid, granuloma inguinale, and lymphogranuloma venereum.

Section 2. Investigation and Enforcement. Only authorized personnel of the Department for Human Resources and local health departments are empowered to administer and enforce the provisions set forth in this regulation. Their duties shall include, among other things, the investigation of persons known to be or reasonably suspected of being infected with a venereal disease. Local health officers and authorized persons of the Department for Human Resources are hereby empowered and directed to make such examinations, including laboratory testing procedures, of persons reasonably suspected of having a venereal disease as may be necessary for carrying out this regulation.

Section 3. Medical Examination and Treatment of Venereal Disease. (1) Any person reasonably suspected of being infected with a venereal disease shall undergo such medical examination as is necessary, including such laboratory testing procedures as are deemed advisable by the examining physician, to definitely determine the existence or non-existence of a venereal disease. If such person is found to be infected with a venereal disease, or the potentiality for incubation exist, he or she shall undergo such treatment as may be determined adequate by the examining physician.
(2) Any person reasonably suspected of being infected with a venereal disease who refuses to submit himself for examination or treatment as hereinabove provided shall be considered delinquent and shall be subject to quarantine by the Department for Human Resources or local health department until such time as the provisions of subsection (1) of this section are complied with.

Section 4. Venereal Diseases to be Reported. Upon diagnosis of a case of venereal disease, the physician shall report such case in a prescribed manner to his local health department or to the Department for Human Resources stating the infected person's name, address, age, sex, race, date of onset, and for syphilis cases, the stage of the disease; provided, however, that a re-identifiable code number assigned to the patient by the physician may be substituted in lieu of the patient's name and address.

Section 5. Reports to be Confidential. (1) All information and reports concerning persons infected with venereal disease or suspected of being infected with a venereal disease are hereby declared to be confidential and only authorized personnel of the local health department concerned, the physician retained by the patient concerned, and the Department for Human Resources shall be permitted access to such records and information.
(2) Except for requests from licensed practicing physicians retained by the patient concerned and authorized health department personnel, information contained in venereal disease records shall be released only upon written consent of the patient.

Section 6. Approved Serology Laboratories for Premarital and Prenatal Tests. A laboratory must have as its director a physician licensed to practice medicine or osteopathy in Kentucky, in order to qualify for approval by the Department for Human Resources for performing serologic tests for syphilis under Kentucky's premarital and prenatal laws (KRS 402.120 et seq., and 214.160 et seq.). Certificates of approval shall be issued annually by the Department for Human Resources to all laboratories evaluated and certified by the Department for Human Resources. All approved serology laboratories shall fully comply with all the provisions of Kentucky's premarital and prenatal laws and with the rules and regulations of the Department for Human Resources.

Section 7. Laboratory Tests for Venereal Disease. Whenever any laboratory in Kentucky performs a test for any venereal disease the result if reactive or positive shall be reported within one (1) week thereafter to the Department for Human Resources.

APPROVED: JOHN P. BELL, MD, Chairperson
Council on Health Services

ACCEPTED: STANLEY HAMMONS, MD, Commissioner
LAUREL TRUE, Secretary

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KAR Codification

(Following is an outline of the codification system which has been developed for the KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE. The entries for regulations received to date are listed below. Other Cabinets, Departments and agencies of state government will be assigned Titles and Chapters as their regulations are received.)

TITLE 1 LEGISLATIVE RESEARCH COMMISSION

Ch. 1 Administrative Regulations
010 Form of administrative regulations; Administrative Register; Codification

TITLE 11 KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

Ch. 1 State Student Incentive Grants
010 Criteria for selection; amounts
010E (same as above, filed on Emergency basis)

TITLE 31 STATE BOARD OF ELECTIONS

Ch. 1 Absentee Voting
010 When charged with or indicted for a crime

TITLE 40 DEPARTMENT OF LAW

Ch. 1 Attorney General
010 Conditions for furnishing opinions
020 Requests for opinions

TITLE 100 SECRETARY OF CABINET

TITLE 101 DEPARTMENT OF PERSONNEL

Ch. 1 Personal Rules
010 Definitions
020 General provisions
030 Personnel Board procedures
040 Classification plan
050 Compensation plan
060 Applications and examinations
070 Registers
080 Certification and selection of eligibles
090 Types of appointments
100 Probationary period
110 Promotion, transfer, demotion and detail to special duty
120 Separations and disciplinary actions
130 Appeals
140 Service regulations

TITLE 102 TEACHERS' RETIREMENT SYSTEM

Ch. 1 General Rules
020 Supplemental payments
030 Substitute Teachers
035 Substitute teaching by retired teachers
045 Transfer to other systems
050 Out-of-State service interest rates
055 Military service credit
060 Refunds
070 Applications for retirement
100 Insurance
120 Voluntary contributions
125 Omitted contributions
130 Additional contributions

TITLE 103 DEPARTMENT OF REVENUE

Ch. 1 General Administration
010 Protests and appeals

Ch. 16 Income tax – Corporations
010 Taxable income – coal royalty
030 Net operating loss deductions of corporations
050 Application of 103 KAR 16:060 through 103 KAR 16:090
060 Income classification – Business and nonbusiness
070 Apportionment – Sales factor
080 Apportionment – Property factor
090 Apportionment – Payroll factor

Ch. 25 Sales and Use Tax – Registration and Collection
050 Factors and agents

Ch. 26 Sales and Use Tax – Service and Professional Occupations
010 Service enterprises in general
020 Physicians and surgeons
030 Optometrists, Oculists and Opticians

Ch. 27 Sales and Use Tax – Miscellaneous Retailer Occupations
030 Brokers, lienors and fiduciaries
050 Florists and nurserymen
140 Publishers of newspapers, magazines and periodicals
170 Sales by civic clubs and similar organizations

Ch. 30 Sales and Use Tax – General Exemptions
020 Prescription medicines, prosthetic devices and physical aids
060 Articles taken in trade

Ch. 31 Sales and Use Tax – Administration and Accounting
110 Resale certificates

TITLE 200 EXECUTIVE DEPARTMENT FOR FINANCE & ADMINISTRATION

Ch. 1 Public Records
010 Inspecting and copying
010E (same as above, filed on emergency basis)

Ch. 2 Travel Expense and Reimbursement
030 Official work station
030E (same as above, filed on emergency basis)
060 Subsistence expenses
060E (same as above, filed on emergency basis)

TITLE 201 DIVISION OF OCCUPATIONS AND PROFESSIONS

Ch. 1 Board of Accountancy
(010 through 110 reserved)
120 Examinations; Subjects, grading, reexamination

Ch. 2 Board of Pharmacy
010 Schools approved by the Board
020 Examinations
030 Reciprocity – Temporary license
040 Registration of interns
050 Licenses and permits; Fees
055 License renewal; revival fee
060 Pocket certificates
070 Prescription intermediary services restricted
080 Prescription substitution
090 Reference material and prescription equipment

Ch. 3 Board of Auctioneers
010 Apprenticeship requirements for principal examination
020 Residence requirements for apprentices
030 Reciprocity with Indiana residents
040 Non-cancellation during active military duty
050 Accounting of funds by licensed auctioneers
060 Sale of real estate at auction

Ch. 5 Board of Optometric Examiners
030 Annual courses of study required

Ch. 6 Board of Licensure for Nursing Home Administrators
010 Licensure

TITLE 301 DEPARTMENT OF FISH AND WILDLIFE RESOURCES

Ch. 1 Fish
010 Boat docks and concession stands
012 Boating, swimming and water skiing
015 Boats and outboard motors – Size limits
020 Snagging
030 Tennessee River closing hours
035 Cumberland Gap National Historical Park restrictions
040 Skin and scuba diving prohibited; exceptions
050 Small state-owned lakes, special regulations of
055 Angling – Limits and seasons
060 Sport and rough fish
070 Rough fish from backwaters
075 Gigging, snagging, tickling and noodling
080 Fish and aquatic organisms
090 Bow fishing
100 Trout stamp
110 Prohibition on raising or hatching fish in public waters
120 Live fish sales and handling – Licensure

Ch. 2 Game
010 Use of steel traps
020 Use of devices for taking and pursuing wildlife
021E Migratory birds; seasons, limits
022E Waterfowl seasons; limits
030 Commercial guides
040 Upland game shooting preserves
050 Land Between the Lakes hunting rules

Ch. 3 Hunting and Fishing
010 Acts of depredation prohibited
020 License fees

Ch. 4 Wildlife
010 Districts
020 Ballard Refuge restrictions

TITLE 302 DEPARTMENT OF AGRICULTURE

Ch. 1 Soybeans
010 Referendum

TITLE 401 BUREAU OF ENVIRONMENTAL QUALITY

Ch. 1 Division of Plumbing
(010 reserved for definitions)
020 Installation permits

Ch. 2 (reserved for Division of Solid Waste)

Ch. 3 (reserved for Division of Air Pollution)

Ch. 4 Division of Water Resources
010 Water withdrawal permits; Criteria; Reports

TITLE 402 BUREAU OF LAND RESOURCES

Ch. 1 Division of Reclamation
010 Reclamation plans of surface effects of underground mines; Definitions; Certificates, fees, terms; Requirements

Ch. 2 Division of Conservation
010 Direct aid eligibility of districts
020 Allowable district expenditures

Ch. 3 (reserved for Division of Forestry)

TITLE 601 BUREAU OF VEHICLE REGULATION

Ch. 1 Division of Motor Carriers
010 Truck tractors, semi-trailers; Maximum length
020 Permit for hauling industrial materials; Fee; Bond
020E (same as 020, filed on Emergency basis)

Ch. 12 Driver's License
010 Notice and hearing prior to revocation

Ch. 13 Driver Improvement
010 Medical Review Board - Basis for examination, evaluation, test

Ch. 14 (reserved for Driver Training Schools)

TITLE 602 DIVISION OF AERONAUTICS AND AIRPORT ZONING

Ch. 1 Air Carriers
010 Applications for intrastate certificates of public convenience and necessity
020 Rules and procedures for hearings on certificates
030 Operation of aircraft in intrastate air commerce
040 Insurance and indemnity bond requirements

TITLE 603 BUREAU OF HIGHWAYS

Ch. 1 (reserved for Construction and Materials)

Ch. 2 (reserved for Pre-Construction)

Ch. 3 (reserved for Maintenance)

Ch. 4 (reserved for Right of Way)

Ch. 5 Traffic
010 Types of limited access; permits for other access
020 Pedestrian traffic on limited access facilities
025 Fully controlled access highways
030 Right turn on red signal prohibitions
040 Use of rest areas

Ch. 6 Truckway Classifications
010 KY 15 Classifications
011 KY 36 Classifications
012 US 119 Classficiation
013 KY 136 Classficiations
014 KY 797 Classification
015 KY 909 Classifications
016 KY 1232 Classification
017 KY 1526 Classifications
018 KY 1 Classifications
019 KY 7 Classifications
020 US 31-W Classifications
021 I-24 Classification
022 KY 153 Classifications
023 KY 805 Classification

TITLE 701 DEPARTMENT OF EDUCATION

TITLE 702 EDUCATION - BUREAU OF ADMINISTRATION AND FINANCE

Ch. 1 General Administration
010 Facilities surveys
020 Length of employment
030 Group life insurance program

Ch. 2 Surplus Property
010 Definitions of eligible entities
020 Authority for organizing and operating
030 Certification of eligibles
040 Donee requirements on use and disposal of Federal surplus personal property donated for public health or educational purposes
050 Donee requirements on use and disposal of Federal excess property
060 Nonfederal excess, surplus or purchased property; requirements on use and disposal
070 Acquisition from Division
080 Service charges, funds and accounting procedures
090 Director of Division; duties
100 Property not covered by PL 152; authority for acquisition

Ch. 3 School District Finance
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KENTUCKY REVISED STATUTES

Chapter 13

ADMINISTRATIVE REGULATIONS

13.075 Definition of Commission. — As used in this chapter unless the context requires otherwise: "Commission" means the Legislative Research Commission. (Enact. Acts 1956, ch. 97, sec. 1, eff. May 18, 1956.)

13.080 Definitions and construction. — As used in KRS 13.080 to 13.125,

(1) "Administrative Body" means each state board, bureau, commission, department, division, authority, officer, or other entity, except the legislature and the courts, authorized by law to make regulations.

(2) "Subcommittee" means Administrative Regulation Review Subcommittee.

(3) "Regulation" means each statement of general applicability issued by an administrative body that implements, interprets, or prescribes law or policy, or describes the organization procedure, or practice requirements of any administrative body. The term includes the amendment or repeal of a prior regulation, but does not include

(a) statements concerning only the internal management of an administrative body and not affecting private rights or procedures available to the public, or

(b) declatory rulings, or

(c) intradepartmental memoranda.

(4) "Affirmative consideration" means that an administrative body must either adopt suggestions or recommendations regarding a regulation or issue a concise statement setting forth the reasons for not adopting suggestions or recommendations regarding a regulation.

(5) Compliance with the provisions of KRS 13.080 to 13.125 does not dispense with the requirements of any other law necessary to make the regulation effective. (Enact. Acts 1952, ch. 63, sec. 1; 1972, ch. 180, sec 1; 1974, ch. 73, sec. 1, eff. July 1, 1974.)

13.082 Uniformity of power to adopt regulations — Repeal of conflicting provisions. — (1) The power vested in every administrative body to adopt regulations shall be uniform and shall be confined to the direct implementation of the functions and duties assigned to an administrative body by the General Assembly, or by executive order.

(2) All grants of authority to adopt regulations inconsistent with this provision are hereby repealed and the Legislative Research Commission is hereby directed to identify and to draft legislation for introduction in the 1976 General Assembly repealing all provisions of the Kentucky Revised Statutes in conflict with this section. (Enact. Acts 1974, ch. 73, sec. 5, eff. July 1, 1974)

13.084 Refiling of regulations — Rescinding of regulations not refiled. — (1) Each administrative body shall file within one (1) year of July 1, 1974, in accordance with the provisions of KRS Chapter 13, all regulations which were adopted by such administrative body prior to July 1, 1974, and which are still effective and all regulations which were adopted by such administrative body prior to July 1, 1974 and which do not become effective until after July 1, 1974.

(2) All regulations filed prior to July 1, 1974, whether or not they shall have become effective, are rescinded effective one (1) year after July 1, 1974. (Enact. Acts 1974, ch. 73, sec. 6, eff. July 1, 1974.)

13.085 Publication, hearing, and review of proposed administrative regulation — Requisites of proposal — Public hearing. — (1) Except as provided in subsection (2) of this section no regulation made by any administrative body after July 1, 1974, shall become effective until after an original and five (5) duplicate copies of the regulation are forwarded to the office of the Legislative Research Commission, and:

(a) the proposed regulation has been published in the Administrative Register as required by KRS 13.096; and

(b) a public hearing is held, if requested, by a person having an interest in the subject matter, within thirty (30) days following publication of proposed regulation, as provided by subsection (4) of this section; Provided, however, that if no public hearing is requested within thirty (30) days of publication the regulation shall be submitted to the Administrative Regulation Review Subcommittee;

(c) the proposed regulation has been reviewed by the Administrative Regulation Review Subcommittee as required by KRS 13.087; and

(d) the proposed regulation is reviewed by the appropriate interim or standing committees of the General Assembly, if required by KRS 13.087.

(2) The requirements of subsection (1) of this section shall not apply when the administrative body finds that an emergency exists, and the Governor issues an executive order that the regulation become effective immediately upon being filed in the office of the Legislative Research Commission. A regulation so filed shall expire at the end of 120 days, during which time the proposed regulation may be processed in accordance with this section if the administrative body desires it to become permanent. The General Assembly hereby declares that it is the state policy that emergencies are held to a minimum.

(3) Each proposed regulation submitted to the Legislative Research Commission shall include a citation of the authority pursuant to which it, or any part of it, was adopted, a brief statement which sets forth the necessity for issuing the regulation, a summary of the functions sought to be implemented by the regulation, and the place and manner in which interested persons may present their views.

(4) If within thirty (30) days following publication of the text of a proposed regulation a request is received by the administrative body from a person having an interest in the subject matter of the regulation to offer comment upon the proposed regulation, the administrative body shall fix a date, time and place for a hearing, open to the public, on the proposed regulation. Every hearing shall be conducted in such a manner so as to guarantee each person who wishes to offer comment a fair and reasonable opportunity to do so; Provided, However, every hearing shall be conducted so as to be completed within sixty (60) days from the date the proposed regulation was first published in the Administrative Register. No transcript need be taken of the hearing unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. Following the hearing the administrative body shall give affirmative consideration to all written and oral statements submitted regarding the proposed regulation. The administrative body shall then forward to the Legislative Research Commission a copy of the regulation as originally published in the Register accompanied by a statement indicating whether any changes have been made in the original wording and by a statement summarizing the comments submitted to the administrative body at the hearing.

(5) The Legislative Research Commission shall cause to be endorsed on the original and duplicate copies of each regulation submitted the time and date of the filing thereof and shall maintain a file of such regulations for public inspection, with suitable indexes. (Enact. Acts 1952, ch. 63, sec. 2; 1972, ch. 180, sec. 3; 1974, ch. 73, sec. 2, eff. July 1, 1974.)

13.087 Administrative Regulation Review Subcommittee—Procedure upon objection to regulations.—(1) There is hereby created a permanent subcommittee of the Legislative Research Commission to be known as the Administrative Regulation Review Subcommittee. The subcommittee shall be composed of three (3) members, no more than two (2) of whom shall be members of the same political party. The Legislative Research Commission shall appoint from the membership of the General Assembly, the members of the subcommittee for terms of two (2) years, and the members so appointed shall elect one (1) of their number to serve as chairman. Any vacancy which may occur in the membership of the subcommittee shall be filled by the Legislative Research Commission at its next regularly scheduled meeting after the occurrence of the vacancy.

(2) The subcommittee shall meet monthly at such time and place as the chairman may determine. The members of the subcommittee shall be compensated for attending meetings, as provided in KRS 7.090(2).

(3) Any professional, clerical or other employes required by the subcommittee shall be provided in accordance with the provisions of KRS 7.090(4) and (5).

(4) Prior to filing, all regulations shall be submitted to the Administrative Regulation Review Subcommittee to determine if the regulation conforms to the statutory authority under which it was promulgated and if it carries out the legislative intent of the statutory authority under which it was promulgated. The subcommittee's finding that a regulation does not conform to the statutory authority or carry out the legislative intent shall be reported to the promulgating administrative body and to the Director of the Legislative Research Commission. In the event the subcommittee determines that a regulation, other than an emergency filing approved by the Governor, does not conform to the statutory authority, or does not coincide with the legislative intent, the subcommittee shall attach to the regulation a written notation of its objection, including a statement of the reasons therefor, and shall return the regulation to the promulgating administrative body. Notice of such objection shall be given by the subcommittee to the Director of the Legislative Research Commission. The subcommittee shall act on a regulation submitted to the Legislative Research Commission within thirty (30) days of the submission of the regulation.

(5) The promulgating administrative body may revise a regulation to comply with the subcommittee's objections, and may return the revised regulation to the subcommittee, or it may return the regulation, with the subcommittee's notation attached, without change. The Legislative Research Commission shall immediately accept a regulation as filed if it is not objected to by the subcommittee.

(6) In the event an administrative body returns a regulation, objected to by the subcommittee, to the Legislative Research Commission, without change, the regulation shall be referred by the Director to the standing committee of the House of Representatives and Senate or to the Interim Committee with appropriate jurisdiction as determined by the Rules of the House and Senate then in effect or in effect during the most recent session of the General Assembly. The standing committees of the House and Senate or the interim committee to which a regulation is referred under this section shall review the regulation in the same manner as did the Administrative Regulation Review Subcommittee and shall not expand their review beyond determining whether the regulation conforms to the statutory authority under which it was promulgated and whether the regulation carries out the legislative intent of the statute it seeks to implement. In the event the standing committee of the House

and Senate or the Interim Committee determines that a regulation does not conform to the statutory authority under which it was promulgated, or does not coincide with the legislative intent of the statute it seeks to implement the standing committees or the interim committee shall attach to the regulation a written notation of its objection, including a statement of the reasons therefor, and the Director shall return the regulation to the promulgating administrative body. Notice of such objection shall be given by the standing committees or by the interim committee to the Director of the Legislative Research Commission. The standing committees or interim committee shall act on a regulation submitted in accordance with this section within thirty (30) days of the date the administrative body returns the regulation.

(7) The promulgating administrative body may revise a regulation to comply with the subcommittee's interim or standing committee's objections, and may return the revised regulation to said subcommittee or committee, or may return the regulation with the subcommittee's interim or standing committee's notation attached, without change. The Legislative Research Commission shall immediately accept the regulation as filed.

(8) The subcommittee shall report monthly to the Legislative Research Commission all action taken on administrative bodies' regulations. The Director of the Legislative Research Commission shall report to the Commission all action taken by the standing committee or by the interim committee.

(9) All regulations objected to by the subcommittee and by the standing committees or interim committee and not revised by the promulgating administrative body together with the notations of the subcommittee's and the standing committee's or interim committee's objection shall be transmitted by the Director to the clerk of the Senate and the clerk of the House of Representatives on or before the first day of each regular session of the General Assembly. The clerk of the Senate and the clerk of the House of Representatives shall lay all regulations so transmitted before the Senate and the House of Representatives, respectively, for such action as the respective legislative bodies may determine to be appropriate. (Enact. Acts 1972, ch. 180, sec. 4; 1974, ch. 73, sec. 3, eff. July 1, 1974.)

13.090 Functions of Legislative Research Commission.—(1) The commission shall prescribe rules governing the manner and form in which regulations shall be prepared, to the end that all regulations shall be prepared in a uniform manner. The commission may refuse to accept for filing any regulation that does not conform to the rules.

(2) The Legislative Research Commission shall furnish advice and assistance to all administrative bodies in the preparation of their regulations, and in revising, codifying and editing existing or new regulations. (Enact. Acts 1952, ch. 63, sec. 3; 1972, ch. 180, sec. 5.)

13.096 Kentucky Administrative Regulations Service—Administrative Register.—(1) The Legislative Research Commission shall compile, publish and distribute the regulations filed by administrative bodies in a manner which will accommodate changes in regulations and allow distribution of any topical or organizational part of the regulations as well as all of them. This compilation shall be known as the Kentucky Administrative Regulations Service and shall constitute the official state publication of administrative regulations.

(2) There is hereby created a publication known as "The Administrative Register" to be printed and published on a monthly basis by the Legislative Research Commission for the purpose of giving notice of proposed regulations filed in accordance with KRS 13.085. Every regulation forwarded to the Legislative Research Commission shall have its complete text printed in the Administrative Register along with the accompanying statements required by KRS 13.085.

(3) The Commission shall prescribe reasonable fees for subscription to the Kentucky Administrative Regulations Service and the Administrative Register. All fees paid to the Commission for these publications shall be placed in the State Treasury to the credit of a revolving, trust or agency fund account, for use by the Legislative Research Commission in carrying out the provisions of this section. (Enact. Acts 1956 (1st Ex. Sess.) ch. 6, sec. 1; 1972, ch. 180, sec. 6; 1974, ch. 73, sec. 4, eff. July 1, 1974.)

13.097 Regulations Compiler—Certificate—Filing of publication with Secretary of State.—The Kentucky Administrative Regulations Service shall be prepared under the direct supervision of an employe appointed by the director of the Legislative Research Commission and designated the Regulations Compiler. The Director shall cause to be prepared a certificate to the effect that the text of the regulations as printed in this service is correct. One (1) copy of the Kentucky Administrative Regulations Service with the original certificate therein shall be maintained in the office of the Secretary of State. All other copies shall contain a printed copy of the certificate and shall constitute prima facie evidence of the law in all courts and proceedings. (Enact. Acts 1956 (1st Ex. Sess.) ch. 6, sec. 2; 1974, ch. 370, sec. 2.)

13.100 Effect of Commission's file stamp on regulation or publication of regulation.—The Legislative Research Commission's authenticated file stamp on a rule or regulation, or publication of a rule or regulation in the Kentucky Administrative Regulations Service shall raise a rebuttable presumption that the rule or regulation was adopted and filed in compliance with all requirements necessary to make it effective. (Enact. Acts 1952, ch. 63, sec. 5; 1956 (1st Ex. Sess.), ch. 6, sec. 3.)

13.102 Administrative body's publication of informational copies.—No administrative body other than the Legislative Research Commission shall publish administrative rules or regulations unless the rules or regulations are inclosed in a booklet or binder on which the words "Informational Copy" are clearly stamped or printed. (Enact. Acts 1958, ch. 47, sec. 1; repealed and reen. Acts 1966, ch. 255, sec. 5; 1972, ch. 180, sec. 7.)

13.105 Judicial notice.—The courts shall take judicial notice of any regulation duly filed under the provisions of KRS Chapter 13, after the regulation has become effective. (Enact. Acts 1952, ch. 63, sec. 6; 1972, ch. 180, sec. 8.)

13.115 File of ineffective regulations to be kept.—When any regulation filed with the Legislative Research Commission expires by its own terms, or is superseded or revoked, the commission shall cause the same to be placed in a "dead" file. (Enact. Acts 1952, ch. 63, sec. 8.)

13.125 Notice and hearings on proposed regulations.—Where practicable to do so, state agencies are encouraged to give notice, to interested persons, of proposed regulations, and conduct hearings upon the proposed regulations prior to adoption thereof. (Enact. Acts 1952, ch. 63, sec. 10, eff. June 19, 1952.)

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