Mabel D. Robertson of

Administrative Register of kentucky

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Public Hearings Scheduled

The Department of Labor and the State Fire Marshal's Office have scheduled public hearings during December 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.

Labor Department Hearing

Hearing will be held at 10 a.m. EST December 9, 1974 in Room G-2, Capital Plaza Tower, Frankfort, Kentucky, on proposed regulation (803 KAR 1:090), which pertains to the employment of handicapped workers, sheltered workshop employes, and students to be employed at less than the statutory wage.

This proposed regulation was published originally in the November issue of the Administrative Register.

Fire Marshal's Hearings

Hearing will be held at 1 p.m. EST December 30, 1974 in the Capital Plaza Tower Auditorium, Frankfort, Kentucky on proposed regulation (806 KAR 50:200), which pertains to standards for the manufacture, sale and alteration of mobile homes and recreational vehicles.

This proposed regulation was published originally in the October issue of the Administrative Register. The Administrative Regulation Review Subcommittee, at its November 13 meeting, returned the regulation to the issuing agency after hearing testimony that certain interested persons were not notified of the proposal. (See Minutes of Subcommittee meeting in column 1 this page.)

Agencies Asked to Mail Statements to Public

Chairman Michael R. Moloney of the Administrative Regulation Review Subcommittee has asked administrative agencies to mail copies of their "Statements of Affirmative Consideration" to all persons who submit comment or testify at hearings held on proposed regulations.

The Chairman said "it is implicit within the spirit" of the 1974 amendments to the Administrative Procedures Act that all members of the public who have commented on a proposed regulation be given a copy of the issuing agency's Statement of Affirmative Consideration.

The new law requires a promulgating agency, following a hearing or receipt of citizen comment upon a proposed regulation, to file a Statement of Affirmative Consideration with the Legislative Research Commission outlining the comments and the agency's action upon them.

DEADLINE FOR NEXT ISSUE

Deadline for submitting proposed regulations for publication in the January 2, 1975 issue of the Administrative Register is Friday, December 13, 1974.

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 102 Regulations

The Administrative Regulation Review Subcommittee approved 102 proposed regulations, all of which became effective on November 13, 1974, the date of the Subcommittee meeting.

Three regulations were returned to issuing agencies and one was withdrawn by the promulgating agency.

Tentative minutes, subject to approval at the next meeting, follow:

Subcommittee Minutes

The Administrative Regulation Review Subcommittee held its fifth meeting on Wednesday, November 13, 1974 at 10 a.m. in Room 307 of the State Capitol. Present were:

Members: Senator Michael R. Moloney, Chairman; Representatives James Davis and Richard Lewis.

LRC Staff: Phillip R. Patton, Hugh Morris, Mabel Robertson, Don Paris and Susan Martin.

Press: Sy Ramsey.

Guests: C. M. Curls, Code Administration Association of Kentucky; Len Mills, Home Builders Association of Kentucky; Ralph Robke, State Fire Marshal's Office; Gene Atkins, Recreational Vehicle Dealer's Association; George Akin, Department of Transportation; Robert Beckt, Department of Transportation; Representative Bruce Blythe; and Herb Ransdall, attorney.

The meeting was called to order by Chairman Moloney.

A letter from Mr. Sam Alexander, Board of Education, was received by the subcommittee regarding 702 KAR 2:100 which was before the subcommittee at its last meeting. The letter questioned the insertion of the word "not" in the necessity and function clause of the regulation. Senator Moloney referred to a letter from Ray Corns, Education Attorney, concurring with the subcommittee's action. The subcommittee then sent a letter to Secretary Lyman V. Ginger stating that if they wish to remove the word "not" from the necessity and function statement, they should file an amended regulation.

The subcommittee had received for its review several regulations from the Office of the State Fire Marshal, which had been subject to public hearing and comment. Senator Moloney asked if the required "Statement of Affirmative Consideration" had been forwarded by the agency to all those who submitted comment. Senator Moloney pointed out that the spirit of SB 172 would seem to require that the statement of affirmative consideration be forwarded to all members of the public who have commented on a particular regulation.

Mr. Ralph Robke, State Fire Marshal's Office spoke to the subcommittee on Regulation No. 806 KAR 50:010, Public Protection–Fire Marshall, General Construction Requirements. Mr. Robke said there had been a one-hour hearing on the

(Continued on Page 206)

Review Subcommittee Minutes

(Continued from Front Page)

regulation and that people from Owensboro, Louisville, Lexington, Somerset, Lake Cumberland, and Frankfort had attended.

Mr. Len Mills, Home Builders Association of Kentucky, said that the code is severely restrictive, and the standards are set higher than any other code. The National Building Code also requires a higher standard of construction. Mr. Mills agreed that the department had authority to issue the regulation. Chairman Moloney asked Mr. Mills what his objection to the regulation regarding legislative intent is. He said that the code is too stringent while the legislature sought "minimum" standards. Mr. Mills also said that it is contrary to legislative intent because it is not reasonable.

Mr. C.M. Curls, Code Administration Association of Kentucky, spoke to the subcommittee regarding this same regulation and said they are not concerned with which building code is used. He said in 1968 there was a complete change in lumber grades. The 2 x 4 is now, for instance, a 1½ x 3½ and that stress factors have now been assigned. He said Article 18 is their concern on the National Building Code and there would be a new building code coming out in January. Mr. Curls said the reference material standards should be updated to meet the new standards. Mr. Robke said a one–hour hearing was held to hear the comments and views of others. Chairman Moloney said that he did not think the hearing should have been limited to one hour as that was not time to hear all of the remarks. Mr. Robke said he set the time limit and thought it was fair. Mr. Robke also said five days were left open after the hearing for written submission.

Chairman Moloney asked Mr. Robke if the Fire Marshal's Office couldn't do something to cure this by updating the reference material rather than relying only on the code of 1967. The subcommittee expressed the fear that the code as drawn would be unenforceable. Representative Lewis moved that the regulation be sent back to the Fire Marshal's office to iron out some of the problems and consider some of the objections. The subcommittee unanimously approved the motion to return Regulation 806 KAR 50:010 to the Fire Marshal's Office.

Regulation No. 806 KAR 50:020, Public Protection–Fire Marshal, Construction to Accommodate Physically Handicapped, was filed as changed following the hearing.

Regulation No. 806 KAR 50:050, Public Protection–Fire Marshal, L.P. Gas License Denial, Revocation or Suspension, was withdrawn from consideration.

Regulation No. 806 KAR 50:060, Public Protection–Fire Marshal, L.P. Gas License; Financial Responsibility, was filed.

Regulation No. 806 KAR 50:070, Public Protection–Fire Marshal, L.P. Gas, Standby Usage Requirements, was filed.

Regulation No. 806 KAR 50:080, Public Protection–Fire Marshal, Liquids, Self-Service Stations, was filed.

Regulation No. 806 KAR 50:100, Public Protection–Fire Marshal, Fire Department Aid, was filed.

Regulation No. 806 KAR 50:200, Public Protection–Fire Marshal, Mobile Homes–Recreational Vehicles, was returned after discussion from Gene Atkins, Recreational Vehicle Dealers Association, and Ralph Robke, State Fire Marshal's Office spoke to the subcommittee.

Representative Bruce Blythe introduced Gene Atkins to the subcommittee due to a complaint against the State Fire Marshal's Office. Mr. Atkins said that none of the people of the National Vehicle Dealers Association of America knew about the hearing on this regulation. He said he understood that the public was to be notified 30 days prior to a hearing. Mr. Robke said that Mr. Atkins attended the initial meeting of the Mobile Home Board meeting but never attended any others. Mr. Atkins replied that he was not permitted to speak at the meeting and that was the reason he had never attended any others. Representative Lewis moved that the regulation be returned for the reason that Section 5, Subsection 2 of the Act requires that all dealers be given a 30-day written notice of regulatory action by the Board. The motion was unanimously adopted.

Mr. James Perkins, Natural Resources and Enviormental Protection, brought Regulation No. 402 KAR 1:010 to the subcommittee's attention. Chairman Moloney asked that the regulation be first order of business on Wednesday, December 11, at its next regularly scheduled meeting. He also said that the members had not had time to read and study the regulation.

Regulation No. 803 KAR 1:030, Public Protection and Regulation–Labor, Prevailing Wage–hearing, was filed.

Regulation No. 803 KAR 1:040, Public Protection and Regulation–Labor, Prevailing Wage Review, was filed.

Regulation No. 102 KAR 1:020, Teacher Retirement, Supplemental Payments, was filed.

Regulation No. 200 KAR 2:030, Finance, Official Work Station, was filed.

Regulation No. 200 KAR 2:060, Finance Subsistence Expenses, was filed.

Regulation No. 201 KAR 5:030, Optometric Examiners, Required Annual Study, was filed.

Regulation No. 201 KAR 6:010, Nursing Home Administrators, Licensure, was filed.

Regulation No. 301 KAR 1:050, Fish and Wildlife, Small State Owned Lakes, was filed.

Regulation No. 301 KAR 1:060, Fish and Wildlife, Sport and Rough Fishing, was filed.

Regulation No. 301 KAR 1:070, Fish and Wildlife, Rough Fishing in Backwaters, was filed.

Regulation No. 301 KAR 1:080, Fish and Wildlife, Fish and Aquatic Organisms, was filed.

Regulation No. 301 KAR 1:090, Fish and Wildlife, Bow Fishing, was filed.

Regulation No. 301 KAR 1:100, Fish and Wildlife, Trout Fishing, was filed.

Regulation No. 301 KAR 1:110, Fish and Wildlife, Hatching Fish in Public Water, was filed.

Regulation No. 301 KAR 2:030, Fish and Wildlife, Commercial Guides, was filed.

Regulation No. 301 KAR 2:040, Fish and Wildlife, Upland Game Shooting Reserves, was filed.

Regulation No. 301 KAR 2:050, Fish and Wildlife, Land Between the Lakes, Hunting, was filed.

Regulation No. 301 KAR 4:020, Fish and Wildlife, Ballard Refuge Restrictions, was filed.

Regulation No. 603 KAR 5:030, Transportation, Right Turn on Red, was filed.

Regulation No. 603 KAR 6:010, Transportation, Ky 15 Classification, was filed.

Regulation No. 603 KAR 6:011, Transportation, Ky 36 Classification, was filed.

Regulation No. 603 KAR 6:012, Transportation, US 119 Classification, was filed.

Regulation No. 603 KAR 6:013, Transportation, Ky 136 Classification, was filed.

Regulation No. 603 KAR 6:014, Transportation, Ky 797 Classification, was filed.

Regulation No. 603 KAR 6:015, Transportation, Ky 909 Classification, was filed.

Regulation No. 603 KAR 6:016, Transportation, Ky 312 Classification, was filed.

Regulation No. 603 KAR 6:017, Transportation, Ky 1526 Classification, was filed.

Regulation No. 603 KAR 6:018, Transportation, Ky 1 Classification, was filed.

Regulation No. 603 KAR 6:019, Transportation, Ky 7 Classification, was filed.

Regulation No. 603 KAR 6:020, Transportation, US 31–W Classification, was filed.

Regulation No. 603 KAR 6:021, Transportation, I 24 Classification, was filed.

Regulation No. 702 KAR 1:020, Education, Length of Employment, was filed.

Regulation No. 702 KAR 1:030, Education, Group Life Insurance, was filed.

Regulation No. 702 KAR 3:010, Education, Foundation Program Capital Outlay, was filed.

Regulation No. 702 KAR 3:020, Education, Bond Issue Approval, was filed.

Regulation No. 702 KAR 3:030, Education, Insurance Requirements on Mortaged Buildings, was filed.

Regulation No. 702 KAR 3:040, Education, Check Issuing Policy, was filed.

Regulation No. 702 KAR 3:060, Education, Teacher's Salaries Payment was filed.

Regulation No. 702 KAR 3:075, Education, Substitute Teacher's Salary, was filed.

Regulation No. 702 KAR 3:080, Education, Treasurer's Bond, was filed.

Regulation No. 702 KAR 3:090, Education, Depository Bond, was filed.

Regulation No. 702 KAR 3:110, Education, Document Filing Dates, was filed.

Regulation No. 702 KAR 3:120, Education, Financial Accounting System, was filed.

Regulation No. 704 KAR 3:130, Education, Art Teacher, was filed.

Regulation No. 704 KAR 3:140, Education, Art Program Consultant, was filed.

Regulation No. 704 KAR 3:160, Education, Director of Vocational Education, was filed.

Regulation No. 704 KAR 3:170, Education, School Media Librarian, was filed.

Regulation No. 704 KAR 3:190, Education, Driver Education and Safety Teacher, was filed.

Regulation No. 704 KAR 3:200, Education, Finance Officer, was filed.

Regulation No. 704 KAR 3:220, Education, Supervisor of Instruction, was filed.

Regulation No. 704 KAR 3:240, Education, Reading Program Consultant, was filed.

Regulation No. 704 KAR 3:260, Education, Academic Consultants, was filed.

Regulation No. 704 KAR 3:270, Education, Consultant Exceptional Children, was filed.

Regulation No. 704 KAR 4:010, Education, Physical Education Standards, was filed.

Regulation No. 704 KAR 4:020, Education, School Health, was filed.

Regulation No. 704 KAR 5:010, Education, Private Kindergartens and Nursery Schools, was filed.

Regulation No. 705 KAR 5:060, Education, Live Work Projects, was filed.

Regulation No. 705 KAR 7:010, Education, Adult Education, Definitions, was filed.

Regulation No. 705 KAR 7:040, Education, Eighth Grade Equivalency, was filed.

Regulation No. 705 KAR 10:010, Education, School Certificates of Approval, was filed.

Regulation No. 705 KAR 10:040, Education, Personnel Qualifications, was filed.

Regulation No. 705 KAR 10:050, Education, School Catalog, was filed.

Regulation No. 705 KAR 10:060, Education, Cancellation and Refund Policy, was filed.

Regulation No. 705 KAR 10:070, Education, Advertisement, was filed.

Regulation No. 705 KAR 10:080, Education, Equipment and Facilities, was filed.

Regulation No. 705 KAR 10:090, Education, Enrollment Contract, Records and Reports, was filed.

Regulation No. 705 KAR 10:100, Education, Financial Stability, was filed.

Regulation No. 705 KAR 10:120, Education, Appeal Procedure, was filed.

Regulation No. 705 KAR 11:010, Education, Approval of Institutional Courses, was filed.

Regulation No. 705 KAR 11:020, Education Apprenticeship and O.J.T., was filed.

Regulation No. 705 KAR 11:030, Education, Amendments Approval, was filed.

Regulation No. 705 KAR 11:040, Education, Denial or Revocation, was filed.

Regulation No. 705 KAR 11:050, Education, Inspection and Supervision, was filed.

Regulation No. 803 KAR 2:020, O.S.H.A., 29 CFR Part 1910, was filed.

Regulation No. 803 KAR 2:030, O.S.H.A., 29 CFR Part 1926, was filed.

Regulation No. 805 KAR 1:030, Mines and Minerals, Oil and Gas Well Plats, was filed.

Regulation No. 902 KAR 1:010, Drug Formulary, Distribution of Formulary, was filed.

Regulation No. 902 KAR 1:020, Drug Formulary, Ampicillin, was filed.

Regulation No. 902 KAR 1:030, Drug Formulary, Erythromycin, was filed.

Regulation No. 902 KAR 1:040, Drug Formulary, Penicillin-G, was filed.

Regulation No. 902 KAR 1:050, Drug Formulary, Penicillin-V, was filed.

Regulation No. 902 KAR 1:060, Drug Formulary, Sodium Pentobarbital, was filed.

Regulation No. 902 KAR 1:070, Drug Formulary, Sodium Secobarbital, was filed.

The meeting adjourned at 1:00 p.m. The Subcommittee's next regularly scheduled meeting will be held on Wednesday, December 11, 1974, at 10:00 a.m. (EST).

Regulation No. 702 KAR 3:150, Education, Audit Exceptions, Corrections, was filed.

Regulation No. 702 KAR 3:160, Education, Classroom Units on Basis of Area Larger Than a District, was filed.

Regulation No. 704 KAR 1:020, Education, Private Programs, was filed.

Regulation No. 704 KAR 3:010, Education, Administrative and Special Services, was filed.

Regulation No. 704 KAR 3:020, Education, Reduction of School Day, was returned for the reason that KRS 158.080 cited by the Department as the section of the statutes to which the proposed regulation relates does not concern itself with the subject matter of the regulation. The proposed regulation seeks to authorize the reduction of the number of hours which constitute a school day. Such a reduction is contrary to the provisions of KRS 158.060.

Regulation No. 704 KAR 3:030, Education, Special Instructional Service Units, was filed.

Regulation No. 704 KAR 3:040, Education, Superintendent or Assistant, was filed.

Regulation No. 704 KAR 3:050, Education, Principal or Assistant, was filed.

Regulation No. 704 KAR 3:060, Education, Visiting Teacher, was filed.

Regulation No. 704 KAR 3:070, Education School Social Worker, was filed.

Regulation No. 704 KAR 3:080, Education, School Health Coordinator, was filed.

Regulation No. 704 KAR 3:100, Education, School Health Program Consultant, was filed.

Regulation No. 704 KAR 3:110, Education, Music Teacher, was filed.

Regulation No. 704 KAR 3:120, Education, Music Program Consultant, was filed.

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 and Regulation 010 deals with the maximum length of such vehicles on specified highways.

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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.

(The two regulations which follow, published originally in the November issue [1 Ky.R. 124, 133], are proposed to be amended as a result of comments received and adopted by the issuing agency, and will be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. The agency's Statement of Affirmative Consideration is a public record on file with the Legislative Research Commission.)

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

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. An employee may not be given salary advancement more than once for successful completion of a probationary period in the same classification. 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 an 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.

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

JAMES O. KING, Secretary

ADOPTED: November 8, 1974
RECEIVED BY LRC: November 18, 1974 at 8:46 a.m.

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

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 <u>for that amount of time necessary to comply with subpoenaes</u> [, 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. <u>This leave shall include necessary travel time. If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work.</u>

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.

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

JAMES O. KING, Secretary

ADOPTED: November 8, 1974
RECEIVED BY LRC: November 19, 1974 at 8:4d a.m.

(The following proposed regulation was published originally in the August issue of the Register and a public hearing on it was held by the issuing agency on September 6, 1974. As a result of this hearing, the following amendments were made. The regulation, as amended, will be considered by the Administrative Regulation Review Subcommittee at its meeting December 11, 1974.)

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Division of Reclamation
(402 KAR 1:010)
(Proposed amendment)

RELATES TO: KRS 350.151
PURSUANT TO: KRS 350.028, 224.033(17), 224.045(6)(b), 13.082
NECESSITY AND FUNCTION: This regulation is necessary to implement KRS 350.151 which was adopted by the 1974 session of the Kentucky General Assembly and places the control of reclamation of the surface effects of underground mines under the jurisdiction of the Kentucky Department for Natural Resources and Environmental Protection.

Section 1. As used in this regulation, unless the context clearly otherwise requires:
(1) "Underground mining" means any method of penetrating and extracting subsurface coal and removing it to the surface, as opposed to strip mining or auger mining.
(2) "Face-up area" means any surface affected in the process of excavating for the purpose of making entry into a seam of coal to be recovered by underground mining methods.
(3) "Processing area" means that portion of the surface effect which includes tipples, coal storage yards, loading ramps, railroad sidings, washers or other areas other than transportation area as defined below on which coal is stored, handled, processed or refined after being extracted by underground mining methods.
(4) "Refuse area" means any surface affected by deposition of reject material, liquid or solid, resulting from mining coal by any or all methods or processing of such coal.
(5) "Transportation area" means any surface, controlled by the licensee, affected by any means of transporting coal from points of entry to any points on the mine property surface.
(6) "Drainage control area" means that portion of the surface effect which includes any land on which runoff or drainage is controlled, stored or channeled and on which the structures for controlling, storing, channeling or otherwise handling drainage or runoff are located.
(7) "Mine management area" means that portion of the surface effect which includes buildings, parking lots, driveways, equipment storage or repair areas and any other building structure or facility used as part of the underground mining operation not directly related to coal removal, handling, storing, processing, or transporting.
(8) "New operation" means any mine for which surface is disturbed for a face-up area, coal processing area, coal refuse area, transportation area, drainage control area or mine management area subsequent to the effective date of this regulation.
(9) "Existing operation" means any mine for which the surface effect of underground mining activity occurs on or prior to the effective date of this regulation.
(10) "Surface effect" means activity resulting in a disturbance of surface incident to mining coal by any or all methods or processing of such coal.
(11) "Abandoned operation" means any mine from which coal was not removed during the six (6) month period immediately preceding the effective date of this regulation, from which further coal removal is not intended and the surface effects of which are not being used in conjunction with underground mining activity at some other location.
(12) "Licensee" means a person, corporation, partnership or other business entity or agents, representatives, lessees or assigns thereof holding a current deep mine license from the Kentucky Department of Mines and Minerals.
(13) "Approval certificate" means the reclamation plan approval certificate issued by the Division of Reclamation pursuant to this regulation.

Section 2. (1) Construction of a face-up area, processing area, refuse area, transportation area, drainage control area, mine management area or other surface effect of a new operation shall not begin until the licensee has applied for and received a reclamation plan approval certificate from the Division of Reclamation. Application for the approval certificate shall be made on forms supplied by the Division. Each application shall be accompanied by a fee of twenty-five dollars ($25) for each year of the approval certificate's duration payable to the Kentucky State Treasurer. Each approval certificate shall be issued for a period not to exceed five (5) years in the discretion of the Division.
(2) The licensee shall file a reclamation plan for the surface effect with the application for an approval certificate. The reclamation plan shall include, as a minimum, four (4) copies of a United States Geological Survey Topography Map, on a scale of not less than one hundred feet (100') nor more than six hundred feet (600') to the inch, depicting the following:
(a) Face-up areas and indicate, by appropriate symbols, the location of each opening, the dimensions of the bench, the cropline of the seam or deposit of coal to be mined and the areas on which the overburden or spoil will be placed.
(b) Processing areas and indicate, by appropriate symbols, the location of tipple, coal storage yards, loading ramps, railroad sidings, washers and other buildings, structures or facilities to be used in processing the coal to be recovered.
(c) Refuse areas indicated by appropriate symbols.
(d) Mine management areas and indicate, by appropriate symbols the location of buildings, shops, parking lots, storage yards, driveways and such other facilities or structures as will be used in conjunction with the management of the mine.
(e) Constructed drainways and channels, diversion ditches, settling ponds, silt control structures and such other control measures as necessary or appropriate for drainage control for the surface effects.
(f) Transportation areas indicated by appropriate symbols.

Section 3. All existing operations shall file application for a reclamation plan approval certificate and a reclamation plan within sixty (60) days of the effective date of this regulation. The reclamation plan shall include maps of the areas of surface effect as required for a new operation and shall include a schedule for compliance with the reclamation requirements of this regulation. This section shall not apply to an abandoned operation. However, should coal extraction begin on an abandoned operation or its surface effect or portion thereof be constructed on, improved or otherwise used in conjunction with underground mining at some other location subsequent to the effective date of this regulation, the provisions of this regulation relating to existing operations shall apply to all surface effects existing at the time operations are resumed and the provisions of this regulation relating to new operations shall apply to surface effects resulting from or incident to resumption of operations. The maps and reclamation plan, in such case, may be combined into one application and approval certificate.

Section 4. Grading, backfilling and compacting of the surface effect of a mine shall be done as follows:
(1) Where the face-up area of a new operation is located within three hundred feet (300') horizontally and one hundred feet (100') vertically of any stream, [all] overburden moved in order to create the bench, face or other portion of the face-up area shall be deposited in a location and controlled in a manner which will insure that no surface runoff or other

[illegible] as regulations of this department [illegible] KRS KK EN V 00 00K

drainage from the highwall, face or bench or area on which the overburden is placed will deposit silt or sedimentation in the stream. As a minimum, adequate control measures shall require that the licensee construct silt and water treatment control structures as required by the Division of Reclamation, that entrance and tram track roadways shall be the only nature of surface disturbance within 100 feet horizonally and 10 feet vertically to the stream and that all coal handling and storage areas shall be at some location remote from the face-up area at a distance no less than 100 feet horizonally and 10 feet vertically to the stream [the nearest point of disturbance shall not be less than one hundred feet (100') horizontally and not less than ten feet (10') vertically to the stream, that the licensee construct silt and water treatment control structures as required by the Division of Reclamation, that entrance and tram track roadways shall be the only nature of surface disturbance and that all coal handling and storage areas shall be at some location remote from the face-up area]. Where required by the Division of Reclamation, silt and water treatment control structures shall be designed by and the construction thereof certified by a registered professional engineer.

(2) On new operations, the entire proposed surface disturbance of the face-up area shall be completely scalped of all timber and other debris. This material shall be windrowed immediately below the line where the thirty-seven degrees (37°) outslope intersects the natural slope of the terrain when forty percent (40%) of the total excavation has been calculated to be placed over the outslope. All other excavated material shall be hauled to an approved disposal site.

(3) Fill bench outslopes [Outslopes] of face-up areas for new operations shall be no greater than thirty-seven degrees (37°). That portion of the highwall above the solid rock line shall have backslopes no greater than thirty-three degrees (33°) where the natural terrain is thirty-three degrees (33°) or less. All solid rock highwalls shall be pre-split to a slope of one quarter to one. Where the new operation will be on an area which has been surface mined, outslopes resulting from the surface mining operation shall not be disturbed without prior, written approval of the Division of Reclamation.

(4) On new operations, the bench of the face-up area shall be graded to eliminate [any] holes or depressions in which [any] surface water or other drainage or runoff may accumulate. Drainways shall be constructed where necessary to carry [any] drainage, runoff or surface water across or around the face-up area to eliminate erosion of either the highwall, bench or outslope.

(5) Where necessary to prevent stream sedimentation from surface water, drainage or other runoff from the processing area, new and existing operations shall grade the processing area to eliminate [any] holes or depressions in which surface water, drainage or other runoff may accumulate and provide drainways around the processing area to channel [any] such surface water, drainage or other runoff to an appropriate sediment control structure or facility.

(6) On and after the effective date of this regulation, refuse piles on new operations or existing operations shall be compacted in layers no greater than two feet (2') in height and graded to a slope no greater than twenty-seven degrees (27°) except where hauled to below grade facilities compaction may not be required. The refuse area shall be graded so that there are no holes or depressions in which any surface water, drainage or other runoff may be allowed to accumulate. Where necessary, channels or drainways shall be constructed to collect [any] surface water, drainage or other runoff and direct it to an appropriate sediment control structure or facility.

(7) All portions of any transportation area, except as governed by Section 5 of this regulation, shall be constructed or improved so that dust is controlled [and erosion due to drainage or other surface runoff is controlled] or eliminated. New operations shall comply during construction and existing operations shall have six (6) months from the effective date of the regulations to bring the transportation area into compliance.

(8) New operations shall have drainage control measures constructed and operating on the face-up area upon completion of the highwall or face, bench and outslope and prior to opening any shafts to be used for or in connection with coal removal. Except where otherwise provided in this regulation, new operations shall have all drainage control measures constructed and operating as soon as any other area or portion of the surface effect is used in conjunction with underground mining activities. Where required by the Division, silt control basins, sediment ponds or settling basins shall be designed structures.

(9) All parking lots, driveways and equipment storage or repair areas which are subject to erosion by surface water or other runoff shall be graded to eliminate [any] holes or depressions which may accumulate water and eliminate [any] ruts caused by vehicular traffic and shall have drainways or channels to carry [any] surface water, drainage or other runoff to an appropriate sediment control facility. Where necessary or desirable such portions of the management area shall be covered with crushed rock or other suitable material [not less than three inches (3") deep].

(10) Final grading of new and existing operations shall blend with the previously reclaimed bench where the new or existing operation is being conducted on an area which has been previously surface mined.

(11) Discharges from any drainage control structure or device shall meet applicable water quality standards.

Section 5. (1) For purposes of this section, a haul or access road shall be a road either constructed or used by the licensee as part of or incident to the mining operation and shall be considered part of the surface effect from the point at which such road joins a publicly maintained road or highway. New operations shall comply with the standards set out in this section during the construction of haul or access roads and existing operations shall have six (6) months from the effective date of this regulation to bring haul or access roads within required standards.

(2) Haul or access roads shall comply with the following standards, except that existing operations are exempt from those standards relating to percent of grade:

(a) No haul or access road shall be constructed in a stream in the flood plain of any stream [or so close to such stream that material will toe out below the high water mark]. Any channel changes shall be approved by the Division of Water Resources as required by KRS 151.250. When a channel change or a stream crossing is proposed and the [drainage area above the] proposed channel change or stream crossing [structure] is considered by the Division of Reclamation to [be large enough that the proposed structure could] create a potential hazard to either life or property, then a permit from the Division of Water Resources shall be required as per KRS 151.250.

(b) The center line of the proposed road must be flagged or marked with an acceptable substitute at the time the reclamation plan is submitted to the Division and approved prior to construction.

(c) The grading of an access or haul road shall be such that the maximum pitch grade shall not exceed twenty percent (20%) and grades above ten percent (10%) shall not exceed a length of three hundred feet (300') and shall revert to a ten percent (10%) grade or less for a minimum distance of three hundred feet (300') between the beginning and ending of each such incline.

(d) The grade on switch back curves must be reduced to less than the approached grade and shall not be greater than five percent (5%).

(e) Ditch relief cross drains shall be spaced according to grade. All natural drains shall be accommodated with an appropriate sized relief structure at the point where the natural drain intersects the roadway. Appropriate skews shall be introduced to reduce turbulence and other resistance factors. Outlet and inlet ends of structures shall be constructed on original ground when possible. Fill sections shall not be subjected to discharge flows of structures or open channels.

(f) Ditch relief culverts will be installed according to the following table of spacings in terms of percent of road grade:

ROAD GRADE IN PERCENT	SPACING OF CULVERTS IN FEET
2–5	300–500
6–10	200–300
11–15	100–200
16–20	100

(g) Culvert pipe openings shall not be less than one and one half (1 1/2) times the channel end area required to flow through the structure.

(h) Where drainage structures are required for areas greater than one hundred (100) acres [and if the structure is to remain in place during the rainy season] they shall be large enough to convey a twenty-five (25) year storm without creating a head elevation that might inundate adjacent property which has not heretofore been inundated. Consideration will be given to the time of year the crossing is to be constructed, and the length of time it is to be used, but in no event, and under no condition will the normal flow of the stream be affected or the sediment load of the stream be materially increased. If the drainage area above the structure is greater than 300 acres or the structure is [large enough to be] deemed by the Division of Reclamation [engineering staff to be hazardous] to present a potential hazard to either life or property, then a permit from the Division of Water Resources shall be required as set forth in paragraph (a) above.

(i) Cut slopes shall not be steeper than 1:1 (45°) in soils and may be vertical in rock.

(j) All fill and cut slopes shall be seeded during the first planting and/or seeding season after the construction of the road.

(k) If a berm is produced in skimming the road, it shall not be left on the ditch side.

(l) Roads shall not be surfaced with any acid producing material which will produce a runoff of acid, the surface being that part of the road which is normally used by vehicles in motion to and from the defined terminals.

(m) Bridges, culverts, stream crossings, etc., which the operator might elect to use on another project, may not be removed from their existing function prior to bond release without the consent of the Division of Reclamation.

(n) When an access road is to be abandoned and shall no longer be used as a road by the operator, [the landowners, or the state or national forest services,] surface drainage to minimize erosion and vegetative

cover shall be provided. Regardless of the future use of the road, adequate surface drainage shall be provided. "Abandoned" means that the operator has ceased to use the road and has provided adequate surface drainage and proper vegetative cover as required by the Division of Reclamation regulations. When the road has been abandoned, the bond may be released. If the road is turned over to another party for their use and adequate surface drainage has been provided, the bond on the road may be released.

(o) All grades referred to in this regulation shall be subject to a tolerance of two percent (2%) except a maximum pitch grade. All measurements referred to in this regulation shall be subject to a tolerance of five percent (5%) of measurement. All angles referred to in this regulation shall be measured from the horizontal and shall be subject to a tolerance of five degrees (5°).

(p) [For conditions of safety through the precarious terrain in which mining access roads are usually constructed,] All [all] road surfaces shall drain to the cutside of the roadway. Where construction through a point or some other topographic condition results in a through cut, then surface drainage shall be to the side of the deepest cut. Haul or access road surfaces shall be elevated at a ratio not to exceed 1/4 inch per foot of road width.

(q) If construction across a hollow should produce an entire fill section, then the side representing the shortest fill slope will be treated as a cut section in carrying out the requirements of any of the above subsection. [Low speed being a consideration in the design of haul or access roads, all surfaces shall be elevated at a ratio not to exceed one-fourth inch (1/4") per foot of road width.]

(r) As long as the bond is in force, all surfaces, ditchlines, cross drains, back slopes, and fill slopes shall be maintained. [A berm of earth with a minimum height of three feet (3') and/or standard steel beam type guard rail shall be constructed the entire length of all side cuts or fill sections where the terrain incline below the shoulder of the road is greater than 10 degrees (10°).]

(s) Anytime the Division of Reclamation personnel should deem an access road in violation of any of the sections of this regulation or if the transporting of minerals from the mine should be causing hazards to travelers on public roads then all hauling from the mining area shall be terminated until proper corrective measures are accomplished. [If construction across a hollow should produce an entire fill section, then the side depicting the shortest fill slope will be treated as a cut section in carrying out the requirements of any of the above section.]

[(t) As long as the bond is in force, maintenance of all surfaces, ditchlines, cross drains, back slopes, and fill slopes shall be perpetual, if such attention is required in order to induce safe and reliable travel to and from the mining area.]

[(u) Access road surfaces shall be completely clear of all snow, ice, and mud while minerals are being transported from the mining area. At anytime the Division of Reclamation personnel should deem an access road unsafe due to any of the articles of this regulation or if the transporting of minerals from the mine should be causing hazards to travelers on public road, due to tracking of mud and/or other debris onto the surface of said public road then all hauling from the mining area shall be stopped until proper corrective measures are imposed.]

Section 6. Vegetation and screening:

(1) Upon completion of the face-up area, new operations shall seed the outslope prior to opening or constructing any entrys to be used for or in connection with coal removal. Existing operations shall have sixty (60) days from the effective date of this regulation to seed the outslope of all face-up areas. Where after seeding, vegetative cover is not established to the satisfaction of the Division, reseeding shall [may] be required. Application of this subsection may be deferred in order to coincide with the growing seasons.

(2) As the use of any refuse area or portion thereof is discontinued all coal waste shall be covered with a minimum of four (4) feet of non-acid [one and one half feet (1 1/2') of earth and all acid] bearing material, the top one and one-half feet of which shall be capable of supporting vegetation [shall be covered with at least three feet (3') of non-acid bearing material and one and one half feet (1 1/2') feet of earth]. The discontinued portion shall also be graded to contours comparable to the surrounding undisturbed terrain and seeded.

(3) All other areas of the surface effect of both new and existing operations shall be seeded whenever and with such frequency as necessary to control erosion. Where considered necessary by the Division of Reclamation, planting may also be required.

(4) Where necessary to assist in the establishment of vegetative cover, mulch, lime or fertilizer or combination thereof may be required by the Division of Reclamation. Where available, existing vegetation which will screen any portion of the operation from adjoining property or from any wild river, park, recreation area, public road, cemetery, or other building or public property shall be left in place.

(5) At least twenty-four (24) hours prior to commencing any revegetation activity, the operator shall notify the area supervisor of the Division of Reclamation and have available for inspection invoices as proof of purchase for seed, seedlings, lime and fertilizer and a soil test report.

(6) Roads shall be seeded to legumes and perennial grasses. This may be modified if, in the opinion of the Division, the roadway will not contribute serious off-site damage to the public or adjacent property owners.

(7) When planting is completed the operator shall file a planting report with the Division of Reclamation on a form furnished by the Division.

(8) There shall be established at least a seventy percent (70%) ground cover of perennial vegetation per acre. Where planting is required, there shall be six hundred (600) or more woody plants living per acre, including volunteers, with distribution of stems fairly uniform. Inspection will be made at the end of the first growing season for vegetation bond release. If above requirements are not met, a complete revegetation plan including liming, fertilization and seeding based on new soil tests shall be submitted to and carried out at the direction of the Division.

(9) Plantings and seed-mixtures and combinations must be approved by the Division of Reclamation prior to application.

Section 7. Closing, temporary or permanent:

(1) When the use of a face-up area of a new or existing operation is discontinued by closing either permanently or for a period which will be greater than six (6) months, the bench shall be graded if necessary and seeded. Any exposed coal shall have a minimum of four feet (4') of non-acid bearing material over any pit or seam. The fill shall be graded to slope away from the highwall at an angle not to exceed ten degrees (10°) from the horizontal and in such a manner that no holes or depressions remain to accumulate drainage, runoff or other surface water. Sealing of any drift openings or exposed shafts or tunnels, done to conform with regulations of the Kentucky Department of Mines and Minerals or agency of the United States Government, shall be completed prior to such grading.

(2) Where the use of a processing area, transportation area or management area on either a new or existing operation is discontinued by closing permanently, all structures and buildings thereon, the use of which is or could be associated exclusively with mining, shall be torn down and removed. Where such use is temporarily discontinued, such structures, buildings and facilities shall be kept in a state of good repair as determined by the Division during the period of non-use.

Section 8. Signs to be posted at mining site. An appropriate sign shall be displayed at the points of access to each operation adjacent to the nearest public highway. The sign shall be at least two feet by four feet (2' x 4'), constructed of a wooden or other durable material, and clearly identify the name of the operator and number of his approval certificate. Such sign shall be maintained during the life of the operation. Failure to post such sign shall subject the licensee to penalty as provided by statute.

Section 9. Succession of operators. Where one (1) operator succeeds another at an operation, either by sale, assignment, lease or otherwise, the Division may release the first operator from all liability under this regulation as to that particular operation. However, both operators must have otherwise complied with the requirements of this regulation and the successor operator assumes as part of his obligation under this regulation, all liability for the reclamation of the area of land affected by the former operator.

Section 10. Where necessary or advisable to conduct experimental work or do research for reclamation techniques, the Division may, if consistent with the requirements of KRS Chapter 350, make exceptions to this regulation.

THOMAS O. HARRIS, Secretary

ADOPTED: November 13, 1974
RECEIVED BY LRC: November 13, 1974 at 10:31 a.m.

(The regulation which follows was returned to the issuing agency by the Administrative Regulation Review Subcommittee. The issuing agency amended the regulation to conform to the Subcommittee's objections and resubmitted the amended regulation, which became effective upon its receipt by the Legislative Research Commission.)

DEPARTMENT OF TRANSPORTATION
Division of Aeronautics and Airport Zoning
602 KAR 1:030
(As Amended)

RELATES TO: KRS Chapter 183
PURSUANT TO: KRS 13.082, 174.080, 183.080 and 183.530
EFFECTIVE: November 20, 1974
NECESSITY AND FUNCTION: This regulation sets forth rules regarding the operation of aircraft in intrastate air commerce.

Section 1. The Federal Aviation Administration's rules contained in 14 CFR 135 (Code of Federal Regulations) as of January 1, 1974, are hereby adopted and incorporated by reference as regulations of this Department insofar as they do not

conflict with the laws of Kentucky or the regulations of this Department]. These rules, commonly known as Federal Aviation Regulations, part 135, provide aircraft operating rules, crewmember qualifications, aircraft and equipment requirements, and rules governing persons holding air taxi/commercial operator (ATCO) operating certificates.

Section 2. The date of incorporation by reference is July 31, 1974.

Section 3. The above mentioned material has been published in the 1974 Code of Federal Regulations and may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Section 4. The rules contained in the above mentioned material are applicable to the operation of aircraft in intrastate air commerce.

BILLY PAXTON, Secretary

ADOPTED: July 31, 1974
RECEIVED BY LRC: August 8, 1974 at 3:48 p.m.
RETURNED TO AGENCY: October 2, 1974
RECEIVED BY LRC: November 20, 1974 at 4:06 p.m.

DEPARTMENT OF TRANSPORTATION
Bureau of Highways
603 KAR 6:011
(Proposed Amendment)

RELATES TO: KRS 189.222
PURSUANT TO: KRS 13.082
SUPERSEDES: HIWA-TC-KY 36
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 of KY 36 are as follows:

KY 36 AAA From: South end of bridge at Milton
To: Jct. US 42 at Prestonsville near Carrollton, and

From: Junction with US 60 in Owingsville
To: Junction with I-64, and

From: Jct. US 68 approximately 13 miles NE of Paris
To: Jct. KY 32 in Carlisle

AA From: Breckinridge
To: Jct. US 27 in Cynthiana, and

From: Jct. I-64
To: Jct. US 460 in Frenchburg

A From: Jct. with I-75 and Old US-25 near Williamstown
To: Breckinridge

From: Jct. US 60 in Owingsville
To: Extending northwest to KY 1944

Except: Southern R. R. Overpass near Williamstown (10 Ton Cap.)

B All other portions not herein classified.

BILLY PAXTON, Secretary

ADOPTED: October 14, 1974
RECEIVED BY LRC: October 28, 1974 at 1:48 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
Occupational Safety and Health
803 KAR 2:030
(Proposed Amendment)

RELATES TO: KRS Chapter 338
PURSUANT TO: KRS 13.082
SUPERSEDES: OSH 12-2
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Express authority to adopt by reference established federal standards and national consensus standards is also given to the Board. The following regulations contain those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1926, the Occupational Safety and Health Standards, December, 1972 edition, Volume 37, Number 243, Government Printing Office, Washington, D.C. 20402, including those changes which have been adopted by the U.S. Department of Labor through July 31, 1973. These standards are hereby adopted by reference with the following exceptions:

(1) 29 CFR Part 1926.1 shall read as follows:
The provisions of this regulation adopt and extend the applicability of established federal standards contained in 29 CFR Part 1926 to all employers, employees, and places of employment throughout the Commonwealth except those excluded in KRS 338.021.

(2) 29 CFR 1926.100 shall read as follows:
(a) Hard hats conforming to specifications of the American National Standards Institute, safety requirements for industrial head protection z89.1 (1971) shall be worn by all employees at all times while engaged in the type of work covered by the scope of this safety standard.
(b) Helmets for the head protection of employees exposed to high voltage electrical shock and burns shall meet the specifications contained in American National Standards Institute z89.2 (1971).

(3) 29 CFR 1926.602(a)(8)(ii) relating to material handling equipment shall read as follows:
(ii) Notwithstanding the provisions of paragraph (a)(8)(i) of this section, the requirement that fenders be installed on pneumatic-tired earthmoving haulage equipment manufactured before January 1, 1972, is postponed indefinitely.

(4) 29 CFR 1926.400(h) shall read as follows:
(h) Notwithstanding any other provisions of this part, the effective date of the requirement in section 210-7 of the National Electrical Code, that all 15- and 20-ampere receptacle outlets on single-phase circuits for construction sites shall have approved ground-fault circuit protection for personnel, is postponed indefinitely.

(5) 29 CFR 1926.55 shall read as follows:
(a) Exposure of employees to inhalation, ingestion, skin absorption, or contact with any material or substance at a concentration above those specified in the "Threshold Limit Values of Airborne Contaminants for 1970" of the American Conference of Governmental Industrial Hygienist, shall be avoided.
(b) To achieve compliance with paragraph (a) of this subsection, administrative or engineering controls must first be implemented whenever feasible. When such controls are not feasible to achieve full compliance, protective equipment or other protective measures shall be used to keep the exposure of employees to air contaminants within the limits prescribed in this section. Any equipment and technical measures used for this purpose must first be approved for each particular use by a competent industrial hygienist or other technically qualified person. Whenever respirators are used, their use shall comply with 1926.103.
(c) Paragraphs (a) and (b) of this subsection do not apply to the exposure of employees to airborne asbestos dust. Whenever any employee is exposed to airborne asbestos dust, the requirements of 1910.93a of this title shall apply.
(d) Paragraphs (a) and (b) of this subsection do not apply to the exposure of employees to vinyl chloride. Whenever any employee is exposed to vinyl chloride, the requirements of 803 KAR 2:020, Section 2(1) and (2) [OSH 11-3, Section 2(b) and (c)] shall apply.

(6) 29 CFR 1926.552(b)(8) of the paragraph on "Material hoists" shall read as follows: All material hoists shall conform to the requirements of ANSI A10.5-1969, Safety Requirements for Material Hoists, with the exception that material hoists manufactured prior to January 1, 1970, may be used with a drum pitch diameter at least eighteen (18) times the nominal rope diameter provided the hoisting wire rope is at least equal in flexibility to 6 x 37 classification wire rope.

(7) 29 CFR 1926.451(a)(4) shall read as follows: Guardrails and toe boards shall be installed on all open sides and ends of platforms more than ten (10) feet above the ground or floor, except needle beam scaffolds and floats (see paragraphs (p) and (w) of this section). Toe boards shall not be required on the loading side of platforms which are loaded by means of a high lift tractor or fork truck provided that employees are prohibited from entering the area beneath the scaffolding where they could be exposed to objects which might fall from the scaffolding. Scaffolds four (4) feet to ten (10) feet in height, having a minimum horizontal dimension in either direction of less than forty-five (45) inches, shall have standard guardrails installed on all open sides and ends of the platform.

(8) 29 CFR 1926.451(d)(10) shall read as follows: Guardrails made of lumber, not less than 2 x 4 inches (or other material providing equivalent protection), and approximately forty-two (42) inches high, with a midrail of 1 x 6 inch lumber (or other material providing equivalent protection), and toe boards, shall be installed at all open sides and ends on all scaffolds more than ten (10) feet above the ground or floor. Cross braces used on 6 foot 6 inch tubular welded frame scaffolds may be substituted for the guardrails described above when the braces are erected continuously along the working level of the scaffold. The boards shall be a minimum of four (4) inches in height. Wire mesh shall be installed in accordance with paragraph (a)(6) of this section.

GEORGE R. WAGONER, Deputy Commissioner, for
JAMES R. YOCOM, Commissioner of Labor
APPROVED: ELIJAH M. HOGGE, Secretary
ADOPTED: November 14, 1974
RECEIVED BY LRC: November 18, 1974 at 10:52 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Coordinator, Kentucky Department of Labor, Occupational Safety and Health Program, Capital Plaza Office Tower, Frankfort, Kentucky 40601.

(The following regulation was returned to the issuing agency by the Administrative Regulation Review Subcommittee. The issuing agency amended it to comply with the Subcommittee's objections and resubmitted the amended regulation to the Legislative Research Commission, whereupon it became effective immediately.)

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
Office of the State Fire Marshal
806 KAR 50:010
(As amended)

RELATES TO: KRS 227.220
PURSUANT TO: KRS 227.300 and 13.082
SUPERSEDES: KSfty Section 100, 101, 102, 200
EFFECTIVE: November 20, 1974
NECESSITY AND FUNCTION: KRS 227.300 requires the State Fire Marshal's Office to establish by regulation principles and practices for construction in order to safeguard life and property from the hazards of fire and panic. These proposed regulations set out the basic procedures, and definitions used in the State Fire Marshal's Office.

Section 1. Citations: These regulations constitute and may be cited as the "Standards of Safety."

Section 2. Purpose and Application: (1) The purpose of the Standards of Safety is to provide, in accordance with KRS 227.300, reasonable rules and regulations, based upon recognized good fire prevention and fire protection engineering principles and practices, for the safeguarding, to a reasonable degree, of human life and property from the hazards of fire and panic:

(a) By establishing minimum requirements governing the design and construction of buildings, particularly those involving the public interest or welfare, and including any building or structure, permanent or temporary which is used or occupied or is to be used or occupied by persons who are employed, lodged, housed, cared for, assembled, served, entertained, or instructed therein, including, but not limited to, hotels, motels, apartments, schools or other educational institutions, colleges, hospitals of all kinds, penal institutions, asylums, nursing homes, convalescent homes, or homes for the aged, mercantile establishments, office buildings, apartment houses, theaters, churches, restaurants, auditoriums, grandstands and stadiums, gymnasiums, armories, night clubs, lodge halls, dance halls, factories, work shops, meeting rooms, bowling alleys, manufacturing and processing establishments, and all other buildings and structures of same or similar character or of same or similar use;

(b) By establishing minimum standards for safeguarding the more common fire hazards;

(c) By establishing minimum requirements for public and private care and cleanliness, as they relate to fire; and,

(d) By establishing minimum regulations governing the operation and maintenance of certain occupancies which have a direct bearing on general safety of life and property (including provisions for issuance of permits, inspection of property, etc.).

(2) Except as otherwise specifically provided, the general provisions of the Standards of Safety apply to all buildings, occupancies, installtions or conditions, including those occupancies for which special requirements are given.

(3) While safety to life warrants as close compliance as possible with the Standards of Safety, nothing herein shall apply to farm property, unless there are activities of an industrial nature sufficient to require the consideration of the State Fire Marshal from a life hazard standpoint.

(4) Unless otherwise provided, the Standards of Safety are intended primarily to apply to new or remodeled buildings, installations, equipment, or conditions; however, they shall also apply to existing buildings, installations, equipment, conditions and occupancies where safety to life or protection of the public interest requires their enforcement.

(5) The standards herein contained are to be considered a minimum. Where an ordinance has been adopted by a municipality, the Standards of Safety do not modify any provision of said ordinance, unless the Standards of Safety impose greater restrictions, in which case the provisions of the Standards of Safety shall control.

(6) Where the purpose of any provision of the Standards of Safety, as it pertains to safety to life and property from fire, can be fulfilled by other means, the State Fire Marshal may modify the provision to permit certain specific alternatives.

(7) It is not the intent of the Standards of Safety to dictate use of specific materials, provided the necessary degree to safety is otherwise attained. Other materials than those herein specified may be used if approved and having the equivalent strength, fire resistance, and other qualities needed for the purpose for which they are intended.

(8) Many of the Standards of Safety are specific. Others, for the sake of brevity simplification, are of general nature. All features of construction and occupance, and operations of any nature, shall be such as to provide reasonable safety to life and property from fire and shall conform to recognized safe practice requirements. Unless specifically covered by a provision of these Standards, the following nationally recognized codes, standards, and regulations shall be deemed safe practice requirements. These codes, standards and regulations have been approved by the Commissioner, and copies have been placed on file in the Office of the State Fire Marshal and with the Legislative Research Commission.

(a) Standards of the National Fire Protection Association known as the National Fire Codes, Volume 1-10, (1973-1974 Edition) and NFPA Pamphlet 58, "Storage and Handling of Liquefied Petroleum Gases," 1974 edition.

1. Copies of the 10 volumes, or of any pamphlet contained therein or of pamphlet 58, 1974 edition are available for a fee from: National Fire Protection Association, 470 Atlantic Avenue, Boston, Massachusetts 02210.
2. The National Fire Codes contain the following codes, standards, recommended practices, and manuals:

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Flammable Liquids, Boiler-Furnaces, Ovens

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30	Flammable & Combustible Liquids Code, '73
31	Oil Burning Equipment, '72
32	Dry Cleaning Plants, '72
321	Classification of Flammable Liquids, '73
327	Cleaning Small Tanks, '70
328	Manholes and Sewers, Flammable and Combustible Liquids and Gases in, '70
329	Underground Leakage of Flammable and Combustible Liquids, '72
33	Spray Application, '73
34	Dip Tanks, '71
35	Manufacture of Organic Coatings, '71
36	Solvent Extraction, '73
385	Tank Vehicles for Flammable & Combustible Liquids, '71
386	Portable Shipping Tanks, '70
393	Gasoline Blow Torches, '69
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85	Oil- and Gas-Fired Watertube Furnaces - One Burner, '73
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86A	Ovens and Furnaces, '73
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10 Portable Fire Extinguishers, Installation, '73
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10L Model Enabling Act, Portable Fire Extinguishers, '69
182M Vaporizing Liquid Agents, Hazards, '65
19 Automotive Fire Apparatus, '73
19B Respiratory Protective Equipment for Firefighters, '71
191 Portable Pumping Units, '59
193 Fire Department Ladders, '72
194 Fire Hose Couplings, Screw Threads, '68
196 Fire Hose, '72
197 Initial Fire Attack, Training Standard on, '66
198 Fire Hose, Care of, '72
25 Water Systems for Rural Fire Protection, '69
27 Private Fire Brigades, '67
295 Wildfire Control by Volunteer Fire Departments, '73
601 Guard Service in Fire Loss Prevention, '68
601A Guard Operations in Fire Loss Prevention, '68
604 Salvaging Operations, '64
901 Uniform Coding for Fire Protection, '73
901AM Fire Reporting Field Incident Manual, '73

Volume 9.
Occupancy Standards & Process Hazards

46 Lumber, Outdoor Storage, '73
46A Wood Chips, Outdoor Storage, '73
46B Outdoor Storage of Logs, '71
47 Lumber Yards, Retail, Wholesale, '73
56C Laboratories in Health-Related Institutions, '73
68 Explosion Venting, Guide, '54
77 Static Electricity, '72
81 Fur Storage, Cleaning, '69
87 Piers and Wharves, '71
88A Parking Structures, '73
88B Repair Garages, '73
224 Homes, Camps in Forest Areas, '72
231 General Storage, Indoor, '72
231A General Storage, Outdoor, '70
231B Cellular Rubber and Plastics, '68
231C Rack Storage of Materials, '73
232 Record Protection, '70
232AM Archives and Record Centers, '72
501A Mobile Home Parks, '73
501B Mobile Homes, '73
501C Recreational Vehicles, '72
501D Electrical Standard for Recreational Vehicles Parks, '71
513 Motor Freight Terminals, '73
602 Community Dumps, '64
801 Facilities Handling Radioactive Materials, '70
802 Nuclear Reactors, '60
910 Protection of Library Collections, '70
911 Protection of Museum Collections, '69

Volume 10.
Transportation

302 Motor Craft, '72
303 Marinas & Boatyards, '69
306 Control of Gas Hazards on Vessels, '72
307 Marine Terminals, Operations, '67
311 Ship Fire Signal, '49
312 Vessels During Construction, Protection of, '70
402 Aircraft Rescue, Fire Fighting, Standard Operating Procedures, '73
403 Aircraft Rescue, Fire Fighting Services at Airports, '73
406M Fire Dept. Handling Crash Fires, '68
407 Aircraft Fuel Servicing, '73
408 Aircraft Fire Extinguishers, '73
409 Aircraft Hangars, '73

410A Aircraft Electrical Maintenance, '68
410B Aircraft Oxygen Maintenance, '71
410C Aircraft Fuel System Maintenance, '72
410D Aircraft Cleaning, Painting & Paint Removal, '71
410E Aircraft Welding Operations in Hangars, '70
410F Aircraft Cabin Cleaning Operations, '70
412 Aircraft Foam Fire Fighting Vehicles, Test Procedures, '73
414 Aircraft Rescue, Fire Fighting Vehicles, '70
415 Aircraft Terminal Buildings, '73
416 Airport Terminal Buildings, '73
417 Aircraft Loading Walkways, '73
418 Roof-top Heliport Construction & Protection, '73
419 Airport Water Supply Systems, '69
421 Aircraft Interior Fire Protection, '73
422M Aircraft Fire Investigators Manual, '72
505 Powered Industrial Trucks, '73
512 Truck Fire Protection, '70"

3. Incorporated by reference on November 1, 1974.

(b) National Building Code recommended by the American Insurance Association, 1967 Edition, hereafter referred to as "The National Building Code," except Article XVIII and Appendix 1 and Section 27.

1. Copies of the National Building Code are available for a fee from: American Insurance Association, 85 John Street, New York, New York 10038.

2. The National Building Code contains the minimum standards for the construction, alteration, equipment, use and occupancy, location and maintenance, moving and demolition of buildings and structures.

3. Date Incorporated by reference November 1, 1974.

(c) A new Article XVIII of the National Building Code shall read as follows:

[(NOTE: These Standards and Codes also adopt other nationally recognized Standards and Codes, i.e. Article XVIII of the National Building Code.)]

"ARTICLE XVIII
LIST OF STANDARDS AND PUBLICATIONS.

Section 1800. Compliance.

Compliance with the standards or publications listed under the section numbers of this code in this article shall be evidence of compliance with the section of the code referring to this article.

Section 1801. Organization names and indicating abbreviations.

The abbreviations preceding these standards and publications shall have the following meaning and are the organizations issuing the standards and publications listed.

ANSI - American National Standards Institute (formerly United States of American Standards Institute.)
1430 Broadway
New York, New York 10018

ASTM - American Society for Testing and Materials
1916 Race Street
Philadelphia, Pa. 19103

NFPA - National Fire Protection Association International
470 Atlantic Avenue
Boston, Mass. 02210

Section 313.1
NFPA No. 30, Flammable and Combustible Liquids Code, '73.
NFPA No. 35, Standard for the Manufacture of Organic Coatings, '71.
NFPA No. 36, Standard for Solvent Extraction Plants, '73.
NFPA No. 40, Standard for Storage & Handling of Cellulose Nitrate Motion Picture Film, '67.
NFPA No. 48, Standard for the Storage, Handling & Processing of Magnesium, '67.
NFPA No. 481, Standard for the Production, Processing, Handling and Storage of Titanium, '72.
NFPA No. 61B, Standard for the Prevention of Dust Explosions in Terminal Grain Elevators, '73.
NFPA No. 61C. Standard for the Prevention of Dust Explosion in Flour & Feed Mills, '73.
NFPA No. 65, Code for the Processing & Finishing of Aluminum, '73.
NFPA No. 664, Code for the Prevention of Dust Explosions in Woodworking & Wood Flour Manufacturing Plants, '71.

Section 318.5
NFPA No. 40, Standard for the Storage and Handling of Cellulose Nitrate Motion Picture Film, '67.
NFPA No. 102, Standard for Places of Outdoor Assembly, Grandstands and Tents, '72.

Section 321
NFPA No. 40, Standard for Storage & Handling of Cellulose Nitrate Motion Picture Film, '67.

Section 505.1
NFPA No. 90A, Standard for the Installation of Air Conditioning & Ventilating Systems Other Than Residence Type, '73.
NFPA No. 54, Gas Appliances and Gas Piping, Installation, '69.
NFPA No. 54A, Industrial Gas Piping and Equipment, '69.
NFPA No. 90B, Warm Air Heating and Air Conditioning, '73.
NFPA No. 91, Blower and Exhaust Systems, '73.
NFPA No. 96, Commercial Cooking Equipment, Ventilation, '73.
NFPA No. 204, Smoke and Heat Venting Guide, '68.
NFPA No. 211, Chimneys, Fireplaces and Vents, '72.

Section 811.4a
NFPA No. 14, Standards for the Installation of Standpipe and Hose Systems, '73.

Section 812.3a
NFPA No. 13, Standards for the Installation of Sprinkler Systems, '73.

Section 905.1a
ANSI A56.1, Building Code Requirements for Excavations and Foundations, '52.

Section 908.1a
ASTM D25, Specifications for Round Timber Piles, '73.
ANSI A56.1, Building Code Requirements for Excavations and Foundations, '52.
ASTM A252, Specifications for Welded and Seamless Steel Pipe Piles, '73.
ASTM A283, Specifications for Low and Intermediate Tensile Strength Carbon Steel Plates for Structural Quality, '70 A.E.
ASTM A366, Specifications for Cold-Rolled Carbon Steel Sheets, Commercial Quality, '72.
ASTM A569, Steel Carbon (0.15 maximum percent) Hot Rolled Sheet and Strip, Commercial Quality, '72.
ASTM A36, Structural Steel Specifications, '70A.
ASTM A306, Carbon Steel Bores Subject to Mechanical Property Requirements, '64.
ASTM A242, Specification for High-Strength Low Alloy Structural Steel, '70AE.
ASTM A441, Specification for High-Strength, Low Alloy Structural Manganese Venadium Steel, '70AE.

Section 909.1c
ASTM C5, Specifications for Quicklime for Structural Purposes, '59.
ASTM C6, Specifications for Normal Finishing Hydrated Lime, '49.
ASTM C10, Specifications for Natural Cement, '73.
ASTM C22, Specifications for Gypsum, '72.
ASTM C33, Specifications for Concrete Aggregates, '74A.
ASTM C34, Specifications for Structural Clay Load-Bearing Wall Tile, '62.
ASTM C52, Specifications for Gypsum Partition Tile or Block, '54.
ASTM C55, Specifications for Concrete Building Brick, '71.
ASTM C56, Specifications for Structural Clay Non-Load-Bearing Tile, '71.
ASTM C57, Specifications for Structural Clay Floor Tile, '57.
ASTM C61, Specifications for Keene's Cement, '64.
ASTM C62, Specifications for Building Brick (Solid Masonry Units Made from Clay or Shale), '69E.
ASTM C73, Specifications for Sand-Lime Building Brick, '67.
ASTM C90, Specifications for Hollow Load-Bearing Concrete Masonry Units, '70A.
ASTM C91, Specifications for Masonry Cement, '71.
ASTM C105, Specifications for Ground Fire Clay as a Mortar for Laying-Up Fireclay Brick, '47.
ASTM C126, Specifications for Ceramic Glazed Structural Clay Facing Brick, and Solid Masonry Units, '71.
ASTM C129, Specifications for Hollow Non-Load-Bearing Concrete Masonry Units, '73.
ASTM C141, Specifications for Hydraulic Hydrated Lime for Structural Purposes, '67.
ASTM C144, Specifications for Aggregate for Masonry Mortar, '70.
ASTM C145, Specifications for Solid Load-Bearing Concrete Masonry Units, '71A.
ASTM C150, Specifications for Portland Cement, '74.
ASTM C595, Blended Hydrolic Cements, '74.
ASTM C206, Specifications for Special Finishing Hydrated Lime, '49.
ASTM C207, Specifications for Hydrated Lime for Masonry Purposes, '74.
ASTM C212, Specifications for Structural Clay facing Tile, '60.
ASTM C216, Specifications for Facing Brick (Solid Masonry Units Made from Clay or Shale), '71A.
ASTM C260, Specifications for Air-Entraining Admixtures for Concrete, '73.
ASTM C270, Specifications for Mortar for Unit Masonry, '73.
ASTM C279, Specifications for Chemical-Resistant Masonry Units, '54.
ASTM C287, Specifications for Sulfur Mortar, '71.
ASTM C315, Specifications for Clay Flue Linings, '56.
ASTM C330, Specifications for Lightweight Aggregate for Concrete Masonry Units, '69A.

Section 911.1
ASTM C476, Specifications for Mortar and Grout for Reinforced Masonry, '71.
ANSI A41.2, Building Code Requirements for Reinforces Masonry, '60, (R70).

Section 913.1
ANSI 89.1, Building Code Requirements for Reinforced Concrete, '72.
ASTM C33, Specifications for Concrete Aggregates, '74A.
ASTM C330, Specifications for Lightweight Aggregates for Structural Concrete, '69A.
ASTM C332, Specifications for Lightweight Aggregates for Insulating Concrete, '66.

Sections 913.1 and 914.1a
ASTM A36, Structural Steel Specifications, '70A.

ASTM A283, Specifications for Low and Intermediate Tensile Strength Carbon Steel Plates for Structural Quality, '70AE.
ASTM A306, Carbon Steel Bores Subject to Mechanical Property Requirements, '64.
ASTM A82, Specifications for Cold-Drawn Steel Wire for Concrete Reinforcement, '72.
ASTM A185, Specifications for Welded Steel Wire Fabric for Concrete Reinforcement, '73.
ASTM A377, Specifications for Cast Iron Pressure Pipe, '66.
ASTM A615, Deformed Plain Billet Steel Boars for Concrete Reinforcement, '74.
ASTM A616, Rail Steel, Deformed and Plain Bars for Concrete Reinforcement, '72.
ASTM A617, Axle Steel, Deformed and Plain Bars for Concrete Reinforcement, '72.

Section 914.1a
ANSI A59.1, Building Code Requirements for Reinforced Gypsum Concrete, '66 (R72).

Section 915.1
ANSI A122.1, Vermiculite Concrete Roofs and Slabs-on-Grade, '65.

Section 916.1
ANSI A89.1, Building Code Requirements for Reinforced Concrete, '72.

Section 917.1
ASTM A36, Specifications for Structural Steel, '70A.
ASTM A283, Specifications for Low and Intermediate Tensile Strength Carbon Steel Plates for Structural Quality, '70AE.
ASTM A306, Carbon Steel Bores Subject to Mechanical Property Requirements, '64.
ASTM A242, Specifications for High Strength Low Alloy Structural Steel, '70AE.
ASTM A440, Specifications for High Strength Structural Steel, '70AE.
ASTM A441, Specifications for High Strength Low Alloy Structural Manganese Vanadium Steel, '70AE.

Section 917.7d
NFPA No. 51, Gas Systems for Welding and Cutting, '73.
ANSI Z49.1 Safety in Welding and Cutting, '73.

Section 918.1
ASTM A570, Hot Rolled Carbon Steel Sheet and Strip, Structural Qualities, '72.
ASTM A611, Steel Cold Rolled Sheets, Carbon Structural Specifications, '72.
ASTM A606, Steel Sheet and Strip; Hot Rolled and Cold Rolled, High Strength and Low Alloy With Improved Corrosion Resistance, '71b.
ASTM A607, Steel Sheet and Strip; Hot Rolled and Cold Rolled, High Strength and Low Alloy Columbian and/or Vanadium, '70.
ASTM A446, Specification for Steel Sheets of Structural Quality, Coils and Cut Lengths, '72.

Section 919.1
ASTM B221, Specifications for Aluminum-Alloy Extruded Bars, Rods Shapes and Tubes, '74.
ASTM B308, Specifications for Aluminum-Alloy Standard Structural Shapes, Rolled or Extruded, '73.

Section 925
ANSI A42.1, Specifications for Gypsum Plastering, '64.
ANSI A42.2, Specifications for Portland Cement Stucco, '71.
ANSI A42.3, Specifications for Portland Cement Plastering, '72.
ANSI A42.4, Specifications for Interior Lathing and Furring, '67.
ANSI A97.1, Specifications for the Application and Finishing of Wallboard, '65.

Section 1204.1
ANSI A10.4, Safety Requirements for Workmen's Hoists, '73.

Section 1211.2a
NFPA No. 31, Standard for the Installation of Oil Burning Equipment, '72.
NFPA No. 58, Standard for the Storage and Handling of Liquefied Petroleum Gases, '72.

Section 1300
ANSI A17.1, Safety Code for Elevators, Dumbwaiters and Escalators and Moving Walks, '71.

Section 1305
ANSI A113.1, Safety Code for Mechanized Parking Garage Equipment, 'R71.

Section 1400.1
NFPA No. 54, Standards for the Installation of Gas Piping and Gas Appliances in Buildings, '69.

Section 1500
NFPA No. 70, National Electrical Code, '71.

Section 1602.6a
ANSI A60.1, Building Code Requirements for Signs and Outdoor Display Structures, '49."

(d) A new Appendix I Section 27 of the National Building Code shall read as follows:

"SECTION 27.
LIST OF STANDARDS AND PUBLICATIONS.

Compliance with the standards or publications listed under the section numbers in this section shall be evidence of compliance with the section of the code referring to this section.

The abbreviations preceding these standards and publications shall have the following meaning and are the organizations issuing the standards and publications listed.

NFPA-National Fire Protection Association, International, 470 Atlantic Avenue, Boston, Mass. 02210.

Section 26.
NFPA No. 30, Flammable and Combustible Liquids Code, '73.
NFPA No. 32, Standard for Dry Cleaning Plants, '72.
NFPA No. 33, Standard for Spray Finishing Using Flammable and Combustible Materials, '73.
NFPA No. 34, Standard for Dip Tanks Containing Flammable or Combustible Liquids, '71.
NFPA No. 35, Standard for the Manufacture of Organic Coatings '71.
NFPA No. 36, Standard for Solvent Extraction Plants, '73.
NFPA No. 40, Standard for Storage & Handling of Cellulose Nitrate Motion Picture Film, '67.
NFPA No. 42, Standard for Storage, Handling & Use of Pyroxylin Plastics in Factories, '67.
NFPA No. 43, Standard for Storage, Handling & Use of Pyroxylin Plastics in Warehouses, Wholesale and Retail Stores, '67.
NFPA No. 48, Standard for Storage, Handling & Processing of Magnesium, '67.
NFPA No. 481, Standard for the Production, Processing, Handling & Storage of Titanium, '72.
NFPA No. 56A, Inhalation Anesthetics, '73.
NFPA No. 56B, Respiratory Therapy, '73.
NFPA No. 58, Standard for Storage & Handling of Liquified Petroleum Gases, '72.
NFPA No. 61A, Standard for Prevention of Dust Explosions in Starch Factories, '73.
NFPA No. 61B, Code for the Prevention of Dust Explosions in Terminal Grain Elevators, '73.
NFPA No. 61C, Code for the Prevention of Dust Explosions in Flour and Feed Mills, '73.
NFPA No. 62, Standard for the Prevention of Dust Explosions in Sugar and Cocoa, '67.
NFPA No. 651, Code for the Prevention of Dust Explosions in the Manufacture of Aluminum Powder, '72.
NFPA No. 502, Code for Explosion & Fire Protection in Plants Producing or Handling Magnesium Powder or Dust, '68.
NFPA No. 653, Standard for the Prevention of Dust Explosions in Coal Preparation Plants, '71.
NFPA No. 654, Standard for the Prevention of Dust Explosions in the Plastics Industry, '70.
NFPA No. 655, Standard for the Prevention of Sulfur Fires and Explosions, '71.
NFPA No. 656, Code for the Prevention of Dust Ignitions in Spice Grinding Plants, '71.
NFPA No. 657, Code for the Prevention of Dust Explosions in Confectionery Manufacturing Plants, '67.
NFPA No. 604, Code for the Prevention of Dust Explosions in Woodworking and Wood Flour Manufacturing Plants, '71.
NFPA No. 88A, Parking Structures, '73.
NFPA No. 88B, Repair Garages, '73.
NFPA No. 409, Standard on Aircraft Hangars, '73."

Section 3. Definitions: (1) Unless otherwise expressly stated, the following terms, as used in these Standards, shall have the meanings indicated in this Article.

(2) Words used in the present tense include the future; the singular number includes the plural and the plural the singular.

(3) Where terms are not defined in this Article, they shall have their ordinarily accepted meaning or such as the context may imply.

(a) "Addition" as applied to a building or structure, means any construction which increases the area or the height of any portion of the building or structure.

(b) "Alley" means any public space or thoroughfare less than twenty-one (21) feet in width which has been dedicated or devoted to public use.

(c) "Alteration" as applied to a building or structure, means any change or modification in construction, exit facilities, or permanent fixture or equipment which does not include an addition to the building or structure.

(d) "ASTM" means American Society for Testing and Materials.

(e) "Approved" as applied to a material, device, or mode of construction, means materials, devices or equipment listed by Underwriter's Laboratories, Inc., the testing laboratory of the American Gas Association, or other recognized testing authority or approved by the State Fire Marshal.

(f) "Area" as applied to a building or structure, means the maximum horizontal projected area of the building or structure at or above grade.

(g) "Areaway" means an unroofed subsurface space adjacent to a building.

(h) "Attic" means the space between the ceiling beams of the top habitable story and the roof rafters.

(i) "Automatic" as applied to a fire door or other opening protective, means normally held in an open posi-

tion and automatically closed by a releasing device that is actuated by abnormal high temperature, a predetermined rate of rise in temperature or electrically connected to an approved fire alarm system.

(j) "Basement" means that portion of a building the average height of which is more than half below grade. However, the space shall not be considered a basement if its ceiling is seven and one-half (7 1/2) feet or more above the grade level at any point next to the building. If this space is used for human habitation it shall be considered a story.

(k) "Building" means the total area enclosed between exterior walls, or exterior walls and fire walls. For the purpose of this Code each portion of a building separated from other portions by a fire wall shall be considered as a separate building.

(l) "Combustible Material" as applied to installtion of heating equipment means any material made or surfaced with wood, compressed paper, plant fibers, or other material that will ignite and burn whether flameproof or not, or whether plastered or not plastered.

(m) "Concrete" means a mixture of portlant cement, aggregates and water.

(n) "Concrete, Reinforced" means concrete in which reinforcement other than provided for shrinkage or termperature changes is embedded in such a manner that the two materials act together as a resisting force.

(o) "Court" means any open, uncovered, unoccupied space on the same lot with a building:

1. Inner court means any court other than an outer court or yard.
2. Outer court means a court other than a yard having at least one side thereof opening to a street, ally, or yard or other permanent open space.
3. Yard means a court on the same lot with a building extending along the entire length of a lot line.

(p) "Dwelling" means a building occupied exclusively for residence purposes and having:

1. One (1) dwelling unit; or
2. Two (2) dwelling units; or
3. One or two dwelling units with a total of not more than fifteen (15) boarders or roomers in these units served with means or sleeping accommodations or both.

(q) "Dwelling Unit" means one (1) or more rooms arranged for the use of one (1) or more individuals living together as a single housekeeping unit, with cooking, living, sanitary, and sleeping facilities.

(r) "Elevator" means a hoisting and lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction, and which served two (2) or more floors of a building or structure:

1. Freight elevator means an elevator ordinarily used for carrying freight and on which only the operator and the persons necessary for unloafing and loading the freight are permitted to ride.
2. Passenger elevator means an elevator used primarily to carry persons other than the operator.

(s) "Existing" means in existence before the time that this Code becomes effective.

(t) "Fire Chief" means the authorized head of a fire department that is recognized by the State Fire Marshal's Office.

(u) "Fire Department", for the purposes of these Standards, means a fire department recognized by the State Fire Marshal's Office.

(v) "Fire Door" means a door and its assembly, so constructed and assembled in place as to give protection against the passage of fire (See approved).

(w) "Fire Resistance Rating" means the time in hours that the material or construction will withstand the standard fire exposure, as determined by a fire test made in conformity with the "Standard Method of Fire Tests in Building Construction and Materials," ASTM E119-55 (See Appendix B for fire resistance ratings for specific types of construction).

(x) "Fire Resistive Construction" means construction conforming to the requirements of Section 702 of the National Building Code.

(y) "Fire Retardant Treated Lumber" means lumber that has been treated by an approved pressure impregnation process and has a flame spread rating not higher than equivalent of twenty-five (25) with no evidence of significant progressive combustion when tested for thirty (30) minutes duration under the Standard Test Method for Fire Hazard Classification of Building Materials of Underwriter's Laboratories, Inc., U.L. 723, NFPA 255, ASTM E84. All fire retardant treated lumber shall be easily identifiable.

(z) "Fire Walls" — (See Walls)

(aa) "Grade" with reference to a building or structure, means the elevation of the ground adjoining the building.

(bb) "Heavy Timber Construction" means construction conforming to the requirement of Section 706 of the National Building Code.

(cc) "Height"

1. As applied to buildings, means the vertical distance from grade to the highest finished roof surface, or to a point at the average height of a roof having a pitch of more than one (1) foot in four and one-half (4 1/2) feet; "height" of a building in stories does not include basements. (See "Basement").
2. As applied to a story, means the vertical distance from top to top of two successive tiers of floor beams or finished floor surfaces.
3. As applied to a wall, means the vertical distance to the top measured from the foundation wall, or from a girder, or other immediate support of such wall.

(dd) "Horizontal Separation" means a permanent open space between the building wall under consideration and the lot line or the center line of a facing street, alley or public way. Where two or more buildings are on a lot, the horizontal separation of the wall under consideration shall be measured from an imaginary line drawn at a distance from the facing wall equal to the horizontal separation applicable for that wall.

(ee) "Interior Finish" means the material of walls, partitions or fixed or movable type ceilings and other exposed interior surfaces of building. Interior finish includes materials affixed to the building structure as distinguished from decorations and furnishings, which are not so affixed:

1. Class A Interior Finish—Flame Spread Rating 0-25
2. Class B Interior Finish—Flame Spread Rating 26-75
3. Class C Interior Finish—Flame Spread Rating 76-200
4. Class D Interior Finish—Flame Spread Rating 201-500
5. Class E Interior Finish—Flame Spread Rating over 500.

(ff) "Legislative Body" means a city council, fiscal court, board of directors, commissioners, committee, or any group however, named, which governs a recognized fire department.

(gg) "Masonry" means a built-up construction or combination of building units of such materials as clay, shale, concrete, glass, gypsum or stone set in mortar; or plain concrete:

1. "Hollow Masonry Unit" means a masonry unit whose net cross-sectional area in any plane parallel to the bearing surface is less than seventy-five per cent (75%) of its cross-sectional area measured in the same plane.
2. "Masonry of Hollow Units" means masonry consisting wholly or in part of hollow masonry units laid continuously in mortar.
3. "Solid Masonry" means consisting of solid masonry units laid continuously in mortar, or consisting of plain concrete.
4. "Solid Masonry Unit" means a masonry unit whose net cross-sectional area in every plane parallel to the bearing surface is seventy-five per cent (75%) or more of its gross cross-sectional area measured in the same plane.
5. "Reinforced Masonry" means unit masonry in which reinforcement is embedded in such manner that the two materials act together in resisting forces.

(hh) "Multifamily House" means a building or portion thereof containing three (3) or more dwelling units; including tenement houses, apartment houses, flats, etc.

(ii) "Noncombustible" as applied to a building construction material, means a material which, in the form in which it is used, falls into one of the following groups:

1. Materials no part of which will ignite or burn and which will not liberate flammable gases or melt when heated to a temperature of 1380 degrees F. and to the maximum temperature to which it will be subjected under its normal use under the applicable conditions as follows:
   a. Where the combustibility of material is a factor in the application or requirements for clearance of the material from a heating appliance, flue, or other device which is a source of high temperature and such clearance is the only consideration requiring that the material be non-combustible.
   b. When the material other than backing is used to support only interior finish.
   c. When the material is used for window sashes, doors, trims, or frames required to be non-combustible but not required as opening protectives to prevent the spread of fire through an opening.
2. Materials having a structural base of a non-combustible material as defined in (1) with surfacing not over 1/8 inch thick which has a flamespread rating not higher than 50.
3. Materials other than as described in 1. or 2. above having a surface flamespread rating not higher than twenty-five (25) without evidence of continued progressive combustion when tested (as per ASTM E84) for a duration of thirty (30) minutes.

It does not apply to surface finishes or coatings which are applied to the surface of combustible materials. Flamespread rating as used herein refers to a rating obtained according to the standard test method for fire hazard classification of the building materials of Underwriter's Laboratories, Inc., U.L. 723, NFPA 255, ASTM E84.

(jj) "Noncombustible" as applied to the installations of heating equipment, means any material which will not ignite and burn.

(kk) "Occupance": (1) "Assembly Occupancy" means the occupancy or use of a building or structure or any

portion thereof by a gathering of persons for civic, political, travel, religious, social, or recreational purposes; including among others:

Armories	Lecture Rooms
Assembly Halls	Lodge Rooms
Auditoriums	Motion Picture Theaters
Bowling Alleys	Museums
Broadcasting Studios	Night Clubs
Chapels	Opera Houses
Churches	Passenger Stations
Clubrooms	Pool Rooms
Community Buildings	Recreation Areas
Courthouses	Restaurants
Dance Halls	Skating Rinks
Exhibition Rooms	Television Studios
Gymnasiums	Theaters

2. "Business Occupancy" means the occupancy or use of a building or structure or any portion thereof for the transaction of business, the rendering or receiving of professional services, or the displaying, selling or buying of goods, wares, or merchandise, or the housing of vehicles of transportation, except where occupancy is of high hazard; including among others:

Banks	Service Stations
Barber Shops	Offices
Beauty Parlors	Stores
Department Stores	Radio Stations
Garages	Telephone Exchanges
Markets	Television Stations

3. "Educational Occupancy" means the occupancy or use of a building or structure or any portion thereof by persons assembled for the purpose of learning or of receiving education instruction; including among others:

Academies	Pre-school Child
Care Centers	Relocable Classroom Unit
Colleges	Schools
Kindergartens	Seminaries
Libraries	Universities

4. "High Hazard Occupancy" means the occupancy or use of a building or structure or any portion thereof that involves highly combustible, high flammable or explosive materials or which as inherent characteristics that constitute a special fire hazard; including among others:

Aluminum Power Factories	Grain Elevators
Charging or filling stations	Lacquer Factories
Distilleries	Liquefied Petroleum Gas
Dry Cleaning Plants	Mattress Factories
Dry Dyeing Plants	Paint Factories
Explosive-Manufacture, Sale or Storage	Pyroxylin-Factories, or Warehouses
Flour and Feed Mills	Rubber Factories
Gasoline Bulk Plants	Sales Rooms

5. "Industrial Occupancy" means the occupancy or use of a building structure or any portion thereof for assembling, fabricating, finishing, manufacturing, packaging or processing operations, excpt for occupancies of high hazard; including among others:

Assembly Plants	Mills
Creameries	Power Plants
Electrical Substations	Processing Plants
Factories	Pumping Stations
Ice Plants	Repair Garages
Laboraties	Smokehouses
Laundries	Workshops
Manufacturing Plants	

6. "Institutional Occupancy" means the occupancy or use of a building or structure or any portion thereof by persons harbored or detained to receive medical, charitable or other care or treatment, or by persons involuntarily detained; including among others:

Asylums	Nursing Homes
Homes for the Aged	Orphanages
Hospitals	Penal Institutions
Houses of Correction	Reformatories
Infirmaries	Sanitariums
Jails	Nurseries

7. "Residential Occupancy" means the occupancy or use of a building or structure or any portion thereof by persons for who sleeping accommodations are provided but who are not harbored or detained to receive medical, charitable or other care or treatment, or are not involuntarily detained, including among others:

Apartments	Hotels
Boarding Houses	Lodging Houses
Club Houses	Motels
Convents	Multifamily Houses
Dormitories	Studios
Dwellings	Tenements

8. "Storage Occupancy" means the occupancy or use of a building or structure or any portion thereof for the storage of goods, wares, merchandise, agricultural, or manufactured products or the sheltering of livestock and other animals except where the occupancy is classified as high hazard.

(ll) "Ordinary Construction" means construction conforming to the requirements of Section 707 of the National Building Code.

(mm) "Pent House" means an enclosed structure other than a roof structure, located on the roof, extending not more than twelve (12) feet above a roof and used primarily for living or recreational accommodations. (See Story)

(nn) "Place of Assembly" shall apply to all buildings or sections of buildings used for the gathering of more than 100 perons in one (1) room or space for religious, recreational, education, political, social, or amusement purposes, or for the consumption of food or drink.

(oo) "Pre-fabricated" means fabricated prior to erection or installation on a building or structure foundation.

(pp) "Protected Noncombustible Construction" means construction conforming to the requirements of Section 704 of the National Building Code.

(qq) "Public Place" means a thoroughfare or open space over twenty-one (21) feet wide which is dedicated to a governmental body maintaining accessibility to the fire department and other public services.

(rr) "Publicway" means a thoroughfare over twenty-one (21) feet wide on a privately owned, privately maintained property but designated for public use and which by agreement is kept accessible at all times to the fire department and other public services.

(ss) "Repair" means the replacement of existing work with equivalent materials for the purpose of its maintenance; but not including any addition, change or modification in construction, exit facilities, or permanent fixtures of equipment.

(tt) "Required" means required by some provision of these Standards.

(uu) "Self Closing" as applied to a fire door or other protective, means normally closed and equipped with an approved device which will insure closing after having been opened for use.

(vv) "Shaft" means a vertical opening or passage through two (2) or more floors of a building or through floors and roof.

(ww) "Shall" indicates mandatory provisions of these Standards.

(xx) "Should" indicates advisory provisions of these Standards which, while not mandatory, are highly desirable and strongly recommended.

(yy) "Solid Wooden Door or the Flush Type" means a door of solid wooden construction (No indented panels or hollow spaces) not less than one and three-fourths (1 3/4) inch in thickness at any point.

(zz) "Sprinklered" means equipped with an approved automatic sprinkler system.

(aaa) "Story" means that part of a building comprised between a floor and the floor or roof next above. A mezzanine shall be considered a story if it exceeds thirty-three and one-third per cent (33 1/3%) of the area of the floor immediately below. A penthouse shall be considered a story if it exceeds 1,000 square feet or thirty-three and one-third per cent (33 1/3%) of the roof area. The basement of a building used for educational occupancy shall be considered a story if it is used for purposes other than storage, mechanical, or electical equipment.

(bbb) "Street" means any public thoroughfare or space twenty-one (21) feet or more in width, which has been dedicated or devoted to the public for public use.

(ccc) "This Office" means the State Fire Marshal's Office.

(ddd) "Unprotected Noncombustible Construction" means conforming to the requirements of Section 705 of the National Building Code.

(eee) "Walls"

1. "Bearing Wall" means a wall which supports any vertical load in addition to its own weight.
2. "Cavity Wall" means a wall built of masonry or of plain concrete, or a combination of these materials, so arranged as to provide an air space within the wall, and in which the inner and outer parts of the wall are tied together with metal ties.
3. "Curtain Wall" means a nonbearing wall between columns or piers and which is not supported by girders or beams.
4. "Faced Wall" means a wall in which the masonry facing the backing is so bonded as to exert common action under load.
5. "Fire Wall" means a wall constructed in accordance with Section 800, for the purpose of subdividing a building or separating buildings to restrict the spread of fire and which starts at the foundation and extends continuously through all stories through and above the roof, except where the roof is fire-resistive and wall is carried up tightly against the underside of the roof slab.
6. "Foundation Wall" means a wall below the first floor extending below the adjacent ground level and serving as a support for a wall, pier, column, or other structural part of a building.
7. "Hollow Wall" of masonry means a wall built of masonry units so arranged as to provide an air space within the wall, and in which the inner and outer parts of the wall are bonded together with masonry units.

8. "Nonbearing Wall" means a wall which supports no load other than its own weight.
9. "Panel Wall" means a nonbearing wall built between columns or piers and wholly supported at each story.
10. "Party Wall" means a wall used or adapted for joint services between two buildings.
11. "Veneered Wall" means a wall having a facing which is not attached and bonded to the backing as to form an integral part of the wall for purposes of load bearing and stability.

(fff) "Wood Frame Construction" shall mean construction conforming to Section 708 of the National Building Code. Buildings having exterior masonry veneer, metal, or stucco, on wooden frame, constituting wholly or in part the structural support of the building are considered "frame buildings".

Section 4. Administration, Enforcement, and Permits:

(1) Jurisdiction.

(a) Any person, persons, firm or corporation failing, refusing, or neglecting to comply with the Standards of Safety shall be punished as provided by KRS 227.990.

(2) Permits.

(a) General: Permits required by this Subsection will be issued when the requirements of the Standards of Safety have been complied with, and they may be suspended or revoked if the requirements are violated. Application for such permits shall be made in writing. When submission of plans and specificiations is required by the Standards of Safety, it is strongly recommended that preliminary plans and specifications be submitted for review in order to eliminate unnecessary delays to the registered architect and/or professional engineer through minimizing any changes to the final working drawings. Any deviation from the final plans and/or specifications shall have prior approval from the office of the State Fire Marshal in writing.

(b) Application: Application for "State Permits" required by paragraph (C), following, shall be made to the State Fire Marshal, Division of Fire Prevention, Department of Insurance, Frankfort, Kentucky. Where submission of plans and specifications is required by the Standards of Safety, the application for a "State Permit" together with at least one (1) complete set of plans and specifications shall be submitted.

(c) State Permits: A permit or license shall be obtained from the State Fire Marshal, for the following:

1. The transportation, selling, storing for resale, or delivering of liquefied petroleum gases, or for engaging in the business of installing or servicing liquefied petroleum gas equipment; or for persons who actually perform such installations or servicing operations. Licenses issued under this Subparagraph shall be in accordance with the provisions of KRS 234.120. Under this Subparagraph, licenses or permits are not required for storage or transportation in quantities of ten (10) gallons or less by the ultimate consumer, handling in quantities of less than one gallon where the gas is an integral part of a device for its utilization, or for use as a motor fuel while in the fuel tank of the motor vehicle.
2. The construction, or substantial remodeling, of any plant or building of a class listed in Subsection (3) "Design Responsibility – Plans and Specifications", paragraph (b), following.
3. The construction or substantial remodeling of any plant or building containing an occupancy for which a license is required under KRS 234.120 relating to the storage and handling of liquefied petroleum gases.
4. Conditions where permits are required by Section 6 Flammable Liquids, Section 7 Dry Cleaning, Section 8 Airports, and NFPA Pamphlet 495 Explosives.

(d) Local Permits: Where the "State Permits" are required as, above, local permits shall also be obtained from an authorized city official, where provisions have been made by the municipality for the issuance of permits, and where the municipality has adopted the Standards of Safety, or has regulations at least as stringent as the Standards of Safety.

(e) Certificate of Occupancy: The provisions on Certificates of Occupancy in the National Building Code will be enforced in their entirety.

(3) Design Responsibility, Plans and Specifications:

(a) Responsibility for the design, plans, and specifications, (Architectural, structural, mechanical, and electrical) covering the construction or substantial remodeling of any building of the classes listed below, shall be intrusted either to a professional architect registered in Kentucky, acting with the scope of his professional registration in accordance with KRS chapter 323 or a professional engineer registered in Kentucky, acting with the scope of his professional registration in accordance with KRS Chapter 322 or both, when, at the discretion of the State Fire Marshal, the circumstances so require. Such architects' and engineers' seals shall be attached to the data covering each area of construction for which he assumes design responsibility.

(b) Plans and specifications in specific detail and in conformity with good architectural and engineering practices shall be submitted to the State Fire Marshal, Division of Fire Prevention, Department of Insurance, Frankfort, Kentucky, and approval received (See "State Permits" preceding) before construction or substantial remodeling is started for the following:

1. Asylums, hospitals, nursing or convalescent homes for the aged; however named, and regardless of capacity.
2. A school or other educational facility, regardless of capacity.
3. A residential occupancy, defined, for the purpose of this section only, as:

a. Hotels. Includes buildings or groups of buildings under the same management in which there are more than fifteen (15) sleeping accommodations for hire, primarily used by transients who are lodged with or without meals, whether designated as a hotel, inn, club, motel, or by any other name. So-called apartment hotels shall be classified as hotels because they are potentially subject to transient occupancy like that of hotels.

b. Apartment Buildings. Includes buildings containing three (3) or more living units with independent cooking and bathroom facilities, whether designated as apartment house, tenement, garden apartments, or by any other name.

c. Dormitories. Includes buildings where group sleeping accommodations are provided for persons not members of the same family group in one (1) room or in a series of closely associated rooms under joint occupancy and single management, as in college dormitories, orphanages, fraternity houses, military barracks, ski lodges; with or without meals.

4. A place of assembly, regardless of capacity.
5. Mercantile building having a capacity in excess of 100 persons.
6. Industrial buildings having a capacity in excess of 100 persons.
7. Office buildings having a capacity in excess of 100 persons.
8. Any building having more than 20,000 square feet of floor area.

(c) The architects and professional engineers shall notify this office before the end of construction or re-modeling of any building listed above, in order that a final inspection may be made prior to occupancy. When supervision of the construction is not conducted by the architect or professional engineer, it shall be noted on the State Fire Marshal's Project Information Sheet.

(4) Inspection:

(a) This office has state-wide jurisdiction to inspect all places insofar as it is necessary for the enforcement of all laws, ordinances and lawful orders requiring any place to be safe from fire loss. The chief of the fire department or an officer or member of his department, designated by him for that purpose, has authority to inspect all places in his city except the interiors of private dwellings in order to determine whether hazardous conditions exist in which case he shall order proper remedies. The power of inspection mentioned in this paragraph applies to the interior of private dwellings only when a fire has occurred or when there is reason to believe dangerous conditions exist in the dwelling. (KRS 227.270, 227.370).

(b) If any owner fails to comply with an order issued pursuant to KRS 227.380 or with an order as modified on appeal to the Commissioner, the officer may cause the property to be repaired or removed if repair is not feasible, and all fire hazard conditions remedied at the expense of the owner. (KRS 227.390). The fire chief shall have primary responsibility for the safety of places under his jurisdiction. Regulations of this office establish minimum standards, which shall not prevent any city from enacting more stringent regulations; but this Office will cooperate with local officials in enforcing all fire safety laws and ordinances of the State or its political subdivision. (KRS 227.220, 227.230, 227.320). Inspection of property in the territory served by the fire department shall be made as often as practicable or as often as the legislative body may direct. A written report of continued violations should be sent to the State Fire Marshal who will cooperate with local authorities to secure compliance with the Standards of Safety and other laws, ordinances and regulations of the State and its political subdivisions relating to matters within the scope of this office (KRS 227.220 et seq).

(c) It shall be the duty of the Chief of Police in each city or town having a Police Department to render all possible assistance in the enforcement of the provisions of the Standards of Safety, and to direct and require Police Officers to enter places of public assembly for such purpose.

Section 5. Constitutionality: If any part of the "Stan-

dards of Safety" is adjudged to be invalid such judgment shall not invalidate the remainder of the "Standards of Safety", but shall be confined in its effect solely to the part directly involved in the proceeding in which rendered.

Section 6. Storage, Handling and Transportion of Flammable Liquids: (1) Permit Requirements.
(a) State Permits.
1. A permit subject to the provisions of Section 2–2, shall be obtained from the State Fire Marshal for the construction, substantial remodeling, or operation of any refinery, bulk storage plant, distributing station, or service station; and for the transporting of flammable liquids in tank vehicles other than in drums, cans, or other containers, of less than sixty (60) gallons individual capacity.
2. Every owner of a tank vehicle used for the transportation of flammable liquids in Kentucky shall make application annually to the State Fire Marshal for a permit to operate such vehicle. such application shall be accompanied by a statement of the condition of the vehicle at the time application is made. The State Fire Marshal will issue annually numbered permits upon receipt of proper application and certification of conditions.
3. The annual permit number shall be displayed at the top of the rear of each tank. Such numbers shall be of a sharply contrasting color and a minimum of three (3) inches in height.
4. No person shall place any flammable liquid in a tank vehicle for transportation in Kentucky until such vehicle has received, and displayed a permit number as required in paragraph "c" above from the State Fire Marshal.
(b) Local Permits: A permit, subject to the provisions of Section 2–2, shall be obtained from an authorized city official for:
1. The storage or handling of Class I liquids in excess of one gallon in any building of "Residential Occupancy", in excess of ten (10) gallons inside any other building, and in excess of fifty (50) gallons outside of any building.
2. The storage or handling of Class II liquids in excess of ten (10) gallons in any building of "Residential Occupancy", in excess of sixty (60) gallons in any other building, and in excess of 120 gallons outside any building.
3. The storage or handling of Class III liquids in excess of 275 gallons inside any building, and in excess of 1100 gallons outside of any building.
4. The construction, substantial remodeling, or operation of a refinery, bulk storage plant, distributing station or service station.
5. Quantities of paints, oils, varnishes, and similar flammable liquids in excess of those given above, for use on the premises, stored for not more than thirty (30) days.

Section 7. Dry Cleaning and Dyeing: (1) Definitions.
(a) For the purposes of the Standards of Safety, "dry cleaning" shall be considered the process of removing dirt, grease, paints, and stains from wearing apparel, textiles, fabrics, rugs, etc., through the use of nonaqueous liquid solvents by one or more of the following methods:
1. Immersion and agitation in open vessels.
2. Immersion and agitation in approved closed machines.
3. Spotting or local application of solvents to spots of dirt, grease, paints and stains not removed by immersion and agitation processes.
4. Brushing or scouring with solvents.
(b) "Dry dyeing" shall be considered the process of drying clothes, textiles, fabrics, rugs, etc., in solutions of dye colors and non–gaseous liquid solvents.
(c) In the following regulations, wherever reference is made to "dry cleaning", that term shall be construed as applying to both dry cleaning and dry dyeing operations.
(2) Permits and Plans.
(a) A permit from the State Fire Marshal, subject to the provisions of Section 2–2, shall be obtained for the construction or operation of a dry cleaning or dry dyeing plant; or for using any room or structure for dry cleaning or dry dyeing operations; or for the storage of flammable or volatile substances for use in such business.
(b) Plans shall be drawn to an indicated scale and shall show the relative location of the dry cleaning building, boiler room, finishing building or department, storage tanks for solvents, and the location and arrangement of all equipment, such as pumps washers, drying tumblers, extractors, filter traps, stills, condensors, and piping. Such plans and specifications, based on NFPA Pamphlet No. 32, shall be submitted with the application for a permit. Where a dry cleaning operation is intended to meet Class III requirements as specified in NFPA Pamphlet No. 32, specifications shall include sufficient information to identify listed equipment and solvents (listees' names and model designation on equipment, and name and trade designation for solvents).

Section 8. Airports: (1) Permit:
(a) A permit subject to the provisions of Section 2–2 shall be secured from the State Fire Marshal before beginning the construction or operation of any airport, or hangar, or similar building intended for the storage or service of airships or airplanes.
(2) General:
(a) In addition to the applicable provisions of the Standards of Safety the following requirements shall be met:
1. Gas or other open flame lights shall not be used for runway lighting.
2. Aboveground storage tanks for flammable liquids shall not be permitted.

WARREN SOUTHWORTH, State Fire Marshal
HAROLD B. McGUFFEY, Commissioner
ADOPTED: September 15, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: September 19, 1974 at 2:11 p.m.
RETURNED TO AGENCY: November 13, 1974
RECEIVED BY LRC: November 20, 1974 at 2:0o p.m.

(This regulation was amended as a result of a public hearing and was approved for filing by the Administrative Regulation Review Subcommittee on November 13, 1974.)

CABINET FOR PUBLIC PROTECTION AND REGULATION
Department of Insurance
Office of the State Fire Marshal
806 KAR 50:020
(As Amended)

RELATES TO: KRS 227.305
PURSUANT TO: KRS 227.305 and 13.082
EFFECTIVE: November 13, 1974
NECESSITY AND FUNCTION: KRS 227.305 requires the State Fire Marshal's Office to issue regulations relating to the minimum requirements for facilities for the physically handicapped in all public buildings and public accommodations. This proposed regulation sets out the standards to be enforced by the State Fire Marshal's Office.

Section 1. Definitions: (1) "Public Building" shall mean any building constructed, owned, or leased by the Commonwealth or any political subdivision thereof; <u>including but not limited to schools, colleges, and other institutions of higher learning; medical centers, hospitals, and clinics; train depots and airports; except three (3) or less relocatable classroom units when used in conjunction with an existing school facility;</u>
(2) "Public Accommodation" shall mean:
(a) Any inn, hotel, motel, or other establishment which provides lodging to transient guest, other than an establishment located within a building which contains not more than five (5) rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;
(b) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food or consumption on the premises of any retail establishment; or any gas station;
(c) Any motion picture house, theater, concert hall, sports arena or other place of exhibition or entertainment; and
(d) Any establishment:
1. Which is physically located within any establishment otherwise covered by this definition, or within the premises of which is physically located any such covered establishment, and
2. Which holds itself out as serving patrons of such covered establishment.
<u>3. This includes but is not limited to shopping centers, department stores, and other establishments within which is located a covered establishment and which holds itself out as serving patrons of a covered establishment.</u>
(3) "Physically Handicapped Person" shall mean a person confined to a wheelchair; a person who uses braces or crutches; a person who because of the loss of a foot or leg or because of an arthritic, spastic, pulmonary or cardiac condition, walks with difficulty or insecurity; a person who suffers from a faulty coordination or palsy; a person who is blind or whose sight is so impaired that, functioning in a public area, he is insecure or exposed to danger; a person whose hearing is so impaired that he is unable to hear warning signals; and a person whose mobility, flexibility, coordination and perceptiveness are significantly reduced by aging;
(4) "Facility for Physically Handicapped Persons" shall mean any convenience or device which facilitates the health, safety, or comfort of a handicapped person, including, but not limited to, ramps, handrails, elevators, and doors;
(5) "American National Standard Institute Specifications" shall mean the American National Standard Institute Specifications for Making Buildings and Facilities accessible to, and usable by, the Physically Handicapped, A117.1–1961 (R1971);
(6) "American Standard A 9.1–1953" shall mean American National Standards Institute Specifications for Safety to Life from fire in Buildings and Structures, ANSI A9.1–1971; and
(7) "Remodel" shall mean, with respect to an existing public building or public accommodation, to construct an addi–

tion, make substantial repairs, or substantially alter the appearance, design or layout.

Section 2. Basic Requirements: (1) All public buildings and public accommodations to be constructed or remodeled after June 21, 1974, shall meet the American National Standard Institute Specifications A117.1–1961 (R1971); herein filed by reference.

(2) After June 21, 1974, no building permit or other official authorization for construction or remodeling of a public building or public accommodation by any person is valid unless the plans and specifications are in compliance with these regulations.

Section 3. Minimum facilities for physically handicapped persons: (1) Toilet Rooms:

(a) A minimum of two percent (2%) of total fixtures or, in the case of a multi story building, a minimum of one (1) fixture within each four (4) floors shall meet the requirements of ANSI A117.101961 (R1971), 5.6.1.–5.6.6.

(b) Exception: Where one or more toilet rooms are provided in an individual residential unit or suite of residential units of publicly owned residential projects, a minimum of five percent (5%) or a minimum of one (1), whichever is greater, toilet room shall comply with ANSI 117.1–1961 (R1971), 5.6.1, 5.6.2, 5.6.4, 5.6.6, and have walls capable of supporting handrails which can support a 250 pound load.

(2) Water fountains: Where water fountains are provided, such water fountains shall comply with ANSI 117.1–1961 (R1971), 5.7.1, 5.7.2.

(3) Public telephones: Where "banks" of public telephones are located at least one public telephone shall be made usable by the physically handicapped in accordance with ANSI 117.1–1961 (R1971), 5.8.1, 5.8.2.

(4) Inns, Hotels, Motels, and other establishments providing lodging to transient guests: In all inns, hotels, motels, and other establishments which provide lodging to transient guests, other than an establishment located within a building which contains not more than five (5) rooms for rent or hire and which is actually occupied by the Proprietor of such establishments as his residence; a minimum of five percent (5%) or a minimum of one, whichever is greater, of lodging rooms must comply with ANSI 117.1–1961.

(5) Seating for assembly:

(a) In places of assembly with fixed type seating and a capacity greater than forty (40) seats, identified spaces for the wheelchair handicapped shall be provided at a rate of one percent (1%), or a minimum of two, whichever is greater, of the total seating capacity shall be set aside for the handicapped with crutches and/or walkers.

(b) Such spaces and seating shall be located as an integral part of the overall floor plan of said assembly area.

(c) Seats and spaces shall be designed to conform with the requirements of accessibility for wheelchairs described in ANSI 117.1–1971, 3.1, 3.2, 3.3, 3.4.

(6) Instructional facilities, dining halls, and other areas utilizing fixed facilities:

(a) Where fixed tables are used, a minimum of two percent (2%), or at least one (1), shall have twenty–nine (29) inches clearance under the table top, and if aprons are greater than two (2) inches, they shall be recessed one (1) foot. In dining areas and libraries, all fixed tables shall meet this requirement.

(b) Width between fixed tables shall be a minimum of five (5) feet, five (5) inches.

(c) Outside rail heights of fixed tray slides in dining areas shall be no greater than thirty–four (34) inches.

(d) Aisles between fixed tray slides and control railings in dining areas shall be a minimum of thirty–four (34) inches.

(e) In areas with twenty–four (24) or more fixed stations or seats (eg., lecture halls, libraries, dining areas, and other work or study areas), or two percent (2%), or at least one station or seat, shall be designed to conform with the requirements of accessibility for wheelchairs described in ANSI 117.1–1961 (R1971), 3.1, 3.2, 3.3, 3.4.

(f) In laboratories and other work or study areas using work benches, each "Handicapped station" shall be designed to have a low work bench with a clear minimum of twenty–nine (29) inches, (floor to underside of work area) and shall not have an apron.

(g) Aisles between fixed work benches shall have a minimum clear width of three (3) feet.

(h) Aisles between fixed stacks in libraries shall be a minimum width of four (4) feet.

(7) Doors: All doors made accessible to the physically handicapped should be automatically operated.

Section 4. Parking lot–sidewalk ramps: (1) In order to enable persons using wheelchairs to travel freely and without assistance from parking lot to sidewalk, a ramp with nonslip surface shall be built into the curb so that the sidewalk and parking lot blend to a common level.

(2) Where such ramps are required, they shall not have a slope greater than one (1) foot rise in twelve (12) feet, or 8.33%, or 4 degrees 50 minutes.

(3) Where such ramps are required, they shall be at least thirty–two (32) inches wide.

(4) Care shall be taken so that the curb cut is not itself a Hazard to the blind.

Section 5. Parking Spaces, minimum number: The minimum number of handicap parking spaces shall be as follows:

TOTAL IN PARKING LOT	REQUIRED NUMBER OF ACCESSIBLE SPACES
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2% of Total–20 plus 1
over 1000	for each 200 over 1000

Section 6. Identification: (1) All buildings shall have sufficient markings to indicate the location of all facilities for the physically handicapped including but not limited to; parking spaces, access ramps, and toilet rooms.

(2) The intefnational symbol of access shall be displayed only on those buildings in which a person in a wheelchair can enter unassisted, conduct his business, use its facilities, and return to the mainstream of pedestrian traffic or a parked automobile without meeting physical impediments of design or construction.

(3) A small international symbol of access may be displayed in large public use buildings to identify certain facilities that have been made accessible and usable by the handicapped.

(4) Use of the international symbol shall conform to these specifications:

(a) Visibility requires that the symbol be no smaller than four (4) inches (ten (10) centimeters) on each side; at long distances, an eighteen (18) inch (forty–five (45) centimeters) square would normally be sufficiently large. Size for road signs or large display should maintain the square proportion and not alter the abstract figure in the wheelchair.

(b) Color should be blue or black for high contrast. If made of metal, black on silver or gold is preferred. If necessary, coloring may be reversed.

WARREN SOUTHWORTH, State Fire Marshal
HAROLD B. McGUFFEY, Commissioner

ADOPTED: September 15, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: November 8, 1974 at 2:24 p.m.

Proposed Regulations

SECRETARY OF THE CABINET
Department of Revenue
(103 KAR 16:100)

RELATES TO: KRS 141.120
PURSUANT TO: KRS 13.082
SUPERSEDES: IC-10
NECESSITY AND FUNCTION: This regulation, under authority of KRS 141.120(11)(b), specifies how the factors for apportioning the income of interstate telephone and telegraph companies are to be determined.

Section 1. General. (1) Business income of multi-state telephone and telegraph companies shall be apportioned to Kentucky by multiplying the income by a fraction, the numerator of which is the sales factor plus the property factor plus the payroll factor and the denominator of which is three (3).
(2) Nonbusiness income shall be allocated to Kentucky by KRS 141.120(4) to (8) and 103 KAR 16:060.

Section 2. Sales Factor. Sales means operating revenues as defined by the Federal Communications Commission. The sales factor is a fraction, the numerator of which shall be revenues included in gross operating revenue accounts, as defined in the Uniform System of Accounts prescribed by the Federal Communications Commission, which are assigned to Kentucky and the denominator of which is the total of such gross operating revenues. Operating revenues are assigned to Kentucky as follows:
(1) Kentucky gross intrastate operating revenues, and
(2) Gross interstate operating revenues which are attributable to Kentucky based upon cost of performance and return on investments. Cost of performance and return on investments shall be determined in accordance with the procedures detailed in the "Separation Manual" issued by the National Association of Railroad and Utility Commissioners and concurred in or ordered on an interim basis by the Federal Communications Commission.

Section 3. Property Factor. The property factor shall be determined under the provisions of KRS 141.120(9)(a) and 103 KAR 16:080.

Section 4. Payroll Factor. The payroll factor shall be determined under the provisions of KRS 141.120(9)(b) and 103 KAR 16:090.

JOHN McD. ROSS, Commissioner
APPROVED: JAMES O. KING, Secretary
ADOPTED: October 29, 1974
RECEIVED BY LRC: October 30, 1974 at 3:34 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 16:110)

RELATES TO: KRS 141.120
PURSUANT TO: KRS 13.082
SUPERSEDES: IC-11
NECESSITY AND FUNCTION: This regulation, under authority of KRS 141.120(11)(b), specifies how the factors for apportioning the income of interstate pipeline companies are to be determined.

Section 1. General. (1) Business income of multi-state pipeline companies shall be apportioned to Kentucky by multiplying the income by a fraction, the numerator of which is the sales factor plus the property factor plus the payroll factor, and the denominator of which is three (3).
(2) Nonbusiness income shall be allocated to Kentucky by KRS 141.120(4) to (8) and 103 KAR 16:060.

Section 2. Sales Factor. (1) Gas Transmission Pipelines. Sales means operating revenues as defined by the Federal Power Commission. Sales are assigned under the provisions of KRS 141.120(9)(c).
(2) Crude Oil Pipelines. Sales means operating income as defined by the Interstate Commerce Commission. The sales factor is a fraction, the numerator of which is operating income assigned to Kentucky, and the denominator of which is total operating income. Kentucky operating income is determined as follows: Total operating income shall be multiplied by a fraction the numerator of which is barrel miles in Kentucky and the denominator of which is total barrel miles. A "barrel mile" means one (1) barrel of liquid transported one (1) mile.

Section 3. Property Factor. The property factor of gas transmission pipelines and crude oil pipelines shall be determined under the provisions of KRS 141.120(9)(a) and 103 KAR 16:080.

Section 4. Payroll Factor. The payroll factor of gas transmission pipelines and crude oil pipelines shall be determined under the provisions of KRS 141.120(9)(b) and 103 KAR 16:090.

JOHN McD. ROSS, Commissioner
APPROVED: JAMES O. KING, Secretary
ADOPTED: October 29, 1974
RECEIVED BY LRC: October 30, 1974 at 3:35 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 16:120)

RELATES TO: KRS 141.120
PURSUANT TO: KRS 13.082
SUPERSEDES: IC-12
NECESSITY AND FUNCTION: This regulation, under authority of KRS 141.120(11)(b), specifies how the factors for apportioning the income of interstate truckline, bus line, and airline companies are to be determined.

Section 1. General. (1) Business income of a multi-state corporate truckline, bus line, or airline shall be apportioned to Kentucky by multiplying the income by a fraction, the numerator of which is the sales factor plus the property factor plus the payroll factor, and the denominator of which is three (3).
(2) Nonbusiness income shall be allocated to Kentucky by KRS 141.120(4) to (8) and 103 KAR 16:060.

Section 2. Sales Factor. "Sales" means operating income as defined by the Interstate Commerce Commission (Civil Aeronautics Board for airlines). The sales factor is a fraction, the numerator of which is operating income assigned to Kentucky and the denominator of which is total operating income. Kentucky operating income is determined as follows: Total operating income shall be multiplied by a fraction the numerator of which is miles operated in Kentucky and the denominator of which is total miles operated.

Section 3. Property Factor. The property factor is a fraction, the numerator of which is the average value of tangible property sitused in Kentucky that is owned and used, and/or leased and used. The denominator is the average value of all tangible sitused property that is owned and used and/or leased and used. The average value of tangible sitused property during the tax period shall be determined under the provisions of 103 KAR 16:080. The value of over-the-road equipment and of aircraft shall be excluded in determining the average value of both Kentucky and total property.

Section 4. Payroll Factor. The payroll factor shall be determined under the provisions of KRS 141.120(9)(b) and 103 KAR 16:090.

JOHN McD. ROSS, Commissioner
APPROVED: JAMES O. KING, Secretary
ADOPTED: October 29, 1974
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SECRETARY OF THE CABINET
Department of Revenue
(103 KAR 16:130)

RELATES TO: KRS 141.120
PURSUANT TO: KRS 13.082
SUPERSEDES: IC-13
NECESSITY AND FUNCTION: This regulation, under authority of KRS 141.120(11)(b), specifies how the factors for apportioning the income of interstate railroad companies are to be determined.

Section 1. General. (1) Business income of multi-state railroad companies shall be apportioned to Kentucky by multiplying the income by a fraction, the numerator of which is the sales factor plus the property factor plus the payroll factor, and the denominator of which is three (3).
(2) Nonbusiness income shall be allocated to Kentucky by KRS 141.120(4) to (8) and 103 KAR 16:060.

Section 2. Sales Factor. Sales means operating income as defined by the Interstate Commerce Commission. Operating income shall be railway operating revenue determined in accordance with accounting rules for railroads prescribed by the Interstate Commerce Commission. The sales factor is a fraction, the numerator of which is operating income assigned to Kentucky and the denominator of which is total operating income. Operating income is assigned to Kentucky as follows:
(1) All operating income from business which both originates and terminates within Kentucky, and
(2) The Kentucky mileage portion of the operating income from each movement or shipment passing through, into, or out of Kentucky.

Section 3. Property Factor. The property factor is a fraction, the numerator of which shall be the average value of the

road property owned or leased in Kentucky plus the average value of the owned equipment property used in Kentucky and the denominator of which shall be the average value of the total road property owned or leased plus the average value of the total owned equipment property used everywhere. The average value of all property during the taxable period shall be determined under the provisions of 103 KAR 16:080. The value of the road property owned or leased shall be its cost or its federal inventory valuation and the value of the owned equipment property shall be its cost. The value of road and equipment properties shall be determined in accordance with the accounting rules prescribed by the Interstate Commerce Commission for railroads and shall not be reduced by depreciation or amortization. Road property shall be assigned to Kentucky if its situs is in Kentucky. The value of owned equipment property used in Kentucky shall be that ratio of the cost to taxpayer of its locomotives and respective classes of cars which its locomotive and respective classes of car miles in Kentucky bear to its total locomotive and respective classes of car miles.

Section 4. Payroll Factor. Payroll shall be assigned to Kentucky under the provisions of KRS 141.120(9)(b) and 103 KAR 16:090.

Section 5. Definitions. (1) Equipment Property means "the several primary accounts designed to show the cost of the several classes of equipment owned by the carrier, or held under equipment trust agreements or other contractual obligations for purchase of the property."
(2) Road Property means "the several primary accounts designed to show the cost of land and road property owned by the carrier and devoted to transportation service."
(3) Other accounting terms and account titles in this regulation shall have those definitions assigned to them by the Interstate Commerce Commission.

JOHN McD. ROSS, Commissioner
APPROVED: JAMES O. KING, Secretary
ADOPTED: October 29, 1974
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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 16:150)

RELATES TO: KRS 141.120
PURSUANT TO: KRS 13.082
SUPERSEDES: IC-15
NECESSITY AND FUNCTION: KRS 141.120 provides for the division of income of interstate business for tax purposes. This regulation interprets this statute as it applies to the apportionment and allocation of the income of interstate loan companies.

Section 1. General. If the primary business of the corporation is making loans, the business income earned within Kentucky shall be determined by a fraction, the numerator of which is the sales factor plus the outstanding loan balance factor plus the payroll factor, and the denominator of which is three (3).

Section 2. Sales Factor. The sales factor is a fraction, the numerator of which is all receipts derived from loans or other sources negotiated through offices located in Kentucky, and the denominator of which is total business receipts.

Section 3. Outstanding Loan Balance Factor. The outstanding loan balance factor is a fraction, the numerator of which is the average balance of outstanding loans negotiated from offices in Kentucky. The denominator is the average balance of all outstanding loans. The average outstanding loan balance is determined at the beginning and end of the taxable period. However, if the yearly beginning and ending balance results in an inequitable factor, the average outstanding loan balance may be computed on a monthly average basis.

Section 4. Payroll Factor. The payroll factor shall be determined under the provisions of KRS 141.120(9)(b) and 103 KAR 16:090.

JOHN McD. ROSS, Commissioner
APPROVED: JAMES O. KING, Secretary
ADOPTED: October 29, 1974
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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 16:160)

RELATES TO: KRS 141.120
PURSUANT TO: KRS 13.082
SUPERSEDES: IC-16
NECESSITY AND FUNCTION: KRS 141.120 provides for the division of income of interstate business for tax purposes. This regulation interprets this statute as it applies to the apportionment and allocation of the income of construction companies and certain other corporations.

Section 1. General. (1) Construction companies and certain other corporations, except those manufacturing and selling tangible personal property, loan companies, and public service companies (KRS 136.120), shall apportion business income to Kentucky as provided in this regulation.
(2) Nonbusiness income shall be allocated to Kentucky by KRS 141.120(4) to (8) and 103 KAR 16:060.

Section 2. Construction Companies. (1) Construction companies shall determine net income earned within Kentucky by separate accounting, except as provided in this section. In any case where a construction company has elected to report on the completed contract basis, the use of separate accounting to determine Kentucky net income is mandatory. Construction companies will not, however, be relieved of the responsibility of submitting to the department an application for separate accounting prior to filing an income tax return for the first period for which authorization is desired.
(2) Construction companies which fabricate or manufacture components used in construction projects shall allocate and apportion net income under the provisions of KRS 141.120 and 103 KAR 16:050 to 103 KAR 16:090.
(3) In any case where the activities of a construction company are such that separate accounting is not practical, the department may prescribe a method or formula to equitably determine the net income earned within Kentucky.

Section 3. Other Corporations. The department shall prescribe a method of allocation and apportionment for other corporations. The term "other corporations" includes all corporations except those:
(1) Manufacturing and/or selling tangible personal property,
(2) Telephone and telegraph companies,
(3) Pipeline companies,
(4) Truckline, bus line, and airline companies,
(5) Railroad companies,
(6) Barge lines, and
(7) Loan companies.

Section 4. If the apportionment and allocation provisions of 103 KAR 16:050 to 103 KAR 16:160 do not fairly represent the corporation's activity in Kentucky, the corporation may request or the department may require the use of another method to equitably apportion and allocate the corporation's income.

JOHN McD. ROSS, Commissioner
APPROVED: JAMES O. KING, Secretary
ADOPTED: October 29, 1974
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SECRETARY OF THE CABINET
Department of Revenue
(103 KAR 17:020)

RELATES TO: KRS 141.180, 141.050
PURSUANT TO: KRS 13.082
SUPERSEDES: II-2
NECESSITY AND FUNCTION: This regulation provides a basis for the combined individual income tax return which permits married taxpayers to gain benefits of separate filing on one return. The regulation also covers other points related to individual income tax forms.

Section 1. Forms. (1) Resident. A resident return shall be filed on Revenue Form 740 (long form) or 740-S (short form) except that a new resident may file on Revenue Form 740-NP (nonresidents and part-year residents).
(2) Nonresidents. A nonresident return shall be filed on Revenue Form 740-NP.

Section 2. Filing Elections. (1) Separate Return. Any individual, whether married or single, may elect to file a separate return.
(2) Joint Return. A husband and wife may elect, for any year, to file a joint return if they are married at the close of the taxable year; or a surviving spouse may elect to file a joint return if the husband or wife died during the taxable year even though one spouse had no gross income. If a joint return is filed, the gross income and adjusted gross income of husband and wife are computed in an aggregate amount and the deductions and the net income are also computed on an aggregate basis. If separate returns have been filed by both spouses for the taxable year, the husband and wife may elect

to file an amended joint return if the Department of Revenue is notified in writing that the separate return election is rescinded. Likewise, if husband and wife have filed a joint return for the taxable year, they may elect to file an amended combined or amended separate returns. A return marked "amended" will satisfy this requirement. Persons filing joint returns are jointly and severally liable for all taxes, penalties, and interest accruing under the return.

(3) Combined Return. A husband and wife may elect, for any year, to file a combined return if they are married at the close of the taxable year. If a combined return is filed, the gross income, adjusted gross income, deductions, net income, tax credits, and tax liabilities of the husband and wife are computed separately but the tax shall be assessed on an aggregate basis. If a husband and wife elect to file a combined return, refunds shall be made payable to the husband and wife jointly and the husband and wife shall be jointly and severally liable for all taxes, penalties, and interest. Married couples electing to file a combined return shall not be permitted to rescind such election and file separate returns for that taxable year.

Section 3. General Provisions. (1) Forms may be obtained from the Department of Revenue, Frankfort, Kentucky, 40601. Each taxpayer must carefully prepare his return so as to set forth fully and clearly the information required and attach copies of all withholding statements designated to be filed with the Kentucky income tax returns. Returns which are not so prepared will not be accepted as meeting the requirements of the law. In the absence of a prescribed form, a statement made by a taxpayer disclosing his gross income and the deductions therefrom may be accepted as a tentative return. If filed within the prescribed time, such statement will relieve the taxpayer from penalties for failure to file or late filing if the tentative return is promptly supplemented by a return made on the proper form.

(2) The complete home address of the taxpayer together with the official post office and zip code shall be given in the space provided at the top of the return for the name and address of the taxpayer. A taxpayer having a permanent business address may give that address as the principal or mailing address if the complete home address is also given within the space provided.

(3) The return may be made by an agent if the taxpayer is unable to do so. Whenever a return is made by an agent, it must be accompanied by a power of attorney, unless, by reason of absence, illness or other good cause, the taxpayer is unable to execute a power of attorney.

JOHN McD. ROSS, Commissioner

ADOPTED: November 7, 1974
APPROVED: JAMES O. KING, Secretary
RECEIVED BY LRC: November 8, 1974 at 3:03 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 17:030)

RELATES TO: KRS 141.020, 141.180
PURSUANT TO: KRS 13.082
SUPERSEDES: II-3
NECESSITY AND FUNCTION: This regulation explains individual income tax return filing requirements for both residents and nonresidents.

Section 1. Residents. A Kentucky resident shall file an individual income tax return for each year if any of the following conditions are met:

(1) Single, or married and not living with husband or wife, with a gross income of $1,200 or more, or a net income of $1,000 or more; or

(2) Married and living with husband or wife, with a gross income of $2,500 or more, or a net income of $2,000 or more; or

(3) Blind, or age of 65 or over, with a gross income of $2,500 or more, or a net income of $2,000 or more.

Section 2. Nonresidents. A full-year nonresident shall file an individual income tax return if any taxable income is received from Kentucky sources and total income meets the tests established in subsections (1) to (3) of Section 1. A person moving out of Kentucky during the year shall file an individual income tax return if the tests established in subsections (1) to (3) of Section 1 are met, and shall report income from all sources while a Kentucky resident and income from Kentucky sources after becoming a nonresident.

JOHN McD. ROSS, Commissioner

ADOPTED: November 7, 1974
APPROVED: JAMES O. KING, Secretary
RECEIVED BY LRC: November 8, 1974 at 3:03 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 17:040)

RELATES TO: KRS 141.215
PURSUANT TO: KRS 13.082
SUPERSEDES: II-4
NECESSITY AND FUNCTION: This regulation explains a special filing extension provided by law for certain military personnel.

Section 1. General. A Kentucky resident on active service with the United States Army, Navy, Marines, Air Force, or Coast Guard may defer filing his return and the payment of the tax, which would otherwise become due during the period of military service, until twelve (12) months after the termination of military service or twelve (12) months after the termination of the national emergency, whichever is the earlier date. The term "national emergency" is defined as any period when a combat zone is established by presidential proclamation for federal income tax purposes.

Section 2. Interest and Penalties. Interest and penalties do not accrue during any period of deferment. However, if the taxpayer does not pay the deferred taxes within the twelve (12) month deferment period described above, interest and penalty will accrue from the original due date of the delinquent return.

JOHN McD. ROSS, Commissioner

ADOPTED: November 7, 1974
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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 17:050)

RELATES TO: KRS 141.081, 141.082
PURSUANT TO: KRS 13.082
SUPERSEDES: II-5
NECESSITY AND FUNCTION: As required by KRS 141.082, this regulation provides instructions for claiming the standard deduction on individual income tax returns.

Section 1. General. Any individual may elect to determine his Kentucky net income by itemizing deductions or he may determine his Kentucky income tax liability by using the standard deduction. The standard deduction may be applied as follows:

(1) A taxpayer with Kentucky adjusted gross income of less than eight thousand dollars ($8,000) may determine his Kentucky income tax liability from an individual income tax table which contains a standard deduction.

(2) A taxpayer with Kentucky adjusted gross income of eight thousand dollars ($8,000) or more may deduct a five hundred dollar ($500) standard deduction in computing Kentucky net income.

Section 2. Limitation — Married Persons. Married persons filing separate or combined returns both shall claim the standard deduction, as determined above, or both shall itemize deductions. Thus, one spouse cannot itemize deductions and the other determine tax liability by either the tax table or the five hundred dollar ($500) standard deduction.

JOHN McD. ROSS, Commissioner

ADOPTED: November 7, 1974
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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 17:070)

RELATES TO: KRS 141.010, 141.020
PURSUANT TO: KRS 13.082
SUPERSEDES: II-7-1
NECESSITY AND FUNCTION: This regulation explains the procedure for determining personal income tax credits and includes special rules for new residents and nonresidents.

Section 1. General. A twenty dollar ($20) tax credit is permitted for each personal exemption allowed by the Internal Revenue Code. An additional twenty dollar ($20) tax credit is permitted for each taxpayer who is a member of the Kentucky National Guard on the last day of the taxable year.

Section 2. Persons Becoming Residents or Nonresidents During the Year. The tax credits described in Section 1 are reduced to the percentage that Kentucky income bears to total income.

Section 3. Nonresidents. (1) General. Nonresidents may claim tax credits, described in Section 1, to the extent of the percentage that Kentucky gross income bears to total income. Married taxpayers, who both have Kentucky income, may file separate returns or may file a joint return. If separate returns are filed, each taxpayer must claim his or her tax credit (including credits for age sixty-five (65) or over and blindness) but credits for dependents may be claimed by either taxpayer. The total dependents claimed by both taxpayers, however, may not exceed the total allowable.

(2) Special Rule. A special rule is provided for a married nonresident, with income from Kentucky sources, whose spouse has no Kentucky income. Allowable tax credits, permitted by Section 1, may be determined by either of the following methods:

(a) The taxpayer may claim his tax credit (including credits for age sixty-five (65) and over and blindness) by multiplying his total credit(s) by the percentage of his Kentucky income to his total income. Credits for spouse and other dependents are not permitted by this method.

(b) The taxpayer may claim a portion of his tax credits (including credits for age sixty-five (65) and over and blindness) plus credits for his spouse and other dependents. The allowable portion is determined by multiplying the total credits by the percentage of his Kentucky income to the total income of both spouses.

Section 4. Division of Tax Credits. Married resident taxpayers filing separate or combined returns must claim their own tax credits but may divide tax credits of dependents in any manner they elect.

JOHN McD. ROSS, Commissioner
ADOPTED: November 7, 1974
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SECRETARY OF THE CABINET
Department of Revenue
(103 KAR 17:080)

RELATES TO: KRS 141.021
PURSUANT TO: KRS 13.082
SUPERSEDES: II-8
NECESSITY AND FUNCTION: This regulation describes certain retirement income which is exempt or partially exempt from Kentucky income tax and provides rules for calculating the exempt portion of such income.

Section 1. General. Retirement income, with exceptions explained below, is included in gross income under the provisions of the Internal Revenue Code.

Section 2. Exempt Retirement Income. Retirement income received from the Social Security Administration and the Railroad Retirement Board (including supplemental benefits) is exempt from income tax. The following retirement income is specifically exempt by Kentucky law which established the retirement systems:

(1) Kentucky teachers retirement income,
(2) Kentucky state employees and county employees retirement income, and
(3) Kentucky judicial retirement income.

Section 3. Military and Civil Service Retirement. Federal Civil Service retirement income received by persons sixty-five (65) years of age and older and military service retirement income received by persons fifty (50) years of age and older may be excluded; limited to $4,000 of such retirement income. The $4,000 maximum exclusion is reduced by earned income, as defined in Section 911(b) of the Internal Revenue Code. The reduction applies as follows:

If Earned Income from Other Sources is:	The Maximum Retirement Exclusion is:
$3,000 or less	$4,000
$3,001 to $4,000	3,000
$4,001 to $5,000	2,000
$5,001 to $6,000	1,000
Over 6,000	-0-

JOHN McD. ROSS, Commissioner
ADOPTED: November 7, 1974
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SECRETARY OF THE CABINET
Department of Revenue
(103 KAR 17:090)

RELATES TO: KRS 141.010
PURSUANT TO: KRS 13.082
SUPERSEDES: II-9
NECESSITY AND FUNCTION: This regulation explains the procedure for determining and reporting the allowable federal income tax deduction in computing the taxpayer's Kentucky income tax liability.

Section 1. General. KRS 141.010(8) authorizes a deduction for federal income tax in determining the Kentucky adjusted gross income of individuals and net income of fiduciaries. KRS 141.010(10) requires overpayments of federal income tax to be included, in the year received or credited, in adjusted gross income of individuals and gross income of fiduciaries.

Section 2. Limitations. The deduction applies only to federal income tax paid or accrued upon income taxed by Kentucky and is limited to federal income tax actually paid or accrued for the taxable year less federal tax credits.

Section 3. Cash Method. A taxpayer using the cash receipts and disbursements method of deducting federal income tax (regardless of accounting methods used for other purposes) may deduct, subject to the limitations in Section 2, federal income tax:

(1) Withheld,
(2) Paid by declaration,
(3) Paid for the prior year,
(4) Paid for previous years (see Section 5).

Section 4. Accrual Method. A taxpayer using the accrual method of deducting federal income tax (regardless of accounting methods used for other purposes) may deduct, subject to the limitations in Section 2, federal income tax liability on the return for the years it applies regardless of when it is paid.

Section 5. Change of Deduction Method. A taxpayer may elect to deduct federal income tax by either the cash or accrual method (regardless of accounting methods used for other purposes) on his initial Kentucky income tax return. Subsequent returns must utilize that method unless written permission for a change of method is granted by the department.

Section 6. Additional Federal Income Tax. (1) Additional tax resulting from federal audits of prior returns may be deducted if the adjustments creating the additional federal income tax were taxed by Kentucky or result in additional Kentucky income tax. Such additional income tax is deducted by the same method the taxpayer used to deduct other federal income tax and is subject to the limitations in Section 2. Taxpayers consistently deducting federal income tax on the cash basis cannot deduct additional federal income tax deficiencies on the accrual basis nor can taxpayers consistently using the accrual basis deduct such federal income tax deficiencies on the cash basis.

(2) Notwithstanding the above, individuals may elect to deduct federal deficiencies from net worth audits on the accrual basis or may elect to deduct any federal income tax deficiencies in the year after the year to which they apply.

Section 7. Federal Income Tax Refunds. Individuals and fiduciaries must include in net income any overpayment of federal income tax, either refunded or credited, in the year the refund is received or the credit is applied.

JOHN McD. ROSS, Commissioner
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SECRETARY OF THE CABINET
Department of Revenue
(103 KAR 18:020)

RELATES TO: KRS 141.330 and 141.355
PURSUANT TO: KRS 13.082
SUPERSEDES: IW-2
NECESSITY AND FUNCTION: This regulation explains the procedure which the employer is to use in correcting errors in the withholding and payment of Kentucky income tax.

Section 1. General. If more or less than the correct amount of tax is withheld, for any period, or more or less than the correct amount of tax is paid to the department, proper adjustment may be made on the return for a subsequent period of the same calendar year. Every return on which an adjustment for a preceding period is reported must include a statement explaining the adjustment and designating the period in which the error occurred. A claim for refund may be filed for any overpayment.

Section 2. Underwithholding. If less than the correct

amount of the tax is deducted from any wage payment, the employer is authorized to deduct the under-collection from the remuneration of the employe under his control. If there is no such remuneration under the control of the employer, the matter is one for settlement between the employer and the employe, but the employer is responsible for the underwithholding.

Section 3. Overwithholding. If more than the correct amount of tax is deducted from any wage payment, the over-collection may be repaid to the employe. The employer shall obtain and keep as part of his records the written receipt of the employe showing the date and amount of the repayment. Any over-collection not repaid and receipted for by the employe must be reported and paid the Department of Revenue for the period in which the over-collection was made.

Section 4. Other Errors. Employers should consult the department for correction of errors in withholding which cannot be adjusted in a return for a subsequent period of the same calendar year.

JOHN McD. ROSS, Commissioner

ADOPTED: November 7, 1974
APPROVED: JAMES O. KING, Secretary
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SECRETARY OF THE CABINET
Department of Revenue
(103 KAR 18:030)

RELATES TO: KRS 141.330
PURSUANT TO: KRS 13.082
SUPERSEDES: IW-3
NECESSITY AND FUNCTION: Under authority of KRS 141.330, this regulation prescribes monthly reporting requirements for certain employers withholding Kentucky income tax.

Section 1. Filing Requirements. Any employer withholding Kentucky individual income tax of three hundred dollars ($300.00) or more during any quarter shall report and pay the tax to the Department of Revenue on a monthly basis. Any employer meeting the monthly payment requirement for the first time shall inform the department and request further instructions.

Section 2. Change to Quarterly Reporting. Any employer making monthly reports and remitting the tax due each month shall continue on such basis until a request in writing to change to quarterly reports and payment is filed with and approved by the Department of Revenue. The request shall contain evidence that the tax withheld is less than three hundred dollars ($300.00) per quarter and will be less than such amount for the next twelve (12) months.

Section 3. Reports. The report and payment of tax for the first two (2) months of the quarter must be made within fifteen (15) days from the close of the month in which the tax was withheld. The report required for the first and second months of any quarter shall be filed on Revenue Form K-5, Employer's Monthly Report of Income Tax Withheld. This form may be secured by written request to the Department of Revenue. All quarterly returns shall be filed in accordance with KRS 141.330. Any employer required to report and remit tax withheld in the first two (2) months of any quarter shall be entitled to a credit for such tax on the quarterly return.

JOHN McD. ROSS, Commissioner

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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 25:060)

RELATES TO: KRS 139.550, 139.560
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-87
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it applies to temporary and transient vendors.

Section 1. Persons not regularly engaged in selling at retail and not having a permanent place of business, but who are temporarily engaged in selling from trucks, portable roadside stands, concessionaires at fairs, circuses, carnivals, and the like, shall report and remit the tax on a non-permit basis, and shall obtain a retail sales tax registration from the Department of Revenue.

Section 2. Persons having no fixed place of business and not selling from a vehicle shall procure a registration in the county in which they make sales of tangible personal property. The application for such registration shall set forth an established residence or permanent mailing address to which all communications from the department shall be addressed.

Section 3. Persons with no fixed place of business and selling from vehicles shall procure a registration for each vehicle. Such registration shall cover all sales made from the vehicle in any county in the state. The application for such registration shall set forth a residence or permanent mailing address in this state to which all communications from the department may be sent.

Section 4. Persons coming within the provisions of this regulation may be required to post a bond if, in the judgment of the department, it is deemed necessary or advisable to secure the collection of the tax. A cash bond or a surety bond is acceptable. The amount and type of the bond shall be determined by the department. The tax may be prepaid in lieu of filing said bond. The bond shall be filed with the department prior to the issuance of the registration and engaging in business within this state.

Section 5. The sale tax return shall be filed and the tax due shall be paid to either a Department of Revenue field office or representative. The due date for the filing of the sales tax return is the expiration date shown on the taxpayer's retail sales tax registration or the date when selling at the designated location is completed, whichever is the earlier. In those cases where the sales of tangible personal property are of more than one month's duration, the tax shall be reported and remitted to the department at the end of each month.

JOHN McD. ROSS, Commissioner

ADOPTED: November 7, 1974
APPROVED: JAMES O. KING, Secretary
RECEIVED BY LRC: November 8, 1974 at 3:01 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 25:070)

RELATES TO: KRS 139.240, 139.250
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-84
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it pertains to the display of a sales tax permit issued to railroad companies.

Section 1. In the case of railroad companies operating dining cars with no permanent assignment to Kentucky, it will be deemed compliance with the regulations relating to display of retailers permits for there to be on display in each dining car, while in use in Kentucky, a reproduction of the permit in possession of the company at its principal place of business in Kentucky. It shall also be deemed compliance with the regulations relating to display of retailers permit for a railroad which makes irregular sales at various locations along its line of road to do so without displaying such permit, or a reproduction thereof, at the place of sale. It is sufficient in such cases for the permit to be on display at the company's principal place of business in Kentucky.

JOHN McD. ROSS, Commissioner

ADOPTED: November 7, 1974
APPROVED: JAMES O. KING, Secretary
RECEIVED BY LRC: November 8, 1974 at 2:59 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 25:100)

RELATES TO: KRS 139.340, 139.390
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-47
NECESSITY AND FUNCTION: To interpret the use tax law as it applies to collection of use tax and the documentation required to relieve the purchaser of liability.

Section 1. Each retailer required or authorized to collect use tax from purchasers must give a receipt to each purchaser for the amount of tax collected. The receipt need not be in any particular form but must show the following:
(1) The name and place of business of the retailer.
(2) The serial number of the retailer's sales and use tax permit.
(3) The name and address of the purchaser.
(4) A description identifying the property sold to the purchaser.
(5) The date on which the property was sold.
(6) The sale price of the property.
(7) The amount of tax collected by the retailer from the purchaser.

Section 2. A sales invoice containing the data listed in Section 1, together with evidence of payment of such sales invoice, will constitute a receipt.

Section 3. Purchasers will be liable for payment of the tax to the department unless they obtain and retain for inspection receipts as herein provided.

JOHN McD. ROSS, Commissioner
APPROVED: JAMES O. KING, Secretary
ADOPTED: October 29, 1974
RECEIVED BY LRC: October 30, 1974 at 3:33 p.m.

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

SECRETARY OF THE CABINET
Department of Revenue
(103 KAR 26:050)

RELATES TO: KRS 139.090, 139.120, 139.190, 139.470
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-43-1
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it applies to transactions involving common carriers.

Section 1. All tangible personal property sold to or used by common carriers in this state shall be subject to application of the sales or use tax. Tax will be applicable to leasing arrangements, or use pursuant to leasing arrangements, whereby items of equipment (including, for example, but not limited to, such things as tires or batteries) are acquired by common carriers for utilization over extended periods of time in connection with operations. Such purchases, uses, leases, and uses pursuant to leases are subject to the exceptions and qualifications hereinafter noted.

Section 2. Excepted from application of the sales or use tax are the following:
(1) Over the road equipment, aircraft, or floating equipment which enters this state in actual use in interstate commerce at the time of entering, and is used exclusively in interstate commerce thereafter (nominal use in intrastate commerce will not affect this exception from application of tax).
(2) Locomotives or rolling stock, including materials for the construction, repair, or modification thereof, or fuel or supplies for the direct operation of locomotives or trains, used or to be used in interstate commerce. The term "rolling stock" shall mean only that equipment designed to move on rails and used for the transportation of goods or passengers for hire.

JOHN McD. ROSS, Commissioner
APPROVED: JAMES O. KING, Secretary
ADOPTED: October 29, 1974
RECEIVED BY LRC: October 30, 1974 at 3:33 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 26:060)

RELATES TO: KRS 139.050, 139.100, 139.110, 139.120, 139.130, 139.160
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-51
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it applies to painting or finishing real and tangible personal property.

Section 1. Persons engaged in the business of painting or finishing tangible personal property are the sellers of tangible personal property. As a seller, a painter or finisher must obtain a retail sales and use tax permit and remit the tax measured by the gross receipts from charges for painting or finishing finished products for consumers.

Section 2. Tax does not apply to charges for repainting or refinishing used articles. Tax applies in such case to the sale to the finisher of the paint and other materials used in the process, as he is regarded as the consumer of such property. If the refinisher uses paint or other materials purchased under a resale certificate, or without payment of use tax, he must report and pay tax measured by the cost of the materials to him.

Section 3. House painters are consumers and tax does not apply to charges for painting real estate. Tax applies in such case to the sale of paint to the house painter.

JOHN McD. ROSS, Commissioner
ADOPTED: November 7, 1974
APPROVED: JAMES O. KING, Secretary
RECEIVED BY LRC: November 8, 1974 at 2:47 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 26:080)

RELATES TO: KRS 139.110
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-77
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it applies to transactions involving dentists and dental laboratories.

Section 1. Dentists are consumers of the materials, supplies, dental laboratory products and other tangible personal property which they use in performing their services. The tax, accordingly, applies to the sale of the tangible personal property to them.

Section 2. Dental laboratories are the retailers of the plates, inlays and other products which they manufacture for dentists or other consumers. Tax applies to their entire charges for such products regardless of whether the materials and services are separately stated.

Section 3. Dental laboratories making repairs or replacements to dentures and any other tangible personal property are the consumers of tangible personal property used to make such repairs or replacements and the tax applies at the time of the sale of such materials to them.

JOHN McD. ROSS, Commissioner
ADOPTED: November 7, 1974
APPROVED: JAMES O. KING, Secretary
RECEIVED BY LRC: November 8, 1974 at 2:56 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 26:090)

RELATES TO: KRS 139.050, 139.100, 139.110, 139.120, 139.130
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-78
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it applies to transactions involving veterinarians.

Section 1. Veterinarians 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 tangible personal property to them. Drugs, medicines and other tangible personal property which are personally administered by a veterinarian or by an assistant under his direction during treatment of a patient are not the subject of a "retail sale."

Section 2. Any veterinarian who, for a separate charge, supplies or dispenses drugs, medicines or other tangible personal property in any manner other than the manner described above is a retailer of such tangible personal property and the tax applies at the time of the delivery of the tangible personal property to the consumer.

JOHN McD. ROSS, Commissioner
ADOPTED: November 7, 1974
APPROVED: JAMES O. KING, Secretary
RECEIVED BY LRC: November 8, 1974 at 2:57 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 26:100)

RELATES TO: KRS 139.100, 139.110, 139.120, 13.130, 139.140
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-86-2
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it applies to transactions involving towel and linen services.

Section 1. Persons furnishing periodic cleaning or laundering of coats, caps, aprons, diapers, uniforms, dresses, towels, linens and articles of a similar nature under an agreement which provides for a continuous service to be rendered to barber shops, beauty shops, industrial plants and other establishments or to individuals, are consumers of the

supplies and other property used in performing their services and the tax applies at the time such supplies are purchased.

JOHN McD. ROSS, Commissioner

ADOPTED: November 7, 1974
APPROVED: JAMES O. KING, Secretary
RECEIVED BY LRC: November 8, 1974 at 3:00 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 27:020)

RELATES TO: KRS 139.110
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-89
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it relates to blueprints and photostat copiers.

Section 1. Photostat copiers, producers of blueprints and articles of a similar nature are retailers and the tax applies to the total charge for such products. This rule is applicable when the article is produced to the special order of the customer and when the article is made from materials furnished by the customer.

JOHN McD. ROSS, Commissioner

ADOPTED: November 7, 1974
APPROVED: JAMES O. KING, Secretary
RECEIVED BY LRC: November 8, 1974 at 3:02 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 27:040)

RELATES TO: KRS 139.100, 139.110, 139.120, 139.310
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-58
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it applies to sales of tangible personal property by finance companies.

Section 1. Sales of tangible personal property by a finance company as a result of a default of payments by a customer are subject to the sales or use tax when such property is sold to a consumer.

JOHN McD. ROSS, Commissioner

ADOPTED: November 7, 1974
APPROVED: JAMES O. KING, Secretary
RECEIVED BY LRC: November 8, 1974 at 2:49 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 27:090)

RELATES TO: KRS 139.050, 139.110
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-59
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it applies to transactions involving memorial dealers.

Section 1. Memorial dealers are retailers of the tombstones, markers and other memorials sold by them and tax applies to such sales, but they are consumers of the materials, such as cement, used in setting the memorial in the cemetery and tax applies to the sale of such materials to them. Tax does not apply to the delivery charges or to charges for labor in the installation of memorials.

Section 2. Cemeteries which construct foundations on which memorial dealers place memorials are the consumers of materials they use in such construction, and tax applies to the sale of such materials to them.

JOHN McD. ROSS, Commissioner

ADOPTED: November 7, 1974
APPROVED: JAMES O. KING, Secretary
RECEIVED BY LRC: November 8, 1974 at 2:49 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 27:120)

RELATES TO: KRS 139.110, 139.120, 139.190
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-75-1
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it applies to photographers, photo finishers and x-ray laboratories.

Section 1. Photographers: (1) Photographers are primarily engaged in the business of rendering a professional service in the taking, development and printing of an original photograph. The photographer is thus the consumer of the tangible personal property which he uses in the performance of this professional service and the tax will apply at the time of the sale of such material to him.

(2) In making additional prints, however, the photographer is producing and selling tangible personal property and the tax applies to the selling price of the prints. The tax does not apply to sales of materials to the photographer which become an ingredient or component part of the prints to be sold.

Section 2. Photo Finishers: (1) The tax applies to charges for printing pictures or making enlargements from negatives furnished by the customer but not to charges for developing the negatives if such charges are separately stated. Tax does not apply to charges for tinting or coloring pictures furnished to the finisher by the customer.

(2) Tax applies to sales to photo finishers of all tangible personal property used by them in developing negatives, finishing pictures, and coloring or tinting pictures furnished by customers, except sensitized paper upon which the prints are made, and frames and mounts sold along with the finished pictures.

Section 3. X-Ray Laboratories: (1) Producers of x-ray film for the purpose of diagnosis are the consumers of materials and supplies used in the production thereof. Thus, the tax applies to the sale of such materials and supplies to laboratories producing x-ray film for the purpose of diagnosis.

(2) Whether the laboratory is a "lay laboratory" or is operated by a physician, surgeon, dentist, or hospital is immaterial.

JOHN McD. ROSS, Commissioner

ADOPTED: November 7, 1974
APPROVED: JAMES O. KING, Secretary
RECEIVED BY LRC: November 8, 1974 at 2:56 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 28:020)

RELATES TO: KRS 139.050, 139.120
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-66-1
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it applies to layaway sales.

Section 1. In the case of layaway or will-call sales (including those in which a deposit is made by the customer), retailers who maintain records on a cash basis and report cash collections rather than sales transactions for sales tax purposes must report cash collections on layaway sales in the return for the period in which the cash is received. All other retailers must report layaway sales on the return for the taxable period in which they are entered as a sale on the retailer's books.

Section 2. If the deposit is forfeited by the customer, the seller shall include only the amount of the deposit received in his gross receipts subject to tax.

JOHN McD. ROSS, Commissioner

ADOPTED: November 7, 1974
APPROVED: JAMES O. KING, Secretary
RECEIVED BY LRC: November 8, 1974 at 2:53 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 28:040)

RELATES TO: KRS 139.050, 139.100, 139.130
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-65
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it applies to the redemption of trading or premium stamps for merchandise.

Section 1. The redemption of trading or premium stamps for merchandise is a sale of tangible personal property and must be included within the "gross receipts" or "sales price" of the redemption center or person.

Section 2. If the stamps have a cash value for which they are exchangeable, the tax is measured by the cash value of such stamps. If the stamps can only be traded for merchandise and are redeemable for tangible personal property the tax is computed upon the fair cash value of the property for which they are traded.

JOHN McD. ROSS, Commissioner
ADOPTED: November 7, 1974
APPROVED: JAMES O. King, Secretary
RECEIVED BY LRC: November 8, 1974 at 2:52 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 28:060)

RELATES TO: KRS 139.050, 139.100, 139.130
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-46
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it applies to the furnishing of parts or materials under the provisions of a guarantee.

Section 1. The sale of tangible personal property by a retailer includes the furnishing, pursuant to the guaranty provisions of the contract of sale, of replacement parts or materials. Sales of such property to a retailer are therefore sales for resale with respect to which tax does not apply.

Section 2. Any charge made by the retailer for replacement parts or material shall be included in "gross receipts" or "sales price," as the case may be.

JOHN McD. ROSS, Commissioner
APPROVED: JAMES O. KING, Secretary
ADOPTED: October 29, 1974
RECEIVED BY LRC: October 30, 1974 at 3:33 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 28:070)

RELATES TO: KRS 139.110, 139.470
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-62
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it applies to the sale or use of ice.

Section 1. All sales of ice for domestic consumption are taxable. Sales to restaurants, soda fountains and the like, of ice to be used exclusively as crushed ice in drinks, are sales for resale and are not subject to the tax. Ice sold to manufacturers, compounders or producers to use inside the shipping cases of the article they have manufactured or produced, are considered a part of the shipping case thereof and are not taxable.

Section 2. Sales of ice for cooling bottled drinks, for preserving foods, for air-cooling devices, etc., to creameries, restaurants, soda fountains, grocery stores, meat markets, and the like, are taxable sales for final consumption. Ice sold for use in refrigerator cars or trucks, except that which is actually a part of the shipping cases of manufactured or compounded articles, are sales for final consumption and are taxable.

Section 3. If the retailer elects to separate the charge for the ice from the charge for the services the tax applies only to the charge for the ice. Where ice is purchased both for refrigeration and for sale in iced drinks, a segregation may be made of the charge and the tax paid only on the ice used in refrigeration. If no segregation is made, the tax applies to the entire sale.

JOHN McD. ROSS, Commissioner
ADOPTED: November 7, 1974
APPROVED: JAMES O. KING, Secretary
RECEIVED BY LRC: November 8, 1974 at 2:51 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 28:130)

RELATES TO: KRS 139.110
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-88
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it applies to charges for tire retreading and recapping.

Section 1. Persons engaged in retreading or recapping of tires for customers are retailers and the tax applies to the gross receipts from such retreading or recapping of tires. The total price charged by the retreader or recapper is the measure of the tax for either retreading or recapping a tire belonging to his customer, or for a recapped or retreaded tire sold outright by the recapper or retreader to his customer.

JOHN McD. ROSS, Commissioner
ADOPTED: November 7, 1974
APPROVED: JAMES O. KING, Secretary
RECEIVED BY LRC: November 8, 1974 at 3:01 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 30:050)

RELATES TO: KRS 139.050, 139.130
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-60
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it applies to finance and carrying charges.

Section 1. "Gross receipts" or "sales price," as the case may be, does not include finance charges, carrying charges or interest charges on conditional sale contracts or other contracts providing for deferred payments of the purchase price if the amount of such finance charges, carrying charges or interest is in addition to the usual or established cash selling price, and such amount:
(1) is segregated on the invoice or bill of sale, or
(2) is billed separately to the customer.

Section 2. Unless the conditions in Section 1 are met such charges shall be deemed to be part of the selling price for the purpose of computing the tax.

JOHN McD. ROSS, Commissioner
ADOPTED: November 7, 1974
APPROVED: JAMES O. KING, Secretary
RECEIVED BY LRC: November 8, 1974 at 2:50 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 30:070)

RELATES TO: KRS 139.050, 139.130
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-40-1
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it applies to charges for freight and delivery.

Section 1. Delivery by Carrier. (1) Tax does not apply to separately stated charges for transportation of property from the retailer's place of business or other point from which shipment is made directly to a place specified by the purchaser, provided the transportation is by facilities other than those of the retailer, i.e., independent contract or common carrier, or United States mail. The charges may not, however, exceed the cost to the retailer of the transportation. Any amount billed to the customer in excess of such cost cannot be excluded from the measure of the tax as a delivery charge.
(2) When delivery is made by independent contract or common carrier or United States mail, passage of title to the customer is not a determining factor in computing tax liability except when the property is sold for an installed or delivered price, as explained in Sections 3 and 4.

Section 2. Delivery by Facilities of the Retailer. (1) Tax applies to charges for transportation of property to the purchaser by facilities of the retailer, unless:
(a) the transportation occurs after title to the property has passed to the purchaser,
(b) the charges are separately stated, and
(c) are for transportation from the retailer's place of business or other point from which shipment is made directly to a place specified by the purchaser.
(2) The amount that may be excluded from the measure of the tax cannot exceed a reasonable charge for the transportion.

(3) When property is processed during delivery in the retailer's vehicle, delivery charges shall be considered a part of the selling price and subject to the sales and use tax.

Section 3. Property Installed after Delivery. When a retailer is under duty to install the property after delivery by him, delivery charges shall be considered a part of the selling price and subject to the sales and use tax, irrespective of the method of delivery.

Section 4. Property Sold for a Delivered Price. (1) When property is sold for a delivered price, charges for transportation of the property to the purchaser are taxable unless:
(a) the transportation occurs after title to the property has passed to the purchaser,
(b) the charges are separately stated, and
(c) are for transportation from the retailer's place of business or other point from which shipment is made directly to a place specified by the purchaser.
(2) The amount excluded from the measure of the tax may not, however, exceed the cost of the transportation, or a reasonable charge therefor if the retailer's facilities are used to make the delivery.

Section 5. Determination of Place of Passage of Title. When a retailer, by means of facilities operated by him, delivers tangible personal property to a place specified by the purchaser, or the property is sold for a delivered price, title will not be considered as passing to the purchaser until the goods reach the place specified, in the absence of clear and convincing evidence that both retailer and buyer intended that title should pass at some other place. Oral declarations of the parties after the transaction is completed are of little value as evidence, because of their self-serving nature. The intention of the parties to transfer title to the buyer prior to delivery to him should be clearly expressed in writing constituting a part of the contract of sale, entered into by both parties prior to the transportation for which the charge in question takes place.

JOHN McD. ROSS, Commissioner
APPROVED: JAMES O. KING, Secretary
ADOPTED: October 29, 1974
RECEIVED BY LRC: October 30, 1974 at 3:32 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 30:080)

RELATES TO: KRS 139.100, 139.110, 139.120, 139.130, 139.140
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-74
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it relates to deposits on returnable containers and refunds of deposits.

Section 1. Deposits received by a retailer upon the retail sale of tangible personal property in returnable containers (e.g., soft drink bottles, beer bottles, and milk bottles) and refunds of such deposits are to be excluded from the computation of gross receipts.

Section 2. Notwithstanding the provisions of Section 1, a retailer may elect to include container deposits in his gross receipts and deduct refunds of such deposits from his gross receipts for purposes of reporting his gross receipts to the department. Any retailer making this election shall continue such method until otherwise authorized by the department.

JOHN McD. ROSS, Commissioner
ADOPTED: November 7, 1974
APPROVED: JAMES O. KING, Secretary
RECEIVED BY LRC: November 8, 1974 at 2:55 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 30:100)

RELATES TO: KRS 139.100, 139.110, 139.120, 139.130, 139.140
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-85
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it applies to the artificial insemination of livestock.

Section 1. Livestock as used herein is limited to livestock, of a kind, the products of which ordinarily constitute food for human consumption.

Section 2. The service costs for the artificial insemination of livestock as defined in Section 1 hereof are exempt from the sales and use tax.

JOHN McD. ROSS, Commissioner
ADOPTED: November 7, 1974
APPROVED: JAMES O. KING, Secretary
RECEIVED BY LRC: November 8, 1974 at 3:00 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 30:150)

RELATES TO: KRS 139.050, 139.100, 139.110, 139.120, 139.130
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-79
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it applies to fuels used in the manufacture of electricity.

Section 1. Coal, and other fuels used as boiler fuel for the generation or manufacture of electricity, shall be exempt from sales and use tax. The term "boiler fuel" shall include fuels used in the generation or manufacture of electricity by methods other than steam turbines.

JOHN McD. ROSS, Commissioner
ADOPTED: November 7, 1974
APPROVED: JAMES O. KING, Secretary
RECEIVED BY LRC: November 8, 1974 at 2:58 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 30:160)

RELATES TO: KRS 139.050, 139.100, 139.110, 139.120, 139.130
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-80
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it applies to the use of gases and other fuels by the producer of such gases and other fuels.

Section 1. The sales and use tax shall not apply to the use or consumption of natural, artificial or manufactured gas owned and consumed by a pipeline from its own lines as fuel to operate compressor stations and other facilities necessary to the marketing of such gas. Also, tax does not apply to natural gasoline, manufactured gases, liquified petroleum gases and fuels which are produced as by-products of a manufacturing or refining process and which are subsequently used or consumed directly in such manufacturing or refining process of the owner and producer of the by-products.

JOHN McD. ROSS, Commissioner
ADOPTED: November 7, 1974
APPROVED: JAMES O. KING, Secretary
RECEIVED BY LRC: November 8, 1974 at 2:59 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 31:020)

RELATES TO: KRS 139.720
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-63
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it applies to the records required to be maintained to support sales and use tax reports.

Section 1. Every seller, retailer, and person storing, using or otherwise consuming in the state tangible personal property purchased from a retailer, shall keep adequate and complete records showing:
(1) The gross receipts from the sales of tangible personal property (including any services that are a part of the sale) made within Kentucky.
(2) All deductions allowed by law and claimed in filing returns.
(3) The total purchase price of all tangible personal property purchased for sale or consumption in Kentucky.

Section 2. These records must include the normal books of account ordinarily maintained by the average prudent business man engaged in the activity in question, together with all bills, receipts, invoices, cash register tapes, cancelled

checks, bank statements, or other documents of original entry supporting the entries in the books of account, as well as all schedules or working papers used in connection with the preparation of tax returns and all "resale certificates", "agricultural certificates", and other approved certificates received from purchasers.

Section 3. All such records for any period shall be preserved until the statutory limitation relating to the assessment of additional tax for that period has expired, unless the department in writing sooner authorizes their destruction. An agreement between the taxpayer and the department, extending the period of limitation upon assessment, shall automatically extend the period for which preservation of the records is required. Failure to maintain such records will be considered evidence of negligence or intent to evade the tax, and may result in the imposition of appropriate penalties.

JOHN McD. ROSS, Commissioner
ADOPTED: November 7, 1974
APPROVED: JAMES O. KING, Secretary
RECEIVED BY LRC: November 8, 1974 at 2:51 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 31:040)

RELATES TO: KRS 139.350
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-50
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it applies to repossessions and bad debts.

Section 1. In the case of a repossession, a retailer may deduct the unpaid balance of the sales price of the property repossessed if he has previously included the full sales price of such property in his total receipts and paid the tax thereon.

Section 2. In the case of a taxpayer reporting on the accrual basis of accounting, a retailer may deduct as a bad debt, the amount found worthless and charged off for income tax purposes. If any such accounts are thereafter collected, in whole or in part, the retailer shall report and pay the tax on the amount so collected in the first return filed after the collection is made.

JOHN McD. ROSS, Commissioner
ADOPTED: November 7, 1974
APPROVED: JAMES O. KING, Secretary
RECEIVED BY LRC: November 8, 1974 at 2:46 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 31:050)

RELATES TO: KRS 139.050, 139.130
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-53
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it applies to returned or defective merchandise.

Section 1. "Gross receipts" and "sales price" do not include the amount charged for merchandise returned by customers if:
(1) the full sale price, including that portion designated as "sales tax" or "use tax" is refunded either in cash or credit, and
(2) the customer, in order to obtain the refund or credit, is not required to purchase other property at a price greater than the amount charged for the property that is returned.

Section 2. Refund or credit of the entire amount is deemed to be given when the purchase price, less rehandling and restocking costs, are refunded or credited to the customer.

Section 3. The records of the taxpayer must clearly reflect and support the taxpayer's claim for all such deductions for merchandise returned for credit or refund.

Section 4. Articles of tangible personal property that are repossessed by the seller may not be classed as returned goods. See 103 KAR 31:040 for repossessed merchandise.

Section 5. Credits or refunds allowed by sellers to consumers on account of defects in merchandise sold may be excluded in the same manner as credits or refunds for returned merchandise.

JOHN McD. ROSS, Commissioner
ADOPTED: November 7, 1974
APPROVED: JAMES O. KING, Secretary
RECEIVED BY LRC: November 8, 1974 at 2:48 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 31:060)

RELATES TO: KRS 139.050, 139.130
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-72
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it relates to cash discounts.

Section 1. Cash discounts actually allowed and taken on sales are not included in "taxable gross receipts" or "taxable sales price," as the case may be. Premium or trading stamps are not considered as cash discounts.

JOHN McD. ROSS, Commissioner
ADOPTED: November 7, 1974
APPROVED: JAMES O. KING, Secretary
RECEIVED BY LRC: November 8, 1974 at 2:53 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 31:070)

RELATES TO: KRS 139.050, 139.130
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-49
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it applies to goods damaged in transit.

Section 1. Sales Tax. If damage to goods in transit to the consumer occurs after a sale is made, sales tax applies to the sale. If the damage occurs prior thereto, sales tax applies as follows:
(1) If the goods are destroyed, tax does not apply to damages paid the retailer for their destruction.
(2) If the goods are not destroyed and are sold at retail in their damaged condition, tax applies to that portion of the total amount paid to the retailer representing the fair retail value of the goods in their damaged condition.

Section 2. Use Tax. Use tax does not apply with respect to goods destroyed before the purchaser makes any storage or use of the goods. If the goods are damaged but are nevertheless stored or used by the purchaser, the tax applies to the fair retail value of the goods in their damaged condition.

JOHN McD. ROSS, Commissioner
ADOPTED: November 7, 1974
APPROVED: JAMES O. KING, Secretary
RECEIVED BY LRC: November 8, 1974 at 2:45 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 31:090)

RELATES TO: KRS 139.050
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-61
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it applies to tax-paid purchases resold.

Section 1. A retailer who resells tangible personal property before making any use thereof (other than retention, demonstration, or display while holding it for sale in the regular course of business) may take a deduction of the purchase price of the property if, with respect to its purchase, he has reimbursed his vendor for the sales tax or has paid the use tax. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.

Section 2. The procedure described in Section 1 should be used in any of the following circumstances:
(1) The retailer when making the purchase intends to use the property rather than resell it but later resells it before making any use thereof.
(2) The particular property is of a kind not ordinarily sold or stocked by the retailer and not customarily covered by resale certificates given to his vendors and is the subject of an unusual sale, such as a sale for the accommodation of a customer, employee, etc.
(3) The particular property is generally for the use of the retailer, but a small portion is incidentally resold.
(4) Through error, sales tax reimbursement or use tax is paid by the retailer with respect to the purchase price of

property purchased for resale in the regular course of business.

JOHN McD. ROSS, Commissioner

ADOPTED: November 7, 1974
APPROVED: JAMES O. KING, Secretary
RECEIVED BY LRC: November 8, 1974 at 2:50 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 31:100)

RELATES TO: KRS 139.290, 139.430
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-73-1
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it relates to the use of tangible personal property for demonstration and display.

Section 1. A purchaser of tangible personal property who gives a resale certificate therefor, and who uses the property solely for demonstration or display while holding it for sale in the regular course of business, in not required to pay tax on account of such use. If the property is used for any purpose other than demonstration or display, or if the property is used in addition to being used for demonstration or display purposes, the user must pay the tax upon the sales price to him.

Section 2. If the sole use of the property is its rental while holding it for sale, he must pay the tax upon the sale price to him or upon the rentals received.

Section 3. When the property is subsequently sold, the sale price of such property must be included in gross receipts subject to tax.

JOHN McD. ROSS, Commissioner

ADOPTED: November 7, 1974
APPROVED: JAMES O. KING, Secretary
RECEIVED BY LRC: November 8, 1974 at 2:53 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 31:120)

RELATES TO: KRS 139.490
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-64
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it relates to the tax liability of a seller accepting exemption certificates from customers.

Section 1. The seller of tangible personal property will not include within the measure of his tax the gross receipts from a retail sale if he takes from the purchaser a "certificate of exemption" that the property purchased will be used in a manner or for a purpose entitling the seller to regard the gross receipts from the sale as exempt under the sales and use tax law.

Section 2. The "certificate of exemption" relieves the seller from the sales and use tax only if he takes the certificate in good faith from the purchaser at the time of sale.

JOHN McD. ROSS, Commissioner

ADOPTED: November 7, 1974
APPROVED: JAMES O. KING, Secretary
RECEIVED BY LRC: November 8, 1974 at 2:52 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 31:150)

RELATES TO: KRS 139.670, 139.680
PURSUANT TO: KRS 13.082
SUPERSEDES: SU-48
NECESSITY AND FUNCTION: To interpret the sales and use tax law as it applies to a successor's liability for the sales and use taxes of the former owner of a business.

Section 1. Whenever a business or stock of goods is sold under a contract providing for payment to the seller or person designated by him of a purchase price in money or property or providing for the assumption of liabilities, the successor or purchaser is required to withhold from the purchase price an amount sufficient to cover the liability of the seller for sales and use taxes, penalties and interest. The requirement to withhold from the purchase price to cover tax liability of the seller does not arise in connection with other transfers of a business such as assignments for the benefit of creditors, foreclosures of mortgages, or sales by trustees in bankruptcy.

Section 2. If the successor or purchaser fails to withhold from the purchase price an amount sufficient to cover the tax liability of the seller, he shall be personally liable for payment of the amount required to be withheld by him, but only to the extent of the purchase price valued in money.

Section 3. The liability of the successor or purchaser of a stock of goods extends to taxes incurred with reference to the operation of the business by the predecessor or any former owner, including the sale thereof even though not then determined against him, to interest thereon to the date of payment of the taxes, to civil penalties for nonpayment of taxes, and to civil penalties for negligence or intentional disregard of the sales and use tax law or authorized rules and regulations, or for fraud or an intent to evade the tax determined and unpaid at the time of sale.

Section 4. The purchaser of the business or stock of goods will be released from further obligation to withhold the purchase price if he obtains a certificate from the department stating that no taxes, interest, or penalties are due from a predecessor. He will also be released if he makes a written request to the department for a certificate and if the department does not within sixty (60) days thereafter, or within sixty (60) days from the date the former owner's records are made available for audit, whichever period expires the later, but in any event not later than ninety (90) days after receiving the request, issue the certificate or mail to the purchaser a notice of the amount of the tax, interest, and penalties that must be paid as a condition of issuing the certificate.

JOHN McD. ROSS, Commissioner

APPROVED: JAMES O. KING, Secretary
ADOPTED: October 29, 1974
RECEIVED BY LRC: October 30, 1974 at 3:34 p.m.

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

SECRETARY OF THE CABINET
Commission on Human Rights
(104 KAR 1:010)

RELATES TO: KRS Chapter 344
PURSUANT TO: KRS 344.190, 13.082
SUPERSEDES: HR-1
NECESSITY AND FUNCTION: KRS 344.190(14) provides for commission adoption of regulations requiring the posting of notices prepared or approved by the commission. This rule is designed to educate the public as well as covered businesses to promote acceptance of the respective sections of the Civil Rights Act.

Section 1. Nature of fair employment practices notices and who must post. Every employer, employment agency, and labor organization subject to the Kentucky Civil Rights Act, shall post and maintain at their establishments fair employment practices notices furnished by the Kentucky Commission on Human Rights indicating the substantive provisions of the Kentucky Civil Rights Act, where complaints may be filed and such other information as the Kentucky Commission on Human Rights deems pertinent.

Section 2. Where employers and employment agencies must post. With respect to employers and employment agencies such notices must be posted conspicuously in easily-accessible and well-lighted places customarily frequented by employes and applicants for employment, and at or near each location where the employes' services are performed.

Section 3. Where labor organizations must post. With respect to labor organizations, such notices must be posted conspicuously in easily-accessible and well-lighted places customarily frequented by members and applicants for membership.

Section 4. Nature of public accommodations notices and who must post. Every owner, lessee, proprietor or manager of any place of public accommodation, resort, or amusement, shall post and maintain at such place of public accommodation, resort or amusement, notices furnished by the commission indicating the provision of the Kentucky Civil Rights Act dealing with places of public accommodation, resort or amusement; where complaints may be filed and such other information as the commission deems pertinent.

Section 5. Where public accommodations notices must be posted. Such notices must be posted conspicuously in easily-accessible and well-lighted places at the place of public accommodation, resort or amusement where they may be readily observed by those seeking or granting any of the accommodations, advantages, facilities, or privileges of such places of public accommodations, resort or amusement.

Section 6. Nature of housing notices and who must post. Every real estate operator, real estate broker, real estate salesman, financial institution, builder, developer, or apartment owner subject to KRS 344.360 shall post and maintain at each location and elsewhere, where their services are regularly performed, notices indicating the provisions of the Kentucky Civil Rights Act dealing with housing, where complaints may be filed, and such other information as the commission deems pertinent.

Section 7. Where housing notices must be posted. Every real estate operator, real estate broker, real estate salesman, financial institution, builder, developer, or apartment owner subject to KRS 344.360 must post such notices furnished by the Kentucky Commission on Human Rights at every business location and elsewhere, where their services are regularly performed, in an easily-accessible and well-lighted place.

Section 8. Notice to owners listing property. Every real estate operator, real estate broker, real estate salesman, financial institution, builder, and developer, subject to the Kentucky Civil Rights Act shall provide to owners of real property at the time they contract for the sale, purchase, or rent, or financing of property, a copy of the memorandum entitled: "Your rights and responsibilities under Kentucky's Civil Rights Act" and any amendments thereto, prepared with assistance from the Office of the Attorney General of Kentucky on the subject of Kentucky law against discrimination in housing. Such notices shall be supplied by the Kentucky Commission on Human Rights.

PAUL OBERST, Chairman
Kentucky Commission on Human Rights

ADOPTED: November 8, 1974
RECEIVED BY LRC: November 14, 1974 at 2:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Director, Kentucky Commission on Human Rights, 828 Capital Plaza Tower, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Commission on Human Rights
(104 KAR 1:020)

RELATES TO: KRS Chapter 344
PURSUANT TO: KRS 344.190, 13.082
SUPERSEDES: HR-2
NECESSITY AND FUNCTION: KRS 344.190(9) and (14) provide for the commission to adopt rules and regulations to effectuate the purposes and provisions of the Act. The rules of practice and procedure before the commission are designed to inform complainants and respondents of the steps followed in processing complaints through conciliation, dismissal or public hearing.

Section 1. Definitions. When used in this regulation: (1) "Act" shall mean the Kentucky Civil Rights Act, KRS Chapter 344.

(2) "Person, commission, commissioner, discrimination, employer, employment agency, labor organization, employee, religion, place of public accommodation, resort, or amusement, real estate operator, real estate broker, real estate salesman, financial institution and licensing agency, credit transaction" shall have the meanings given to them in the Act.

(3) "Chairman" shall mean the duly appointed chairman of the Kentucky Commission on Human Rights, or in the event of his absence or inability to act, the vice-chairman, or if no vice-chairman has been designated, or if such vice-chairman is unable to act, a commissioner designated by the chairman.

(4) "Hearing commissioners" shall mean the commissioners designated by the chairman to conduct a hearing.

(5) "Investigator" shall mean a member of the commission staff designated by the executive director to investigate the allegations of the complaint and make a determination of whether there is probable cause, or a commissioner appointed by the chairman.

Section 2. Complaint. (1) Who may file:

(a) Any individual claiming to be aggrieved by an unlawful practice may make, sign, and file with the commission a written sworn complaint. Assistance in drafting and filing complaints shall be available to complainants at the commission's office in Frankfort, at any other commission office, and from any commission staff member.

(b) A commissioner or the Attorney General may, in like manner, make, sign, and file such complaint.

(c) Upon the receipt of a communication from the Federal Equal Employment Opportunity Commission or U. S. Department of Housing and Urban Development transmitting a complaint which has been submitted to that agency, the executive director, acting in the name of the commission, may issue a complaint in writing and attach thereto the materials transmitted from the federal government, if any.

(2) Complaint Form. The complaint shall be in writing and the commission shall provide a form to aid the complainant if so desired. The complaint must be signed and sworn before a notary public or other person duly authorized by law to administer oaths and take acknowledgements. Notarial service shall be furnished without charge by the commission.

(3) Contents:

(a) A complaint shall contain the following:

1. The full name and address of the complainant.
2. The name and address of the person, employer, labor organization, employment agency, government agency, place of public accommodation, resort, or amusement, real estate operator, real estate broker, real estate salesman, financial institution or licensing agency against whom the complaint is made.
3. A short and plain statement of the claim showing that the complainant is entitled to relief under the Kentucky Civil Rights Act.

(b) A complaint should contain the following:

1. The date or dates and time of day of the alleged unlawful discriminatory practice, if known, and if the alleged unlawful discriminatory practice is of a continuing nature, the dates between which said continuing unlawful acts of discrimination are alleged to have occurred, if known.
2. A statement as to any other action, civil or criminal, instituted by the complainant in any other forum based upon the same grievance as is alleged in the complaint, together with a statement as to the status or disposition of such other action.

(4) Time of filing. A complaint alleging discrimination must be filed within 180 days after the alleged unlawful practice occurs. If the alleged practice is of a continuing nature, the date of the occurrence of said practice shall be deemed to be any date subsequent to the commencement of the practice up to and including the date on which the practice shall have ceased, or the date on which the complaint shall have been filed if the unlawful practice continues.

(5) Place of filing. A complaint shall be filed with the commission at its office in Frankfort or Louisville.

(6) Manner in filing. The complaint may be filed by personal delivery, ordinary mail, registered or certified mail to the commission's office in Frankfort or Louisville. A complaint may be delivered to a commissioner, or a member of the commission's staff or to any other commission office for filing at the commission's Frankfort or Louisville office.

(7) Amendment of complaint. The commission, the presiding hearing commissioner, or the complainant shall have the power reasonably and fairly to amend a complaint.

(a) The power to amend a complaint may be exercised prior to the issuance of a notice of hearing by the commission staff with the consent of the complainant and after the issuance of a notice of hearing by the presiding hearing commissioner with the consent of the complainant.

(b) The complainant's power to amend the complaint may be exercised prior to the issuance of a notice of hearing as a matter of right, and after notice of hearing at the discretion of the presiding hearing commissioner.

(c) If a complaint is amended, postponement of the hearing date may be granted to the respondent upon a request to the commission. In no event shall such hearing date be more than ten (10) days later than the original hearing date.

(8) Withdrawal of complaint. Upon the written request of the complainant, stating the reasons for such request, a complaint or any part thereof, may be withdrawn only on written consent as hereinafter set forth.

(a) If the request for withdrawal is made before the case has been noted for hearing, the written consent of the executive director shall be obtained.

(b) If the request for withdrawal is made after the case has been noted for hearing, the written consent of the chairman shall be obtained.

(c) In either case of withdrawal, such withdrawal shall be without prejudice to the rights of the complainant.

(9) Dismissal of complaint. If the executive director shall determine, whether upon the face of the complaint, after investigation, or after conference, conciliation, and persuasion, that the complaint shall be dismissed, due to lack of probable cause or for other reasons, he shall dismiss the complaint and notify the parties by mail of such determination and of the complainant's right to apply to the commission for reconsideration of such dismissal.

Section 3. Investigation, Conference, Conciliation, and Persuasion. (1) Investigation. After the filing of a complaint, the executive director shall designate an investigator from the commission staff and the chairman may designate a commissioner to direct the investigation as chief investigator. The investigator(s) shall make a prompt and thorough investigation of the allegations of the complaint.

(2) Production of evidence:

(a) An investigator may at any reasonable time request access to premises, records, and documents relevant to the complaint.

(b) If such request is denied, the commission may issue a subpoena duces tecum requiring the production of such documents.

(c) If a person fails to permit access, examination, photographing, or copying, the commission may apply to circuit court for an order requiring the person to permit same.

(3) Conference, conciliation and persuasion:

(a) If the investigator determines after preliminary investigation that probable cause may exist for crediting the allegations of the complaint, he shall report his recommendations to the executive direc-

tor, who shall make a finding and report to the commission. The investigator shall endeavor to eliminate the unlawful discriminatory practice by conference, conciliation and persuasion. If a complaint subsequently goes to a hearing, no testimony shall be given or received concerning any offers or counteroffers made in an effort to conciliate any alleged unlawful discriminatory practice.

(b) The investigator shall notify the respondent(s) that a particular meeting or conversation is for the purpose of attempting to conciliate the complaint. These requirements shall not be construed to limit the power of the commission to conduct further investigations in preparation for a hearing or for other purposes in connection with its statutory duties, nor shall they be construed to prohibit the use of evidence obtained through such investigations.

(4) Conciliation agreement. If as a result of conference, conciliation, and persuasion, the investigator is able to provide for involuntary compliance, and to effect the elimination of any unlawful discriminatory practice, a conciliation agreement shall be prepared which shall set forth all measures to be taken by any party, including provisions for compliance reports, and which shall be signed by the respondent and a representative of the commission.

(5) Satisfactory adjustment. Upon the signing of the conciliation agreement, the investigator shall report the same to the executive director, who shall mark the case "satisfactorily adjusted" and notify the parties and commissioners of the terms of such disposition. Said disposition of a case by conference, conciliation, and persuasion shall not, however, preclude the commission, whenever justice so requires, from reconsidering the terms of such conciliation at any time and taking such further action as it may deem necessary on notice to the parties.

Section 4. Reconsideration. (1) The complainant, within ten (10) days after receiving a copy of the order dismissing the complaint, may file with the commission an application for reconsideration of the order. Such application must be in writing, stating specifically the ground on which it is based.

(2) Upon receipt of an application for reconsideration, the executive director shall designate a different investigator and the chairman may designate a different commissioner to direct the new investigation as chief investigator. While a new investigation shall be made, the investigator may consider the evidence gathered in the initial investigation. The investigator(s) shall within ten (10) days make a new determination of whether there is probable cause to believe that the respondent has engaged in an unlawful practice.

(3) Dismissal of a complaint may be reconsidered by the commission on its own initiative at any time within 180 days after the alleged unlawful practice occurred. Notice of such reconsideration shall be provided by the commission to all parties to the initial investigation or final conciliation as the case may be.

Section 5. Notice of hearing. (1) When hearings ordered:

(a) After a finding of probable cause to credit the allegations of the complaint and in case of failure to eliminate said unlawful discriminatory practices or otherwise resolve same, the results of the investigation shall be reported to the executive director, who shall report same to the chairman, with his recommendation on scheduling a hearing.

(b) The chairman shall thereupon appoint a presiding hearing commissioner and may in his discretion appoint one or more additional hearing commissioners.

(2) Notice of hearing:

(a) The notice of hearing shall state the time and place and shall inform the respondent that he may file an answer to the complaint.

(b) The notice of hearing and sworn complaint, as the same may have been amended, shall be served by registered or certified mail on the respondent at least ten (10) days before the date of the hearing, and the complainant, hearing commissioners and Attorney General shall be furnished a copy of such notice.

(c) If a party is represented by an attorney, a copy of the notice of hearing and complaint, as the same may have been amended, shall be furnished to said attorney.

(3) Place of hearing. The place of any hearing shall be the office of the commission in Frankfort or such other place as may be designated by it. The commission shall give consideration to a request for a change of hearing location made by the complainant or the respondent.

Section 6. Answer. (1) Filing of answer. The respondent may by himself or his attorney answer the complaint or amended complaint. The answer shall be in writing and signed by the respondent or his attorney and filed with two (2) copies at the office of the commission in Frankfort or Louisville not less than five (5) days before the hearing date.

(2) Content. The answer shall state in short and plain terms the defenses to each claim asserted and shall admit or deny the allegations in the complaint. If the respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation, the answer shall so state and this has the effect of a denial. The answer shall contain the post office address of the respondent.

(3) Manner of filing. The answer may be filed by registered or certified mail addressed to the office of the commission in Frankfort or Louisville or by delivery to said offices.

(4) Failure to deny or admit. Failure to deny or admit an allegation in the complaint, unless the respondent shall state in the answer that he is without knowledge or information sufficient to form a belief, shall be deemed an admission of such allegation.

(5) Defense and new matter. Any allegation of new matter contained in the answer shall be deemed denied without the necessity of a reply.

(6) Extension of time for filing. Upon application, the chairman or the presiding hearing commissioner may for good cause shown extend the time within which the answer may be filed.

(7) Amendments of answer. The answer or any part thereof may be amended as a matter of right at any time before the first hearing and thereafter in the discretion of the presiding hearing commissioner on application duly made therefor. An original with two (2) copies of the amended answer shall be filed with the commission.

(8) Amendment of answer upon amendment of complaint. In any case where a complaint has been amended, the respondent shall have the opportunity to amend his answer within such period as may be fixed by the presiding hearing commissioner.

(9) Failure to file answer. The hearing commissioners may proceed, notwithstanding any failure of the respondent to file an answer within the time provided herein, to hold a hearing at the time and place specified in the notice of hearing and may make its findings of fact and enter its order upon the testimony taken at the hearing.

(10) Default. Upon application the chairman may for good cause shown, set aside a default in answering.

Section 7. Hearings. (1) Appearances. Whenever practicable the complainant or the party on whose behalf the complaint was filed shall appear at the hearing, with or without counsel, and submit testimony. The respondent may appear at the hearing with or without counsel and if an answer has been filed or the default in answering has been set aside for good cause shown, may examine and cross-examine witnesses and may present evidence. The complainant, the Attorney General, and in the discretion of presiding hearing commissioner, any person may intervene, examine and cross-examine witnesses, and present evidence.

(2) Who shall conduct. Hearings shall be conducted before one (1) or more hearing commissioners to be appointed by the chairman. In the event more than one (1) hearing commissioner is appointed, the chairman shall designate one (1) of the hearing commissioners to act as presiding hearing commissioner.

(3) Power and duties of the presiding hearing commissioner. The presiding hearing commissioner shall have full authority co control the procedure of a hearing, to admit or exclude testimony or other evidence, and to rule upon all motions and objections. The presiding hearing commissioner shall make full inquiry into all the facts in issue and shall obtain a full and complete record of all facts necessary for a fair determination of the issues. The presiding hearing commissioner may call and examine witnesses, direct the production of papers or documents, and introduce the same into the record of proceedings.

(4) Procedure:

(a) The case in support of the complaint shall be presented before the hearing commissioners by a commission attorney or staff member. The complainant or his counsel may also present any case in support of the complaint.

(b) Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent men in the conduct of their affairs. However, irrelevant, immaterial, or unduly repetitious evidence shall be excluded and the rules of privilege shall be given effect.

(c) All testimony shall be given under oath or affirmation, and record of the proceedings shall be made and kept.

(d) No testimony or evidence shall be given or received at any hearing concerning any offers or counteroffers made in an effort to conciliate any alleged unlawful discriminatory practice.

(e) Two (2) or more proceedings under the act may be joined by the commission in its discretion.

(5) Stipulations. The parties may file a stipulation as to the facts, in which event the same shall be numbered and used at the hearing. Such stipulation shall not preclude the offering of additional evidence by any party.

(6) Continuation and adjournments. The hearing commissioners may continue a hearing from day to day or adjourn it to a later date or to a different place by announcement thereof at the hearing, or by appropriate notice to all parties.

(7) Motions and objections. Motions made during a hearing and objections with respect to the conduct of a hearing, including objections to the introduction of evidence, shall be stated in writing or orally and shall be included in the record of the hearings.

(8) Oral arguments and briefs. The presiding hearing commissioner shall permit the parties, their attorneys, or the members of the commission's staff presenting the case in support of the complaint, to argue orally before the hearing commissioners and to file briefs within such time limits as the presiding hearing examiner may determine. Oral arguments

shall not be included in the record unless the presiding hearing commissioner shall so direct.

(9) Improper conduct. The presiding hearing commissioner may exclude from the hearing room or from further participation in the proceeding any person who engages in improper conduct before the hearing commissioners.

(10) Waiver of hearing. With the consent in writing of the respondent and notice to all parties, an order may be entered without holding any hearing or the making of any findings of fact or conclusion of law.

(11) Public hearings. All commission hearings shall be open to the public unless the chairman or the presiding hearing commissioner, in his discretion, directs a closed hearing.

(12) Written transcript of the record. The written transcript of the record upon the hearing before the hearing commissioners shall consist of the notice of the hearing, the sworn complaint, as the same may have been amended, the answer, as the same may have been amended, the transcript of the testimony taken at the hearing, the exhibits and depositions offered in evidence, written applications, briefs, orders, motions, oral arguments if directed by the hearing examiner, stipulations, the findings of fact, conclusions of law, and the final order of the commission.

Section 8. Discovery. (1) Subpoenas:

(a) Issuance of subpoena. Whenever it is deemed necessary to compel the attendance of witnesses or the production for examination of any books, payrolls, personnel records, correspondence, documents, papers, or any other evidence relating to any matter under investigation or in question before the commission, any commissioner or the executive director may issue a subpoena or subpoena duces tecum and thereby compel such attendance of witnesses or production for examination of books, papers, and records.

(b) Issuance of subpoena at instance of party. Any commissioner or the executive director may issue such subpoena or subpoena duces tecum at the instance of any party to a hearing or other proceedings. The issuance of such subpoena and subpoena duces tecum at the instance of a party shall depend upon a showing of the necessity therefor.

(c) Fees. Where a subpoena or subpoena duces tecum is applied for and issued at the instance of any party to a hearing or other proceeding, the cost of service, witness and mileage fees, if any, shall be borne by the party at whose instance it has been requested and issued. Where a subpoena or subpoena duces tecum is issued at the instance of any commissioner or the executive director, the cost of such service, witness, and mileage fees, if any, shall be borne by the commission.

(2) Depositions and interrogatories:

(a) Depositions of witnesses, including any party, may be taken as prescribed by the Kentucky Rules of Civil Procedure.

(b) Interrogatories. The commission may, at any time after the complaint is filed, require any party or witness to answer interrogatories. The procedure for interrogatories shall conform to the Kentucky Rules of Civil Procedure, as far as is practicable.

(3) Refusal to make discovery. If a person fails to permit access, fails to comply with a subpoena, refuses to have his deposition taken, refuses to answer interrogatories, or otherwise refuses to make discovery, the commission or any party may request an order of the circuit court requiring discovery.

Section 9. Orders. (1) Contents of order. An order of the commission issued after hearing shall set forth the findings of fact and conclusions of law of the hearing commissioners, the commission's final decision, and in the discretion of the commission, opinion containing the reasons for said decision.

(2) Issuance of orders:

(a) If upon all the evidence, the hearing commissioners shall find that a respondent had engaged in any unlawful discriminatory practice, the hearing commissioners shall state its finding of fact, conclusion of law and shall make a recommendation on the basis of which the commission may issue and cause to be delivered to respondent an order requiring such respondent to cease and desist from such unlawful discriminatory practice and to take such affirmative action as in the judgment of the commission will carry out the purpose of the act. Affirmative action orders may include the remedies enumerated in KRS 344.230.

(b) If upon all the evidence, the hearing commissioners shall find that a respondent has engaged in an unlawful discriminatory practice, the hearing commissioner shall state its findings of fact, conclusion of law and shall make a recommendation on the basis of which the commission may similarly issue an order dismissing the complaint.

(3) Filing. All orders issued by the commission after a hearing shall be filed in the commission's office in Louisville.

Section 10. Re-opening of proceedings. (1) Who may open. After hearing and the issuance of a final order, the commission or the hearing commissioners may, upon its own motion or upon application of any party or intervenor, for good cause shown, or whenever justice so requires, or where an order or determination or decision was made upon default of a party affected thereby; reopen any closed proceeding upon notice of all parties, intervenors and the Attorney General, and take such action as it may deem necessary.

(2) Time limitation for filing. No application to reopen shall be considered unless filed within six (6) months from the date the matter was previously closed or otherwise disposed of.

Section 11. Judicial review. (1) Who may apply. A complainant, respondent, or intervenor aggrieved by an order of the commission, including an order dismissing a complaint or stating the terms of a conciliation agreement, may obtain an order of the court for enforcement of its order.

(2) Forum. A proceeding for judicial review may be brought in the circuit court in a county in which the alleged unlawful practice which is the subject of the order or complaint occurs or in which a respondent resides or had his principal place of business.

(3) Filing of written transcript of the record by the commission:

(a) Upon receipt by the commission of a copy of the court's order so directing, the commission shall cause to be certified and delivered to the clerk of the court the entire record made before the commission, together with the findings of fact, conclusions of law and order of the commission thereon.

(b) The commission's copy of the written transcript of the record shall be available during the regular office hours of the commission to all parties for examination without cost, and for the purpose of appeal to the circuit court from the order of the commission. The commission's copy of the testimony shall, in the discretion of the commission or the chairman, also be available to intervenors and other persons for such purpose and to such extent as the commission or the chairman may determine.

Section 12. Certification. The chairman, the secretary of the commission or the executive director is authorized and empowered to certify all documents or records which are a part of the files and records of the commission.

Section 13. Availability of rules. The rules and regulations of the commission and any amendments, additions, or modifications thereof, shall be available to the public at the office of the commission in Frankfort or at any other commission office.

Section 14. Construction of rules and pleadings. (1) These rules and regulations shall be liberally construed to effectuate the purposes and provisions of KRS Chapter 344 and the policies of the Kentucky Commission on Human Rights.

(2) All pleadings shall be liberally construed with a view to effect justice between the parties, and the commission and hearing commissioners will, at every stage of any proceeding, disregard errors or defects in the pleadings or proceedings which do not affect the substantial rights of the parties.

Section 15. Amendment of rules. New rules may be adopted and any rule may be amended or rescinded by the commission at a regular or special meeting, provided that notice of the proposed adoption, amendment, or recission has been given in writing to all members of the commission at least ten (10) days before the meeting at which action is to be taken; except that said ten (10) days notice shall not be required when two-thirds of the membership of the commission shall approve in writing any such adoption, amendment, or recission. Provided further, all such amendments and the process for amending commission regulations shall comply with Kentucky statutes governing the amendment of Kentucky administrative regulations.

Section 16. General investigations. The commission may, in its discretion, conduct such general investigations into the problems of discrimination as it deems necessary or desirable and may study and report upon the problems of the effect of discrimination on any field of human relationships.

PAUL OBERST, Chairman
Kentucky Commission on Human Rights

ADOPTED: November 8, 1974
RECEIVED BY LRC: November 14, 1974 at 2:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Director, Kentucky Commission on Human Rights, 828 Capital Plaza Tower, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Commission on Human Rights
(104 KAR 1:030)

RELATES TO: KRS Chapter 344
PURSUANT TO: KRS 344.250, 13.082
SUPERSEDES: HR-3

NECESSITY AND FUNCTION: KRS 344.250 provides that persons subject to the Civil Rights Act shall make and keep records and make such reports therefrom as the commission shall require by regulation. The act provides for such records and reports to conform with federal reports, and this regulation provides that where federal employment reports are filed and timely made available to the commission, duplicate reports will not be required. Where the

reports are not available through the federal government the commission preserves the right to require the information directly in its case investigations.

Section 1. Every employer in the Commonwealth of Kentucky who is subject to the Kentucky Civil Rights Act (KRS Chapter 344) and who is also subject to the jurisdiction of the U.S. Equal Employment Opportunity Commission shall file the appropriate standard employer information report Form (EEO-1-5) with the U.S. Equal Employment Opportunity Commission in accordance with that commission's instructions and regulations.

Section 2. Employers subject to the jurisdiction of the U.S. Equal Employment Opportunity Commission shall not be required to furnish information to the Kentucky commission which is duplication of that filed on the appropriate standard employer information report form (EEO-1-5). The Kentucky Commission on Human Rights reserves the right to require reports about the employment practices of individual employers or groups of employers, whenever such information has not been furnished to the Equal Employment Opportunity Commission. In connection with the investigation of a complaint the commission reserves the right to require the employer to provide such information where it has not been received by the commission, or is information more than six (6) months out of date, and where the appropriate EEO form job categories do not provide a breakdown descriptive of the employers actual job categories, the commission may require a more descriptive workforce breakdown.

Section 3. The provisions respecting confidentiality of information contained in Section 709(e) of the U.S. Civil Rights Act of 1964 and KRS 344.250(6) shall be observed by all commissioners and staff of the Kentucky Commission on Human Rights.

Section 4. Any personnel or employment record made or kept by an employer (including but not necessarily limited to application forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, layoff or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship) shall be preserved by the employer for a period of six (6) months from the date of the making of the record and the personnel action involved, whichever occurs later. In case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of six (6) months from the date of termination. Where a complaint of discrimination has been filed, the respondent employer shall preserve all personnel records relevant to the complainant until final disposition of the complaint. The term "personnel records relevant to the complaint," for example, would include personnel or employment records relating to the complainant and to all other employees holding positions similar to that held or sought by the complainant and application forms or test papers completed by an unsuccessful applicant or by all other candidates for the same position as that for which the complainant applied and was rejected. The date of "final disposition of the complaint" means the date of the statutory period within which the complainant, the Attorney General, and the intervenor, or the commission may bring an action in the circuit court; or the date on which such litigation is terminated, whichever date is later.

Section 5. If a person fails to make, keep, or preserve records or make reports in accordance with this regulation, the circuit court for the county in which such person is found, resides or has his principal place of business, upon application of the commission, may issue an order requiring compliance.

PAUL OBERST, Chairman
Kentucky Commission on Human Rights

ADOPTED: November 8, 1974
RECEIVED BY LRC: November 14, 1974 at 2:32 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Director, Kentucky Commission on Human Rights, 828 Capital Plaza Tower, Frankfort, Kentucky 40601.

SECRETARY OF THE CABINET
Commission on Human Rights
(104 KAR 1:040)

RELATES TO: KRS Chapter 344
PURSUANT TO: KRS 344.190, 13.082
SUPERSEDES: HR-4
NECESSITY AND FUNCTION: This regulation, pursuant to KRS 344.080 and 344.190, is designed to eliminate job ads which discriminate on the basis of sex, as well as other coverages in the Civil Rights Act. Employers may not use discriminatory language in job ads, nor may the ads be segregated under headings which discriminate. The regulation provides a procedure by which employers may obtain a "bona fide occupational qualification" exemption. Suggested substitutes for discriminatory terms are provided.

Section 1. It shall be a violation of KRS 344.080 for any employer, labor organization, licensing agency, or employment agency to cause to be published, printed, circulated or displayed any advertisement or notice relating to employment, employment opportunities, job openings, union membership, apprentice programs, job training programs, licensing opportunities, or any of the terms, conditions or privileges thereof under an employment advertisement or notice column which is segregated on the basis of race, color, religion, national origin, sex or age or under any column heading which expresses overtly or subtly, directly, or indirectly, any preference, specification or limitation.

Section 2. (1) It shall be a violation of KRS 344.080 for any employer, labor organization, licensing agency, or employment agency to cause to be published, printed, circulated or displayed any advertisement or notice relating to employment, employment opportunities, job openings, union membership, apprentice programs, job training programs, licensing opportunities, or any of the terms, conditions or privileges thereof the language of which advertisement or notice expresses any limitation, specification, discrimination or preference as to race, color, religion, national origin, sex or age. A limitation, specification, discrimination, or preference as to religion, national origin, sex or age is not a violation where such limitation, specification, discrimination or preference is a bona-fide occupational qualification for the particular job advertised as defined in Section 3.

(2) Whenever a "help wanted" advertisement or notice is to contain any job title or job description which is not clearly neutral in terms of sex and to the job advertised is not one for which sex is a "bona-fide occupational qualification" as defined in this regulation, then the advertisement or notice should instead utilize a neutral job title whenever practicable. If the use of a neutral job title is not practicable, then the advertisement or notice may contain the non-neutral job title provided, however, that the advertisement or notice also includes: (i) the job title which is the counterpart of the non-neutral job title or (ii) the designation "M/W." Newspapers which print employment advertisements are encouraged to voluntarily print a box on their employment advertising pages indicating that the abbreviation "M/W" when used means men or women.

(3) The commission staff has prepared a listing of terms considered discriminatory and suggested substitutes and make it available for the guidance of those who come under these provisions, which is filed herein by reference.

Section 3. (1) For the purpose of this regulation, the "bona-fide occupational qualification" exception shall include only those vocational qualifications which are reasonably necessary to the normal operation of the particular business, enterprise, or apprentice, or other training programs. The exception shall be interpreted so that individuals will be considered for employment on the basis of their individual capacities and not on the basis of any characteristics generally attributable to their group. The employer, labor organization, licensing agency, or employment agency has the burden of establishing with the Kentucky Commission on Human Rights that religion, national origin, sex or age is a bona-fide occupational qualification.

(2) The application of the exception is not warranted where based on, for example: assumptions of the comparative general employment characteristics of persons of a particular religion, national origin, sex or age, such as their turnover rate; stereotyped characteristics of the aforementioned classes, such as their mechanical ability or aggressiveness; customer, client, co-worker or employer preference, or historical usage, tradition or custom, or the necessity of providing separate facilities of a personal nature, such as rest rooms or dressing rooms. In regard to sex, the application of the exception may be authorized by the Kentucky Commission on Human Rights where it is necessary for authenticity or genuineness, such as for an actor or actress, or fitters of intimate apparel.

Section 4. Any employer, labor organization, licensing agency, or employment agency may make an inquiry of the Kentucky Commission on Human Rights, 701 West Walnut Street, Louisville, Kentucky, 585-3363; or in Frankfort, Kentucky, 828 Capital Plaza Tower, 564-3550, as to whether religion, national origin, sex or age is a bona-fide occupational qualification for a particular job which they intend to cause to be published, printed, circulated or displayed. The Kentucky Commission on Human Rights shall, within one (1) working day, give opinions in response to such inquiries. An opinion rendered orally or in writing by the commission prior to the publication or display of any advertisement in response to such an inquiry shall be binding on the commission for the purpose of this regulation, except in those instances in which the inquiry has not fully and accurately disclosed the relevant facts regarding the particular job in question. The commission shall maintain records as to each inquiry made pursuant to this section, to include the name, title and address of the inquiries, a summary of the job and job duties, the bases for the exception claimed and the time, date, identification number and disposition of the inquiry.

Section 5. It shall be a violation of KRS 344.280 for any newspaper or other publication published or circulated within this Commonwealth to print, publish or circulate employment advertisements under headings or columns that are segregated on the basis of race, color, religion, national origin, sex or age or under any column or heading which expresses overtly or subtly, directly or indirectly a preference, specification or limitation on the basis of race, color, religion, national origin, sex or age.

Section 6. Newspapers and other publications which print employment advertisements are encouraged to maintain lists of discriminatory terms and permissible substitutes and to instruct their employees to advise employers, labor organizations, licensing agencies, or employment agencies of these terms and to have copies of these regulations available for distribution to advertisers upon request.

Section 7. The use of language including but not limited to "black," "Negro," "colored," "white," "restricted," "interracial," "segregated," "Christian," "Jewish," "men," "women," "boy," "gal," "young," "under 40," or any other word, term phrase or expression which tends to influence, persuade or dissuade, encourage or discourage, attract or repel, any person or persons because of race, color, religion, national origin, sex, or age between forty (40) and sixty-five (65) shall be considered discriminatory advertising in violation of KRS 344.080.

Section 8. Nothing contained in this regulation shall be deemed to prohibit the Kentucky commission from including in any of its orders against any respondent employer, labor organization, licensing agency, or employment agency a provision requiring said respondent to include in any advertisement or notice regarding any employment or licensing opportunity the term "equal opportunity," or any substantially similar term. Nor shall this regulation be deemed to prohibit persons from voluntarily using the term "equal opportunity," or any substantially similar term in any notice or advertisement.

Section 9. The Kentucky Commission on Human Rights will follow the above guidelines in determining whether or not a general advertisement or advertising practice violates KRS Chapter 344.

PAUL OBERST, Chairman
Kentucky Commission on Human Rights

ADOPTED: November 8, 1974
RECEIVED BY LRC: November 14, 1974 at 2:31 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Director, Kentucky Commission on Human Rights, 828 Capital Plaza Tower, Frankfort, Kentucky 40601.

SECRETARY TO THE CABINET
Commission on Human Rights
(104 KAR 1:050)

RELATES TO: KRS Chapter 344
PURSUANT TO: KRS 344.190, 13.082

SUPERSEDES: HR-5

NECESSITY AND FUNCTION: Pursuant to KRS 344.020 which states the purpose of the chapter to provide for execution within Kentucky of the various federal civil rights acts and KRS 344.190, this regulation adopts the guidelines on religious discrimination, the guidelines on sex discrimination, and the guidelines on employment testing of the Equal Employment Opportunity Commission. This regulation is designed to give Kentucky employers and employees the benefit of consistent interpretations of law by the Kentucky commission, EEOC, and the federal courts.

Section 1. The guidelines on religious discrimination promulgated by the United States Equal Employment Opportunity Commission as last amended on July 10, 1967, which appears in 29 C.F.R. 1605, are adopted and incorporated by reference.

Section 2. The guidelines on sex discrimination promulgated by the United States Equal Employment Opportunity Commission as last amended on April 4, 1974, which appears in 29 C.F.R. 1604.5 on Job Opportunities Advertising which subject is already covered by 104 KAR 1:040, are adopted and incorporated by reference.

Section 3. The guidelines on employment testing issued by the United States Equal Opportunity Commission, as last amended on July 21, 1970, which appears in 29 C.F.R. 1607, are adopted and incorporated by reference.

PAUL OBERST, Chairman
Kentucky Commission on Human Rights

ADOPTED: November 8, 1974
RECEIVED BY LRC: November 14, 1974 at 2:32 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Director, Kentucky Commission on Human Rights, 828 Capital Plaza Tower, Frankfort, Kentucky 40601.

SECRETARY TO THE CABINET
Commission on Human Rights
(104 KAR 1:060)

RELATES TO: KRS Chapter 344
PURSUANT TO: KRS 344.250(2), 13.082
SUPERSEDES: HR-6

NECESSITY AND FUNCTION: As provided in KRS 344.250, this regulation requires the owner of apartment buildings with twenty-five (25) or more units to keep records and to file annual reports with the commission indicating their racial occupancy and application experience. The information obtained is used by the commission in accordance with KRS 344.190(10) and (11) to provide technical assistance to the real estate industry to facilitate compliance with the fair housing provisions.

Section 1. Definitions. As used in this rule: (1) "Multiple apartment development" means one (1) or more buildings situated at the same general location or operated under one (1) management or with ownership in common; or more than one (1) building situated in various locations within the Commonwealth of Kentucky if they are under the same management or are owned by the same person or persons. It shall include, but not be limited to, an apartment building or buildings, garden apartments, and condominiums.

(2) "Racial designation" means white, black and other.

(3) "Leaseholder" means the party with whom the landlord has contracted for the apartment rental, whether the contracting be orally or in writing. It shall include any subletee or assignee of the contract where notice or approval of subleting or assignment is a condition of the contract.

(4) "Apartment turnover" means a change of leaseholder or purchaser.

(5) "Applicant" means any persons who appear before either the owner, leasor, agent or other principal or operator of a multiple apartment development for the purpose of renting or purchasing an apartment.

(6) Unless the context indicates to the contrary all terms used in this rule have the same meaning as in KRS Chapter 344.

Section 2. Persons required to report. The owner or owners of every multiple apartment development which have twenty-five (25) units or more shall file an annual report with the Kentucky Commission on Human Rights concerning the racial composition of the multiple dwelling and factors affecting the composition. Where there are multiple owners of a development and the development is operated as one (1) unit, a consolidated report may be filed. Managers, agents, or others responsible for management of apartments may file for owners. Reports for condominiums shall be filed by the development manager.

Section 3. Form and contents of report. The report shall be submitted on forms approved by the Kentucky Commission on Human Rights and said forms shall be available at any office of the Kentucky Commission on Human Rights. The report shall include information concerning:

(1) Racial designation of applications for apartments;

(2) Racial designation of apartment leaseholder or purchasers;

(3) Apartment turnovers;

(4) Apartment recruiting techniques;

(5) Rental rates and apartment sizes; and

(6) Such other information as the Kentucky Commission on Human Rights determines is necessary to effectuate the purposes of KRS Chapter 344.

Section 4. Filing of reports. One (1) copy of the report shall be filed with the Kentucky Commission on Human Rights by July 1, of each year. The report shall include information for a period of one (1) year prior to the month of filing. The commission may waive submission of all or a part of a report for hardship situations as provided in KRS 344.250(4). The executive director of the commission may in his descretion postpone or waive the filing of any report required under this rule.

Section 5. Maintenance of records. The owner or owners of the multiple apartment development shall be responsible to have maintained at all times the following records:

(1) Racial designation of each applicant for an apartment;

(2) Racial designation of each new apartment leaseholder or purchaser;

(3) Racial designation of each new leaseholder or purchaser;

(4) Apartment rental or sales recruiting techniques employed; and

(5) Such other records as the Kentucky Commission on Human Rights determines is necessary to effectuate the purpose of KRS Chapter 344. Such records shall be kept on file for a period of two (2) years and shall be produced for inspection upon request of the Kentucky Commission on Human Rights during business hours.

Section 6. Violation. If a person fails to make, keep or preserve records or make reports in accordance with this regulation, the circuit court for the county in which such person resides, or has his principal place of business, upon application of this commission in accordance with KRS 344.250(7), may issue an order requiring compliance.

PAUL OBERST, Chairman
Kentucky Commission on Human Rights

ADOPTED: November 8, 1974
RECEIVED BY LRC: November 14, 1974 at 2:32 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Director, Kentucky Commission on Human Rights, 828 Capital Plaza Tower, Franfort, Kentucky 40601.

EXECUTIVE DEPARTMENT FOR FINANCE AND ADMINISTRATION
State Board of Business Schools
(201 KAR 4:020)

RELATES TO: KRS 331.010, 331.040(3)(7), 331.050(4)
PURSUANT TO: KRS 13.082, 331.010, 331.040
SUPERSEDES: BS-10
NECESSITY AND FUNCTION: KRS Chapter 331 prescribes that a State Board of Business Schools will define a business school, protect students, schools, and the community from unfair practices, and be an instrument to carry out rules and regulations for the benefit of its students, its schools, and members of the public. The board's function is to license qualified schools, agents, and staff, issue rules and regulations, hear complaints made by schools, agents, students, or members of the public and generally to make a continuing effort to upgrade the field or proprietary education in Kentucky.

Section 1. All schools licensed by the board shall provide a surety bond in the amount of $20,000 or such equivalent security as the board may accept. Each agent shall provide a surety bond in the amount of $5,000 or such equivalent security as the board may accept. Bond shall be issued by a surety authorized to do business in this state, and the bond shall be filed with the State Board of Business Schools. The term of the bond shall be continuous, but shall be subject to cancellation by the surety. The bond shall provide blanket coverage for the acts of all persons engaged as agents of the school without naming them and without regard to the time they are engaged during the term of the bond. Such bond shall provide for the indemnification of the person suffering damage or loss as a result of:
(1) Any fraud or misrepresentation used in procuring his enrollment; or
(2) The failure on the part of the school to carry out and comply with each and every contract made and entered into by said school, acting by and through its officers, agents, or representatives with any student or enrollee; or
(3) The inability of the student to complete the course of courses because the school ceased operation.

Section 2. The surety bond shall cover the period of the license except when the surety is released in a manner provided by the board. The surety may terminate upon sixty (60) days written notice to the principal and to the State Board of Business Schools, but the liability of the surety will continue during the sixty (60) day period.

Section 3. The license shall be suspended when a school or agent is no longer covered by a surety bond or other equivalent security as required by this regulation.

VIRGIL F. YOUNG, Executive Secretary
APPROVED: JAMES O. KING, Commissioner
ADOPTED: November 12, 1974
RECEIVED BY LRC: November 14, 1974 at 10:21 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Virgil F. Young, Executive Secretary, State Board of Business Schools, 462 East High Street, Lexington, Kentucky 40508.

EXECUTIVE DEPARTMENT FOR FINANCE AND ADMINISTRATION
State Board of Business Schools
(201 KAR 4:030)

RELATES TO: KRS 331.010, 331.040(3)(7)
PURSUANT TO: KRS 13.082, 331.010, 331.040
NECESSITY AND FUNCTION: KRS Chapter 331 prescribes that a State Board of Business Schools will define a business school, protect schools, students, and the community from unfair practices, and be an instrument to carry out rules and regulations for the benefit of its students, its schools, and members of the public. The board's function is to license qualified schools, agents, and staff, issue rules and regulations, hear complaints made by schools, agents, students, or members of the public, and generally to make a continuing effort to upgrade the field of proprietary education in Kentucky.

Section 1. Schools licensed by this board have the authority to offer a subject, group of subjects, or a course of study preparing students for gainful employment in a recognized career or occupation.

VIRGIL F. YOUNG, Executive Secretary
APPROVED: JAMES O. KING, Commissioner
ADOPTED: November 12, 1974
RECEIVED BY LRC: November 14, 1974 at 10:21 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Virgil F. Young, Executive Secretary, State Board of Business Schools, 462 East High Street, Lexington, Kentucky 40508.

EXECUTIVE DEPARTMENT FOR FINANCE AND ADMINISTRATION
State Board of Business Schools
(201 KAR 4:040)

RELATES TO: KRS 331.010, 331.040(3)(7), 331.050(3)
PURSUANT TO: KRS 13.082, 331.010, 331.040, 331.050(3)
NECESSITY AND FUNCTION: KRS Chapter 331 prescribes that a State Board of Business Schools will define a business school, protect students, schools, and the community from unfair practices, and be an instrument to carry out rules and regulations for the benefit of its students, its schools, and members of the public. The board's function is to license qualified schools, agents, and staff, issue rules and regulations, hear complaints made by schools, agents, or members of the community, and generally to make a continuing effort to upgrade the field of proprietary education in Kentucky.

Section 1. Each school licensed by this board may be required to undergo an on-site inspection by a team assigned by the State Board of Business Schools. Prior to each inspection, the school shall complete an application which shall include, but not be limited to:
(1) The title or name of the school, together with ownership and controlling officers thereof.
(2) Place(s) where the courses are offered.
(3) A copy of the school's catalog in published form certified as true and correct in content and representing fairly the school and its offerings.
(4) A specific listing of equipment available for inspection in each specific field and course.
(5) The educational and teaching qualifications of instructors and supervisors (full-time and part-time).
(6) Conditions under which students shall receive a refund in part or in full of fees paid.
(7) A financial statement in a form acceptable to, or designated by this board, indicating financial stability.
(8) Current advertising utilized by the school.
(9) The form of certificates, diplomas, and degrees offered.

VIRGIL F. YOUNG, Executive Secretary
APPROVED: JAMES O. KING, Commissioner
ADOPTED: November 12, 1974
RECEIVED BY LRC: November 14, 1974 at 10:20 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Virgil F. Young, Executive Secretary, State Board of Business Schools, 462 East High Street, Lexington, Kentucky 40508.

EXECUTIVE DEPARTMENT FOR FINANCE AND ADMINISTRATION
State Board of Business Schools
(201 KAR 4:060)

RELATES TO: KRS 331.010, 331.040(3)(7)
PURSUANT TO: KRS 13.082, 331.010, 331.040
NECESSITY AND FUNCTION: KRS Chapter 331 prescribes that a State Board of Business Schools will define a business school, protect students, schools, and the community from unfair practices, and be an instrument to carry out rules and regulations adopted by this board for the benefit of its students, it schools, and members of the public. The function of the board is to license qualified schools, agents, and staff, issue rules and regulations, hear complaints, made by schools, agents, students, or members of the public, and generally to make a continuing effort to upgrade the field of proprietary education in Kentucky.

Section 1. The refund policy as set by the board shall meet the following requirements:
(1) Each school must furnish the board with a definite and established policy for the settlement of cases where students request discontinuance of training.
(2) The board may accept the refund policy of any school if the policy of the school is identical or more liberal than the refund policy of any accrediting agency, recognized by the U.S. Office of Education for that type of school.
(3) If a school desires to use a refund policy that is different from the policy outlined above, it must be individually approved by the board.

VIRGIL F. YOUNG, Executive Secretary
APPROVED: JAMES O. KING, Commissioner
ADOPTED: November 12, 1974
RECEIVED BY LRC: November 14, 1974 at 10:20 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Virgil F. Young, Executive Secretary, State Board of Business Schools, 462 East High Street, Lexington, Kentucky 40508.

EXECUTIVE DEPARTMENT FOR FINANCE AND ADMINISTRATION
Kentucky Board for Licensing Hearing Aid Dealers
(201 KAR 7:052)

RELATES TO: KRS 334.150
PURSUANT TO: KRS 13.082
SUPERSEDES: HAD-5,g.
NECESSITY AND FUNCTION: Provide calendar for election of officers.

Section 1. There will be an annual meeting of the board during the month of January each year, at which time election of officers will be held.

WARREN R. CROSSETT, Chairman
APPROVED: JAMES O. KING, Commissioner
ADOPTED: August 1, 1974
RECEIVED BY LRC: November 15, 1974 at 10:10 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Chairman Charles Stone, Kentucky Board for Licensing Hearing Aid Dealers, 213 Broadway, Paducah, Kentucky 42001.

EXECUTIVE DEPARTMENT FOR FINANCE AND ADMINISTRATION
Kentucky Board for Licensing Hearing Aid Dealers
(201 KAR 7:122)

RELATES TO: KRS 334.090
PURSUANT TO: KRS 13.082 and 334.150
NECESSITY AND FUNCTION: Clarification of need to complete training requirements prior to examination and responsibility of supervisor for continuous training.

Section 1. Each trainee and supervisor must certify to the board that the trainee has successfully completed all three stages of the training requirement in an uninterrupted six (6) month period under the same supervisor.

WARREN R. CROSSETT, Chairman
APPROVED: JAMES O. KING, Commissioner
ADOPTED: September 7, 1974
RECEIVED BY LRC: November 15, 1974 at 10:12 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Charles Stone, Kentucky Board for Licensing Hearing Aid Dealers, 213 Broadway, Paducah, Kentucky 42001.

EXECUTIVE DEPARTMENT FOR FINANCE AND ADMINISTRATION
Kentucky Board for Licensing Hearing Aid Dealers
(201 KAR 7:125)

RELATES TO: KRS 334.090
PURSUANT TO: KRS 13.082 and 334.150
NECESSITY AND FUNCTION: Clarification of need for trainee to take first available examination. This allows trainee to obtain license and sell aids. A trainee cannot sell aids even though he has completed his training until he passes the examination and is licensed.

Section 1. The trainee must take the first qualifying examination scheduled by the board after completing successfully the training requirement.

WARREN R. CROSSETT, Chairman
APPROVED: JAMES O. KING, Commissioner
ADOPTED: September 7, 1974
RECEIVED BY LRC: November 15, 1974 at 10:12 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Chairman Charles Stone, Kentucky Board for Licensing Hearing Aid Dealers, 213 Broadway, Paducah, Kentucky 42001.

DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(301 KAR 1:082)

RELATES TO: 150.025, 150.175, 150.360
PURSUANT TO: KRS 13.082
SUPERSEDES: KFWR-F-98
NECESSITY AND FUNCTION: It is necessary to regulate the season, time, bag limit, and manner of taking for bullfrogs in order to utilize and conserve the population thereof.

Section 1. The open season on bullfrogs shall be 12:01 a.m. May 15 through 12:00 p.m. October 31. The daily creel limit shall be fifteen (15) bullfrogs with a possession limit of thirty (30) bullfrogs after two (2) or more days frogging. Each day for taking bullfrogs shall begin at 12 o'clock noon and end at 12 o'clock noon the following day. No person may have more than fifteen (15) bullfrogs in his possession while in the field.

Section 2. Bullfrogs may be taken with gig, by hand, bow and arrow, firearm or hook and line from public and private waters, and an appropriate license is required. If bullfrogs are taken with firearm or bow and arrow, a hunting license is required. If bullfrogs are taken by use of a pole and line, a fishing license is required. If bullfrogs are taken with hand or by use of a gig, then either a fishing license or a hunting license is valid.

Section 3. It shall be illegal to possess a gig, of any type, while in a boat, or on, or in a stream, or lake, between November 1 and the last day of February of the following year, both dates inclusive.

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

ARNOLD L. MITCHELL, Commissioner

CHARLES F. HAYWOOD, Secretary

ADOPTED: November 12, 1974
RECEIVED BY LRC: November 12, 1974 at 3:20 p.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 1:085)

RELATES TO: KRS 150.025, 150.110, 150.170, 150.175, 150.190, 150.510, 150.520
PURSUANT TO: KRS 13.082
SUPERSEDES: KFWR-F-124
NECESSITY AND FUNCTION: It is necessary to regulate the manner of taking mussels because of the value and susceptibility of these animals for over-harvest.

Section 1. Conforming with KRS 150.170, all persons who actively participate in the harvesting of mussels or mussel shells, whether or not they own or possess the gear being used in the harvest of mussels or mussel shells, must have an appropriate license. No boat can be used in musseling operations without a licensed operator in the boat.

Section 2. The mussel season is open year around in all streams and on all beds, except in the area directly below Kentucky Dam downstream to river mile 17.8 in the Tennessee River which is hereby established as a sanctuary and musseling is prohibited. Musseling is also prohibited within the stream segments 200 yards below any dam on any stream and within the area on the Cumberland River below Barkley Dam downstream to U.S. 62 bridge.

Section 3. Musseling is permitted during the hours of 6 a.m. to 6 p.m. daily. Musseling is prohibited during any other time.

Section 4. No mussel, except the Asiatic clam, Corbicula sp., the greatest measurement of which is less than two and one-half (2-1/2) inches may be taken. All mussels, except Corbicula, smaller than two and one-half (2-1/2) inches, as measured at their greatest lengths or width, must be returned immediately to the water from which taken.

Section 5. No more than two (2) sixteen (16) foot brails may be operated from any one (1) boat; more than two (2) brails may be carried aboard the boat.

Section 6. Mussel brail hooks when used must be constructed of wire of at least fourteen (14) guage; smaller wire is prohibited.

Section 7. Prongs of hooks must be no longer than one and one-fourth (1-1/4) inch in size as measured from the tip of point to place on hook where the prongs are joined.

Section 8. The harvesting of mussels by mechanical dredges, forking and/or divers is prohibited except in areas designated by the commissioner as disaster areas in which all live mussels have been killed and only dead shells remain. In these areas, the commissioner may issue a special permit allowing the use of various methods of harvest.

Section 9. Mussels may be taken by hand by licensed fishermen for their own use in fishing. Fishermen may not have more than 100 mussels in possession. There is no limit on the Asiatic clam.

Section 10. No mussels designated as endangered may be taken after such designation has been made by regulation and duly advertised.

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

ARNOLD L. MITCHELL, Commissioner

CHARLES F. HAYWOOD, Secretary

ADOPTED: November 12, 1974
RECEIVED BY LRC: November 12, 1974 at 3:19 p.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 1:115)

RELATES TO: KRS 150.280, 150.290, 150.485, 150.450
PURSUANT TO: KRS 13.082
SUPERSEDES: KFWR-F-119
NECESSITY AND FUNCTION: It is necessary to regulate the manner of propagation in order to protect the native wild species from exploitation, disease, and parasites.

Section 1. A permit shall be required for the propagation of all species of fish, frogs, crayfish, or aquatic organisms.

Section 2. All applications for fishes, frogs, crayfish, or aquatic organisms propagation farm permits shall be made on standard forms available from any conservation officer and shall carry the approval of such officer. Upon notification by the applicant, the conservation officer shall inspect the applicant's ponds and other equipment needed for propagation and enter all information on the standard fishery propagation application form.

Section 3. Should there be need for a seine larger than ten (10) feet, such may be authorized in the propagation permit. Each seine authorized shall have a metal tag attached which states the name of the owner, size of seine and date permit expires; this tag to be furnished by the Department of Fish and Wildlife Resources. No seine authorized under the permit shall be used except in waters designated in the application.

Section 4. A propagator may obtain under the supervision of a conservation officer 1500 minnows or crayfish for brood stock, one (1) time only, from public waters for stocking each surface acre of water to be used for propagation of the particular species.

Section 5. The propagation farm or permit holder shall allow inspection by a conservation officer at any time. Should the officer find a violation of any of the terms of this regulation, such shall be cause for the immediate cancellation of said permit. Fees paid for permits will not be refunded in case permit is revoked. Permits shall remain in force until December 31 of the year of issue.

Section 6. Any or all species of fish, frogs, crayfish, or aquatic organisms propagated may be sold at the discretion of the permit holder at all times and the permit form itself shall be proof that these species were legally obtained.

Section 7. When any propagation permit expires and is not renewed, or when any permit is revoked for a violation of the game and fish codes, all equipment that is approved under this permit that is illegal without the permit shall be confiscated.

Section 8. The fee for a fish propagation permit shall be five dollars ($5).

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

ARNOLD L. MITCHELL, Commissioner

CHARLES P. HAYWOOD, Secretary

ADOPTED: November 12, 1974
RECEIVED BY LRC: November 12, 1974 at 3:20 p.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 1:130)

RELATES TO: KRS 150.010, 150.025, 150.170, 150.175, 150.340, 150.450
PURSUANT TO: KRS 13.082
SUPERSEDES: KFWR-F-LB1-1
NECESSITY AND FUNCTION: It is necessary to regulate the manner of taking of bait species in order to utilize and conserve the populations.

Section 1. (1) Live bait includes minnows, shad, herring, crayfish, salamanders, all frogs, except bullfrogs, all tadpoles, native lampreys and aquatic invertebrate organisms.
(2) "Minnows" means all fishes under six (6) inches in length, except basses (largemouth, smallmouth or Kentucky), rock bass or goggle-eye, trout, crappie, walleye, sauger, pikes, white bass, yellow bass, rockfish (saltwater striped bass) and muskellunge.

Section 2. Live bait may be taken with the following gear for personal use only, and any other species except live bait taken with this gear must be returned immediately to the water:
(1) Seines: Maximum size 10 ft. long, 4 ft. deep, 1/4 in. mesh, legal statewide; maximum size 30 ft. long, 6 ft. deep, 1/4 in. mesh, legal in Ohio and Mississippi Rivers only.
(2) Minnow Traps: Maximum size 3 ft. long, 18 in. diameter, 1 in. openings for catching, legal statewide.
(3) Dip Nets: Maximum size 3 ft. diameter, legal in Ohio, Tennessee and Mississippi Rivers, Cumberland River below Barkley Dam, Kentucky River below Lock #14, and all lakes over 1,000 acres.
(4) Sport Cast Nets: Maximum size 9 ft. diameter, 3/8 in. mesh, legal in Tennessee, Ohio and Mississippi Rivers, Cumberland River below Barkley Dam, Kentucky River below Lock #14, and all lakes over 1,000 acres.

Section 3. Sport fishermen may have in their possession no more than:
(1) 500 minnows,
(2) 500 crayfish,
(3) 100 salamanders (spring lizards),
(4) 100 frogs (other than Bullfrogs),
(5) 100 tadpoles,
(6) 100 native lampreys (mud eels),
(7) 500 aquatic invertebrates,
(8) Any number of shad or herring.

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

ARNOLD L. MITCHELL, Commissioner
APPROVED: CHARLES P. HAYWOOD, Secretary
ADOPTED: November 12, 1974
RECEIVED BY LRC: November 12, 1974 at 3:18 p.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 1:150)

RELATES TO: KRS 150.010, 150.025, 150.120, 150.170, 150.175, 150.445, 150.450
PURSUANT TO: KRS 13.082
SUPERSEDES: KFWR-F-CF1-4
NECESSITY AND FUNCTION: It is necessary to regulate the places where commercial fishing is permitted to insure that the size of the water and fish population is large enough for this type of activity to better utilize and conserve those populations concerned.

Section 1. Appropriately licensed commercial fishermen may fish with commercial fishing gear in the following designated waters subject to requirements as set forth in regulations designating commercial gear and manner of taking. Commercial gear may be used in no other waters of the Commonwealth except under specific permit.

Section 2. Commercial Fishing Waters. (1) Streams and rivers:
(a) Barren River from its Junction with Green River upstream to Greencastle, Kentucky;
(b) Big Sandy River from its Junction with Ohio River upstream to Junction of Levisa and Tug Forks;
(c) Levisa Fork of Big Sandy River from its Junction with Big Sandy upstream to 200 yards below mouth of Paint Creek in Johnson County;
(d) Cumberland River from its Junction with Ohio River upstream to Highway #62 Bridge;
(e) Eagle Creek from its Junction with Kentucky River upstream to Highway #22 Bridge in Grant County;
(f) Green River from its Junction with Ohio River upstream to 200 yards below Lock and Dam #6;
(g) Highland Creek from its Junction with Ohio River upstream to Rock Ford Bridge in Union County;
(h) Kentucky River from its Junction with Ohio River upstream to Junction of North and Middle Forks of Kentucky River;
(i) North Fork of Kentucky River from its Junction with Kentucky River upstream to Mouth of Walker's Creek;
(j) South Fork of Kentucky River from its Junction with Kentucky River upstream to Mouth of Cow Creek;
(k) Licking River from its Junction with Ohio River upstream to a point directly adjacent to Highway #111 on the Bath and Fleming Counties line;
(l) Mississippi River from the Mouth of Ohio River upstream to the Tennessee line;
(m) Mud River from its Junction with Green River upstream to McGee Landing in Butler and Muhlenberg Counties;
(n) Ohio River from its Junction with Mississippi River upstream to West Virginia Line;
(o) Pond River from its Junction with Green River upstream to Highway #62 Bridge;
(p) Panther Creek from its Junction with Green River upstream to Head of Creek;
(q) Rough River from its Junction with Green River upstream to Highway #69 Bridge at Dundee, Kentucky;
(r) Tennessee River from its Junction with Ohio River upstream to River Mile 17.8;
(s) Tradewater from its Junction with Ohio River upstream to Highway #132 Bridge.

(2) Lakes. The following lakes are open to commercial fishing, but not above the first shoal or riffle upstream from the impounded or standing pool of the lake in any main or tributary stream:
(a) Barkley;
(b) Cumberland;
(c) Herrington;
(d) Kentucky;
(e) Nolin;
(f) Rough River;
(g) Overflow lakes in Hickman, Fulton, Carlisle and Ballard Counties;
(h) Dewey Lake is open uplake to a point directly beneath the concrete structure known as Buffalo Bridge which crosses the lake.

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

ARNOLD L. MITCHELL, Commissioner
ADOPTED: November 12, 1974
APPROVED: CHARLES P. HAYWOOD, Secretary
RECEIVED BY LRC: November 12, 1974 at 3:18 p.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 1:155)

RELATES TO: KRS 150.010, 150.025, 150.120, 150.170, 150.175, 150.445, 150.450
PURSUANT TO: KRS 13.082
SUPERSEDES: KFWR-F-CP3-2
NECESSITY AND FUNCTION: It is necessary to regulate the manner of taking of rough fishes for commercial use, to avoid conflicts with other interests, and to utilize and conserve the populations of those fishes.

Section 1. The handling or transportation on or in water of any type of commercial gear is illegal during hours of darkness. Gear may remain in the water at all times, but activities of the commercial fisherman must be confined to daylight hours, except in that portion of the Cumberland River between Highway 62 bridge and its junction with the Ohio River.

Section 2. Each person fishing with any commercial gear, or assisting another in the doing of such acts, must have in possession an appropriate commercial fishing license and an appropriate tag or tags attached to each piece of gear in such a manner and in such a position that enforcement officers can, without undue difficulty, determine whether or not the fishing gear in use or possession has been properly licensed, and the operator of the gear at the time of inspection is complying with statute and regulation.

Section 3. No person shall have in possession any seines, nets or commercial trotlines, except that gear permitted in a specific permit from this department, or that gear legal under live bait regulations, unless he has procured an appropriate commercial fishing license and legal tags for each piece of gear and has such tag or tags attached to the gear at all times. This section shall not be construed to require manufacturers, retail or wholesale dealers, who have such gear in their possession for sale only, to obtain licenses or tags.

Section 4. Commercial gear shall not be fished within fifty (50) yards of any outlet or inlet of an overflow lake, within fifty (50) yards of the mouth of any stream except the mouth of the Ohio River, or within 200 yards below any dam on any stream.

Section 5. Any fish, taken by commercial gear, designated as sport fish, largemouth bass, smallmouth bass, Kentucky bass, coosa bass, rock bass, white crappie, black crappie, walleye, sauger, rockfish (striped bass), white bass, yellow bass, musky, northern pike, chain pickerel and trout must be returned immediately to the waters from which taken, without undue injury. All other species are designated as rough fish and may be taken as herein described, except those species which are designated as endangered species by regulation and duly advertised.

Section 6. Each piece of commercial gear in use in any of the waters of the Commonwealth must be tended every twenty-four (24) hours and all fish caught by that piece of gear removed. In addition, each piece of commercial gear must be removed from the waters in which it has been fished at the termination of its use in fishing. Failure to comply shall constitute a violation and sufficient grounds for the enforcement officer to confiscate the gear not tended or abandoned. Also, the owner of the gear shall be charged with violating this regulation and penalized according to KRS 150.990.

Section 7. The use of commercial nets of any type is illegal in the bays and inlets and for a distance of 200 yards from the mouth of each bay or inlet in Kentucky and Barkley lakes.

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

ARNOLD L. MITCHELL, Commissioner

CHARLES F. HAYWOOD, Secretary

ADOPTED: November 12, 1974
RECEIVED BY LRC: November 12, 1974 at 3:19 p.m.

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

DEPARTMENT OF TRANSPORTATION
Bureau of Vehicle Regulation
(601 KAR 10:010)

RELATES TO: KRS 189.651, 189.653
PURSUANT TO: KRS 13.082, 174.080, 189.653, 189.657
SUPERSEDES: PSfty-MVI-2
NECESSITY AND FUNCTION: KRS 189.653 provides for an annual fee, set by regulation and not to exceed $25, for inspection station permits, for an official station to have competent personnel to conduct inspections, and for the revocation of the permit of any station not properly conducted. KRS 189.651(4), moreover, provides that no permit can be assigned or transferred or used at any location other than that designated. This regulation sets the permit fee for an official inspection station; and it also provides for renewal procedures, procedures to facilitate record keeping when a station wishes to go out of business or has its permit revoked, re-application when a permit holder desires to change locations, and for suspension of the right of a station's authorized personnel to conduct inspections when a station goes out of business, relocates, or has its permit suspended or revoked.

Section 1. The fee which shall accompany the application for an official inspection station permit, payable to the department, shall be $25 annually.

Section 2. Each inspection station permit shall be renewed each year at least thirty (30) days in advance of the inspection year, designated herein as the calendar year and commencing on January 1 of each year. A renewal certificate shall be issued each year and shall be posted conspicuously in the inspection station in full view of the public.

Section 3. Whenever any official inspection station goes out of business, the licensee shall notify the department in writing of this intent and immediately return all forms, certificates, signs furnished by the department, and any other official materials relating to inspections to the department. A final accounting of all forms, certificates, monies, and other items shall be included immediately upon termination of business by the station-licensee.

Section 4. Whenever any official inspection station desires to move to another location, the station-licensee shall notify the department in advance. The department shall cancel the station license until the new premises have been inspected and new approval granted. In any such case, re-application is required and a new annual fee shall accompany the application. Moving to a new location shall be treated as setting up a new inspection station and the department shall follow the same procedure as required for a new station.

Section 5. Whenever a station license is revoked or suspended by the department, the station-licensee shall immediately turn over all forms, certificates, signs, and other items that pertain to the operation of the inspection station, except that which is the personal property of the station. No inspections may be performed after the station-licensee is officially notified of such revocation or suspension.

Section 6. In all cases where an official inspection station goes out of business, changes location, or has its permit revoked or suspended, all mechanic-inspectors assigned to such stations shall surrender their certificates to the department and shall not perform any inspection until re-assigned.

O. B. ARNOLD, Commissioner

ADOPTED: October 14, 1974
APPROVED: BILLY PAXTON, Secretary
RECEIVED BY LRC: November 20, 1974 at 4:08 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Bureau of Vehicle Regulation, Department of Transportation, State Office Building, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Vehicle Regulation
(601 KAR 10:020)

RELATES TO: KRS 189.653
PURSUANT TO: KRS 13.082, 174.080, 189.657
SUPERSEDES: PSfty-MVI-12
NECESSITY AND FUNCTION: KRS 189.653(2) provides that no official inspection station permit shall be granted until the department is satisfied that the station has competent personnel to make safety inspections. This regulation implements that duty by providing for the approval of and record keeping on all mechanic-safety inspectors to be used by an official station to conduct inspections. KRS 189.653(3), moreover, requires inspections to be made of official stations, and this regulation provides for withdrawal of the right to conduct inspections if an inspector can no longer be considered competent.

Section 1. Every applicant for an official inspection station permit shall furnish to the department the name of each mechanic he intends to use in the inspection program and such other pertinent information, including each mechanic's experience, as the department requests. The department shall then screen each prospective safety inspector for competency and for admittance to any training programs conducted by the department.

Section 2. Every mechanic approved as a safety inspector shall be issued a permit and given an inspector number so as to identify to which official station he is assigned.

Section 3. A safety inspection shall be performed only by a duly approved safety inspector assigned to the official station where the inspection is performed.

Section 4. The department must be notified of changes in the status of assigned safety inspectors. (1) If the station-licensee removes a safety inspector from that status or if the inspector terminates his employment, either by dismissal or resignation, the station-licensee shall immediately notify the department and return the inspector's permit.

(2) If a safety inspector changes employment and wishes to be re-assigned to another official inspection station, he must obtain the approval of the department before performing any inspections at his new official station.

Section 5. A safety inspector's right to perform inspections is subject to suspension or revocation for specific acts in violation of KRS 189.641 to 189.647, 189.651 to 189.659 and 189.730 or these regulations or specific acts constituting improper conduct in regard to the safety inspection program.

O. B. ARNOLD, Commissioner

ADOPTED: October 14, 1974
APPROVED: BILLY PAXTON, Secretary
RECEIVED BY LRC: November 20, 1974 at 4:08 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Bureau of Vehicle Regulation, Department of Transportation, State Office Building, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Vehicle Regulation
(601 KAR 10:030)

RELATES TO: KRS 189.647
PURSUANT TO: KRS 13.082, 174.080, 189.647, 189.657
SUPERSEDES: PSfty MVI-1
NECESSITY AND FUNCTION: KRS 189.647(1) provides for record keeping by inspection stations on all vehicle inspections done. This regulation implements that requirement so that the department can best scrutinize the inspections being performed by the various permit-holding stations.

Section 1. All inspections performed by every official inspection station shall be recorded in full upon the inspection report furnished by the department for that purpose. One (1) copy shall be given to the vehicle owner, one (1) copy shall be retained by the inspection station for one (1) year in its files, and one (1) copy shall be returned to the department at the end of each week.

O. B. ARNOLD, Commissioner

ADOPTED: October 14, 1974
APPROVED: BILLY PAXTON, Secretary
RECEIVED BY LRC: November 20, 1974 at 4:11 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Bureau of Vehicle Regulation, Department of Transportation, State Office Building, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Vehicle Regulation
(601 KAR 10:040)

RELATES TO: KRS 189.647, 189.651, 189.655
PURSUANT TO: KRS 13.082, 174.080, 189.657
SUPERSEDES: PSfty-MVI-4
NECESSITY AND FUNCTION: KRS 189.647(2) provides that the fee a station charges for an inspection shall not exceed $2.50. KRS 189.651(4) requires permits to be posted in conspicuous places and KRS 189.655(2) requires the department to regulate the signs and posters to be used in the inspection program. This regulation establishes the manner in which permits are to be displayed, sets forth the types of signs to be displayed, and sets a uniform fee to be charged for inspections.

Section 1. Permits of official inspection stations and those of their safety inspectors shall be framed under glass and kept in full view in a prominent place in the station, in the area of the inspection lane insofar as practical.

Section 2. An official inspection station shall be responsible for the display of various signs. (1) Every official inspection station shall furnish and post in a conspicuous place in full view of the public a sign designating the fee charged for inspections, which shall be $2.

(2) Every inspection station shall furnish and post a sign bearing the words "Official Inspection Lane" in the immediate area where approval has been granted for location of the lane. Every such lane so approved shall be so marked and designated. The sign shall be at least 1' X 3' in size, with the lettering to be at least 3" in height, and must be posted in full view of the public.

(3) Every inspection station shall be identified by an official inspection station sign, furnished by the department. It shall be provided as a means of identification of the official station and shall remain the property of the department. The sign shall be posted outside the station in full view of the public and may not be altered without written permission from the department.

O. B. ARNOLD, Commissioner

ADOPTED: October 14, 1974
APPROVED: BILLY PAXTON, Secretary
RECEIVED BY LRC: November 20, 1974 at 4:10 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Bureau of Vehicle Regulation, Department of Transportation, State Office Building, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Vehicle Regulation
(601 KAR 10:050)

RELATES TO: KRS 189.645, 189.647
PURSUANT TO: KRS 13.082, 174.080, 189.657
SUPERSEDES: PSfty-MVI-5 and PSfty-MVI-11
NECESSITY AND FUNCTION: KRS 189.645(1) requires annual inspection of Kentucky-registered motor vehicles; KRS 189.645(5) allows the department to accept certificates of inspection issued in other states; and KRS 189.647(1) requires the department to furnish certificates of inspection. This regulation interprets the annual inspection requirement so that Kentucky-registered vehicles must bear a Kentucky certificate from the time of initial registration and so that the department can issue the certificates of inspection in a workable format.

Section 1. Every new vehicle subject to annual inspection sold in Kentucky and every new or used vehicle subject to such requirement brought into Kentucky from without the state shall be inspected at the time it is permanently registered in Kentucky.

Section 2. Every vehicle, after its initial inspection, shall be re-inspected the same month of the succeeding year as it was inspected and passed. A certificate of inspection shall be good for one (1) year from the last day of the month in which it is issued.

Section 3. Any vehicle may be inspected prior to the schedule provided in Section 2.

O. B. ARNOLD, Commissioner

ADOPTED: October 14, 1974
APPROVED: BILLY PAXTON, Secretary
RECEIVED BY LRC: November 20, 1974 at 4:09 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Bureau of Vehicle Regulation, Department of Transportation, State Office Building, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Vehicle Regulation
(601 KAR 10:060)

RELATES TO: KRS 189.645
PURSUANT TO: KRS 13.082, 174.080, 189.645, 189.657
SUPERSEDES: PSfty-MVI-3
NECESSITY AND FUNCTION: KRS 189.645(5) gives the department the function of providing for situations where Kentucky vehicles will be out of the state during their inspection month. This regulation implements that function so as to allow for an extension of time while assuring that vehicles will be inspected as closely on schedule as possible.

Section 1. Vehicles that are temporarily out of the state and not conveniently available for inspection during the scheduled month must be presented for inspection immediately upon return to the state. The owner may drive such vehicle into the state upon return to his destination or home, but after that trip, the vehicle must be inspected and approval obtained before further use of the vehicle upon the public streets and highways.

Section 2. Whenever any vehicle will be out of the state for a period of more than two (2) months past the scheduled deadline for inspection, written permission shall be requested from the department by the owner in order to extend the schedule for inspection. Such permission may be granted by the department whenever a hardship can be determined, but the agreement of the time involved shall be fixed and the extension, including the time limit, shall be issued in writing.

O. B. ARNOLD, Commissioner

ADOPTED: October 14, 1974
APPROVED: BILLY PAXTON, Secretary
RECEIVED BY LRC: November 20, 1974 at 4:07 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Bureau of Vehicle Regulation, Department of Transportation, State Office Building, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Vehicle Regulation
(601 KAR 10:070)

RELATES TO: KRS 189.659
PURSUANT TO: KRS 13.082, 174.080, 189.657
SUPERSEDES: PSfty-MVI-6 and PSfty-MVI-8
NECESSITY AND FUNCTION: KRS 189.659 allows the department to issue inspection permits to operators of commercial vehicles with approved safety programs and grants certain exemptions from the effect of the inspection statutes. This regulation implements that statute so that the department can get needed information relative to approving such safety programs and to recognizing such exemptions.

Section 1. Any operator of commercial vehicles who carries out a safety program and who desires an inspection permit

shall seek approval of his program by the following method: (1) Submission of his permit request and the grounds for the request in writing to the department;

(2) Submission of the safety program schedule to be followed, specifying the nature, scope, and frequency of the safety inspections;

(3) Submission of any information that might assist the department in making a determination regarding the permit request;

(4) Submission of a statement that, if a permit is granted, any change in the procedures, standards or frequency of the approved safety inspections will be filed with the department sufficiently in advance of such proposed change, in every case not less than sixty (60) days prior to such change. No such change will be permitted until and unless the request has been approved in writing by the department.

Section 2. The requirements of Section 1 shall not pertain to the exemption for vehicles operated in interstate commerce and subject to the safety regulations adopted by the Interstate Commerce Commission (ICC); and such exemption shall be recognized by means of an official cab card issued by the department and identifying a vehicle as being authorized to operate in interstate commerce, a driver daily log book, as required by ICC regulations, and/or the M.C. number painted on the vehicle. The requirements of Section 1, insofar as appropriate for getting information needed to recognize the exemption, shall pertain to operators of vehicles claimed to be exempt because of being subject by regulation to stricter and more frequent safety inspections as provided for in KRS 189.659(2).

O. B. ARNOLD, Commissioner
ADOPTED: October 14, 1974
APPROVED: BILLY PAXTON, Secretary
RECEIVED BY LRC: November 20, 1974 at 4:10 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Bureau of Vehicle Regulation, Department of Transportation, State Office Building, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Vehicle Regulation
(601 KAR 10:080)

RELATES TO: KRS 189.653
PURSUANT TO: KRS 13.082, 174.080, 189.657
SUPERSEDES: PSfty-MVI-9
NECESSITY AND FUNCTION: KRS 189.653(1) provides for the department to issue permits to official inspection stations. This regulation interprets that duty so as to provide for the issuance of permits to qualified applicants with sufficient vehicles of their own to warrant that they be given permits restricted to inspecting their vehicles. This prevents the obvious inconvenience of a person, company, etc. with a fleet of vehicles having to get them inspected at a regular public station.

Section 1. Whenever an applicant for an official inspection station permit is properly equipped, has competent personnel, and is in all other ways qualified to conduct an official station, and said applicant has registered or titled in its name or leases or maintains under a written agreement of one year's duration 15 or more vehicles which are subject to inspection, the department may issue a private (fleet) inspection station permit. Such a permit shall restrict the holder thereof to the inspection of vehicles actually owned, leased, or maintained by the fleet station; and vehicles borrowed or loaned temporarily, when no lease agreement exists, shall not be inspected by a fleet station.

Section 2. All requirements which apply to other official inspection stations, except the display of signs and permits when they relate to the public, shall apply to fleet stations.

O. B. ARNOLD, Commissioner
ADOPTED: October 14, 1974
APPROVED: BILLY PAXTON, Secretary
RECEIVED BY LRC: November 20, 1974 at 4:09 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Bureau of Vehicle Regulation, Department of Transportation, State Office Building, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Vehicle Regulation
(601 KAR 20:010)

RELATES TO: KRS 190.061
PURSUANT TO: KRS 13.082, 174.080, 190.061
SUPERSEDES: DMT-ADL-9-01
NECESSITY AND FUNCTION: KRS 190.061 allows the dealers' board to set by regulation its time of meeting. This regulation implements that function.

Section 1. The Motor Vehicle Dealers Board shall meet at least once per month. It may meet on such other occasions as it deems necessary for the transaction of its business. Meetings shall be called by its chairman or by the commissioner. For all such meetings, each member shall be given at least three (3) days' notice prior to the date set for a meeting. A member may waive this notice requirement. All meetings of the board shall be in the office of the bureau at Frankfort, Kentucky, or such other place as the chairman or commissioner may designate. Such meetings shall start at 10:00 a.m., on such time as prevails at the place of meeting on that date, or at such time as the chairman or commissioner may designate. The board shall not meet a total of over twenty (20) days per year.

O. B. ARNOLD, Commissioner
ADOPTED: October 17, 1974
APPROVED: ROBERT Y. BLAKEMAN, Chairman
Motor Vehicle Dealers Board
APPROVED: BILLY PAXTON, Secretary
RECEIVED BY LRC: November 20, 1974 at 4:13 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Bureau of Vehicle Regulation, Department of Transportation, State Office Building, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Vehicle Regulation
(601 KAR 20:030)

RELATES TO: KRS 190.030
PURSUANT TO: KRS 13.082, 174.080, 190.020, 190.073
SUPERSEDES: DMT-ADL-2-13
NECESSITY AND FUNCTION: KRS 190.030 provides for a speedy disposition of an application for a dealer's license and for the bureau to require information pertinent to a decision. This regulation allows the Bureau to assure that incomplete applications will not remain pending for an inordinate amount of time.

Section 1. Failure to file a full and complete application, all supporting materials in accordance with these rules and regulations, and any pertinent information requested by the bureau within ninety (90) days of the submitting of the initial application may result in the refusal by the bureau to refund any fees paid.

Section 2. If the applicant fails to file within one (1) year from the date of receipt of the initial application a full and complete application along with all supporting materials and fees, in accordance with these rules and regulations, then the bureau may summarily dismiss the application for lack of prosecution.

O. B. ARNOLD, Commissioner
ADOPTED: October 17, 1974
APPROVED: ROBERT Y. BLAKEMAN, Chairman
Motor Vehicle Dealers Board
APPROVED: BILLY PAXTON, Secretary
RECEIVED BY LRC: November 20, 1974 at 4:13 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Bureau of Vehicle Regulation, Department of Transportation, State Office Building, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Vehicle Regulation
(601 KAR 20:040)

RELATES TO: KRS 190.030, 190.037, 190.040
PURSUANT TO: KRS 13.082, 174.080, 190.020, 190.073
SUPERSEDES: DMT-ADL-2-11
NECESSITY AND FUNCTION: KRS 190.030 and 190.040 provide for the granting or denying of licenses under KRS Chapter 190 and for an opportunity for a hearing of review upon denial; and KRS 190.037 allows the bureau to issue temporary permits. This regulation provides for a preliminary investigation of relevant types of applicants and requires issuance of temporary permits to qualified applicants, and it also requires notice that the denial of an application is subject to review.

Section 1. Upon receipt in proper form of an application for any license authorized under KRS Chapter 190, other than a license for a motor vehicle salesman, manufacturer, factory branch or factory representative, the bureau shall initiate an investigation to determine whether the applicant has complied with all statutory and regulatory requirements pertaining to the issuance of such license, and if this investigation reveals such compliance, the bureau shall grant a temporary permit to the applicant to engage in the business for which the license is sought. Upon the granting of a temporary permit, the applicant shall be advised that his application is still subject to final approval or denial. If the investigation reveals that the applicant has not complied with the statutory and regulatory requirements, he shall be notified of the denial of his application, in compliance with KRS 190.040(2), and shall be notified of his right to a hearing before the bureau.

O. B. ARNOLD, Commissioner
ADOPTED: October 17, 1974
APPROVED: ROBERT Y. BLAKEMAN, Chairman
Motor Vehicle Dealers Board
APPROVED: BILLY PAXTON, Secretary
RECEIVED BY LRC: November 20, 1974 at 4:12 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Bureau of Vehicle Regulation, Department of Transportation, State Office Building, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Vehicle Regulation
(601 KAR 20:050)

RELATES TO: KRS 190.030
PURSUANT TO: KRS 13.082, 174.080, 190.020, 190.073
SUPERSEDES: DMT-ADL-13
NECESSITY AND FUNCTION: KRS 190.030(6)(a) allows a motor vehicle dealer to get a supplemental license for each used car lot not immediately adjacent to the office of a branch for one dollar ($1). This regulation interprets that statutory language so as to determine when a supplemental license will be issued and when a regular one will be required.

Section 1. The supplemental license provided for in KRS 190.030(6)(a) shall be issued only for the operation of a used car lot that is actually supplemental to the operation of a principal lot. A used car lot located more 1,000 feet from the principal lot shall not be considered as being supplemental to the principal lot. The distance 1,000 feet as used herein does not mean the straight line distance between the two (2) lots, but does mean the distance a pedestrian would travel normally in walking from the principal lot to the supplemental lot.

O. B. ARNOLD, Commissioner

ADOPTED: October 17, 1974
APPROVED: ROBERT Y. BLAKEMAN, Chairman
Motor Vehicle Dealers Board
APPROVED: BILLY PAXTON, Secretary
RECEIVED BY LRC: November 20, 1974 at 4:11 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Bureau of Vehicle Regulation, Department of Transportation, State Office Building, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Vehicle Regulation
(601 KAR 20:070)

RELATES TO: KRS 190.035
PURSUANT TO: KRS 13.082, 174.080, 190.020, 190.073
SUPERSEDES: DMT-ADL-2-10A, DMT-ADL-3-10, and DMT-8-10
NECESSITY AND FUNCTION: KRS 190.035 requires a dealer to display a sign easily visible from the street identifying his business, allows a dealer to conduct more than one (1) business in a building if he has suitable space and adequate facilities for his dealer business, and requires a dealer to have a lot and building of suitable character and adequate facilities to properly conduct the business of a motor vehicle dealer. This regulation interprets and implements those requirements.

Section 1. A motor vehicle dealer shall display on his premises a sign identifying his business, the letters on which shall be not less than nine (9) inches in height.

Section 2. An applicant for a dealer's license conducting more than one (1) business at his proposed location shall be scrutinized in regard to his fitness and ability properly to conduct the business of a dealer. (1) If an applicant for motor vehicle dealer's license will be conducting more than one (1) business at the proposed location, and if the primary business being conducted will not be that of a motor vehicle dealer, then the applicant must have the following:

(a) A sign in compliance with Section 1 clearly indicating he is a motor vehicle dealer in addition to any other signs he may have.
(b) A display area used for the parking and showing of vehicles for sale that is separate, apart and exclusively used for the display and parking of vehicles for sale.
(c) Sufficient office space to carry on the business of a dealer. There need be no separate walled enclosure for the conduct of the dealer business, but there must be an area which is used to conduct the dealer business which is in addition to the area necessary to the conduct of the primary business.

(2) If an applicant for a motor vehicles dealer's license conducts an automobile salvage or junk business on the same premises, he must have a current license from the Department of Transportation as a junkyard operator and must be in compliance with all state regulations regarding junkyard operation. The applicant must have an area for the display of vehicles for sale and an office area separate and apart from the area where junk cars or parts are stored or situated.

(3) If an applicant for a motor vehicle dealer's license conducts a garage for the repair or rebuilding of wrecked or disabled vehicles, such applicant must have an area for the display of vehicles for sale and an office separate and apart from the area where such repairs are conducted.

Section 3. Not more than one (1) licensed dealer shall operate from a single place of business at one (1) time.

O. B. ARNOLD, Commissioner

ADOPTED: October 17, 1974
APPROVED: ROBERT Y. BLAKEMAN,
Motor Vehicle Dealers Board
APPROVED: BILLY PAXTON, Secretary
RECEIVED BY LRC: November 20, 1974 at 4:07 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Bureau of Vehicle Regulation, Department of Transportation, State Office Building, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Vehicle Regulation
(601 KAR 20:080)

RELATES TO: KRS 190.030
PURSUANT TO: KRS 13.082, 174.080, 190.020, 190.073
SUPERSEDES: DMT-ADL-4-10
NECESSITY AND FUNCTION: KRS 190.030 requires a licensee to specify his place of business and procedures to follow when a change in place of business occurs. This regulation implements those requirements so the bureau's record keeping can be efficient and accurate.

Section 1. A dealer shall immediately notify the bureau of any change in business location, and if the change involves a move within the same municipality, he shall deliver his license to the bureau to be indorsed in accordance with KRS 190.030(7). Upon any other change in business location, the bureau shall issue a new license, and if the current license is surrendered to the bureau prior to the issuance of a new license, no additional fee for the new license shall be required for that license year, but, otherwise, the regular fee shall apply to the new license.

O. B. ARNOLD, Commissioner

ADOPTED: October 17, 1974
APPROVED: ROBERT Y. BLAKEMAN, Chairman
Motor Vehicle Dealers Board
APPROVED: BILLY PAXTON, Secretary
RECEIVED BY LRC: November 20, 1974 at 4:12 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Bureau of Vehicle Regulation, Department of Transportation, State Office Building, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Vehicle Regulation
(601 KAR 20:090)

RELATES TO: KRS 190.030
PURSUANT TO: KRS 13.082, 174.080, 190.020, 190.073
SUPERSEDES: DMT-ADL-6
NECESSITY AND FUNCTION: KRS 190.030 requires each separate entity acting as a dealer to have a license and to make needed reports to the bureau. This regulation implements those requirements, particularly when a sale or transfer occurs, so the bureau can be on notice of who actually holds licenses.

Section 1. Any change of ownership of a motor vehicle dealership or of an automobile franchise held by a licensed dealer or wholesaler shall be reported to the Bureau within ten (10) days of the change.

Section 2. Upon the sale or transfer of a motor vehicle dealership, the new owner shall secure a new dealer's license unless he was a partner in the business prior to its sale or transfer and will conduct said business as an individual proprietorship. If the licensee is a partnership and part or all of the business is sold to another person, a new license is required. If the licensee is a corporation, the sale of the controlling stock in the corporation must be reported to the bureau in accordance with Section 1, but no new license is required to operate.

O. B. ARNOLD, Commissioner

ADOPTED: October 17, 1974
APPROVED: ROBERT Y. BLAKEMAN, Chairman
Motor Vehicle Dealers Board
APPROVED: BILLY PAXTON, Secretary
RECEIVED BY LRC: November 20, 1974 at 4:11 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Bureau of Vehicle Regulation, Department of Transportation, State Office Building, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Vehicle Regulation
(601 KAR 20:110)

RELATES TO: KRS 190.010, 190.030, 190.035
PURSUANT TO: KRS 13.082, 174.080, 190.020, 190.073
SUPERSEDES: DMT-ADL-5-10 and DMT-ADL-15
NECESSITY AND FUNCTION: KRS 190.010, 190.030, and 190.035 define what a motor vehicle salesman is and his relationship to his dealer-employer. KRS 190.030 also provides for salesmen's licenses to indicate for whom they work and to be displayed on request. This regulation interprets

the dealer-salesman relationship and implements statutory requirements to facilitate accurate record keeping by the bureau and to help put the public on notice of with whom they are dealing.

Section 1. A properly licensed motor vehicle salesman employed by a properly licensed dealer may, in that capacity, sell or exchange or attempt to sell or exchange a motor vehicle anywhere in Kentucky, subject to the following limitations: (1) Such activity must be pursuant to the salesman's employment by the licensed dealer whose name appears on his license.

(2) Once a sale or exchange is negotiated by a salesman, he may not offer, transfer or assign it to any other dealer or salesman.

(3) A salesman may not establish a place of business separate from the location for which his employer holds a dealer's license.

(4) A salesman may not hold himself out to be a dealer or conduct himself in any manner which might lead a prospective purchaser to believe he is a dealer.

(5) A salesman may not advertise his sales activity at any specific location other than that for which his employer holds a dealer's license.

Section 2. In case of a change of employment, a salesman shall return his license to the bureau with a notification from the licensed dealer by whom he will be employed, and his license will be amended and returned to him showing the name and address of the new employer and a copy thereof will be sent to the new employer. Before any copy of the license may be secured by any new employer, the salesman's license must be amended to show the name and address of the new employer.

Section 3. A licensed dealer shall display in a conspicuous place in his office a copy of the license of each salesman employed by him. Upon the termination of employment of a salesman, the dealer shall within ten (10) days notify the bureau of such termination and return to the bureau the dealer's copy of the salesman's license.

O. B. ARNOLD, Commissioner

ADOPTED: October 17, 1974
APPROVED: ROBERT Y. BLAKEMAN, Chairman
Motor Vehicle Dealers Board
APPROVED: BILLY PAXTON, Secretary
RECEIVED BY LRC: November 20, 1974 at 4:09 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Bureau of Vehicle Regulation, Department of Transportation, State Office Building, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Vehicle Regulation
(601 KAR 20:130)

RELATES TO: KRS 190.040
PURSUANT TO: KRS 13.082, 174.080, 190.020, 190.073
SUPERSEDES: DMT-ADL-12
NECESSITY AND FUNCTION: KRS 190.040(1)(i) provides that a license can be denied, suspended or revoked for false or misleading advertising. This regulation interprets that proscription against false and misleading advertising to include the use of the name of a make of automobile in the trade name of a used car dealer, a practice which would very likely mislead a consumer into thinking that he could buy a new car from that dealer.

Section 1. No dealer other than a franchised new car dealer may use the name of any make of automobile as a part of his trade name. The adoption of such a trade name or advertising in this manner shall be deemed to constitute false and misleading advertising within the meaning of KRS 190.040(1)(i) and shall be considered grounds for the denial, suspension or revocation of a license.

O. B. ARNOLD, Commissioner

ADOPTED: October 17, 1974
APPROVED: ROBERT Y. BLAKEMAN, Chairman
Motor Vehicle Dealers Board
APPROVED: BILLY PAXTON, Secretary
RECEIVED BY LRC: November 20, 1974 at 4:12 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Bureau of Vehicle Regulation, Department of Transportation, State Office Building, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Highways
(603 KAR 6:024)

RELATES TO: KRS 189.222
PURSUANT TO: KRS 13.082
SUPERSEDES: HIWA-TC-KY 70
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 70 are as follows:

KY 70	AAA	From:	Jct. US 60 at Smithland
		To:	Extending east 1.8 miles
		From:	Jct. US 641 N.E. of Mexico in Crittenden County
		To:	Extending S.W. to Frances
		From:	Jct. US 431 Truck Route in Central City
		To:	West Corporate Limits of Central City
		From:	Jct. US 41 (Madisonville By-pass)
		To:	Extending east to Jct. with KY 85, 1.8 miles S.W. of Anton
	AA	From:	Jct. US 68 at Campbellsville
		To:	Jct. KY 1798 at Acton
		From:	Jct. US 231, 1.0 mile northwest of Aberdeen (Butler County)
		To:	Extending east to KY 79
	A	From:	Jct. KY 109 at Beulah
		To:	Jct. US 41 (Madisonville By-pass)
		From:	Jct. KY 85, east of Madisonville
		To:	West Corporate Limits of Central City
		From:	Jct. US 431 at Browder, south of Drakesboro
		To:	Jct. US 231 in Morgantown
		From:	Jct. KY 79, northeast of Aberdeen
		To:	Jct. KY 259, north of Brownsville
		From:	Taylor County Line via Liberty
		To:	Jct. with US 27 near Eubank
	B	All other portions not herein classified.	

BILLY PAXTON, Secretary

ADOPTED: October 1, 1974
RECEIVED BY LRC: October 24, 1974 at 11:08 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 6:025)

RELATES TO: KRS 189.222
PURSUANT TO: KRS 13.082
SUPERSEDES: HIWA-TC-KY 85
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 85 are as follows:

KY 85	AAA	From:	Jct. KY 70, east of Madisonville
		To:	Extending northeast 1.8 miles to Anton
	AA	From:	Antón
		To:	Jct. KY 81, south of Sacramento
	B	All other portions not herein classified.	

BILLY PAXTON, Secretary

ADOPTED: October 2, 1974
RECEIVED BY LRC: October 24, 1974 at 11:08 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 6:026)

RELATES TO: KRS 189.222
PURSUANT TO: KRS 13.082
SUPERSEDES: HIWA-TC-KY 181
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 181 are as follows:

KY 181	AAA	From:	Jct. US 68 in Elkton
		To:	Jct. US 79 at Tiny Town
	A	From:	Jct. US 68 in Elkton
		To:	Jct. US 62 in Greenville
	B	All other portions not herein classified.	

BILLY PAXTON, Secretary

ADOPTED: October 2, 1974
RECEIVED BY LRC: October 24, 1974 at 11:09 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 6:028)

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 59 is as follows:

KY 59 A From: Jct. KY 10 in Vanceburg
To: Jct. KY 2, 2.7 miles N.W. of Olive Hill

BILLY PAXTON, Secretary

ADOPTED: October 14, 1974
RECEIVED BY LRC: October 28, 1974 at 1:47 p.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 6:029)

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 classfications of highways and fix a different maximum for each classification.

Section 1. The classification for KY 111 is as follows:

KY 111 A From: Jct. KY 32, 2.4 miles south of Flemingsbury
To: Jct. US 60 at Owingsville

BILLY PAXTON, Secretary

ADOPTED: October 14, 1974
RECEIVED BY LRC: October 28, 1974 at 1:46 p.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 6:030)

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 classifications for KY 292 are as follows:

KY 292 AA From: Jct. US 119 at South Williamson
To: Extending north to Jct. with Ky 468

B All other portions not herein classified.

BILLY PAXTON, Secretary

ADOPTED: October 14, 1974
RECEIVED BY LRC: October 28, 1974 at 1:47 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Director, Division of Maintenance, Bureau of Highways, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Registry of Election Finance
(801 KAR 1:005)

RELATES TO: KRS 121.160
PURSUANT TO: KRS 121.120(3) and 13.082
SUPERSEDES: REF-1-1.
NECESSITY AND FUNCTION: KRS 121.120(3) requires the Registry to "adopt such regulations, official forms and perform such duties as are necessary to implement the provisions of KRS 121.015 and KRS 121.100 to 121.200." The Registry shall "develop prescribed forms for the making of the required reports", KRS 121.120(3)a.

Section 1. "Candidate's Appointment of Campaign Treasurer" form is amended as attached.

(801 KAR 1:005)

KENTUCKY REGISTRY OF ELECTION FINANCE
310 West Liberty, Room 714, Louisville, Kentucky 40202
Telephone (502) 584-6381

CANDIDATE'S APPOINTMENT OF CAMPAIGN TREASURER*

Complete and file duplicate copies at the time and with the office where candidate files.**

Name of Candidate _____ Political Party _____
(Mr.,Mrs.,Ms. or Miss)(Please type or print)
Address of Candidate _____
(Street and Number or Rural Route)
_____, _____, _____ Telephone _____
(City) (County) (Zip Code)
Office sought by Candidate _____
(If District, please indicate)
Office with which Declaration filed** _____
(Secretary of State or County Clerk)
Campaign Treasurer Designated _____
(Mr., Mrs., Ms. or Miss) (Name of Treasurer)
Address of Treasurer _____
(Street and Number or Rural Route)
_____, _____, _____ Telephone _____
(City) (County) (Zip Code)
Primary (Principal) Campaign Depository Bank _____
(Name of Bank)
_____
(Address of Bank)
Secondary Depository Bank(s)(If Applicable)
(Attach additional sheets, if necessary)
(KRS 121.220)
_____
(Name of Bank)
_____
(Address of Bank)
_____
(Name of Bank)
_____
(Address of Bank)

I hereby certify the foregoing is my act and deed this ____ day of _____, _____
(Month) (Year)

_____
(Signature of Candidate)

I hereby accept the above appointment:

_____
(Signature of Campaign Treasurer)

* Candidate may act as own Treasurer. (KRS 121.160)

** To: Secretary of State or County Court Clerk. Attach original to candidate's filing papers and send duplicate copy immediately to the Registry.

Revised 1974 (See Reverse Side)

(801 KAR 1:005) (To be printed on back of form)

KRS 121.160. Campaign Treasurers.

(1) Each candidate shall designate a campaign treasurer at the time and with the office he files as a candidate on a duplicate form prescribed and furnished by the registry and until this requirement is met his qualifications as a candidate shall not be complete and his filing papers shall not be accepted by the office with which he is required to file. The candidate may appoint himself or any registered voter in Kentucky as his campaign treasurer. The office with which the candidate is required to file shall immediately forward to the registry the duplicate copy of the completed form designating the candidate's campaign treasurer and shall attach the original to the candidate's filing papers. The office with which the candidate files shall promptly notify the registry when a candidate withdraws.

(2) The duties of a campaign treasurer shall be to:

(a) Designate a depository bank for all campaign funds;

(b) Keep detailed and exact accounts of contributions in general and by name, address and occupation where the contribution exceeds $100;

(c) Make or authorize all expenditures on behalf of a candidate. Any expenditure in excess of $50 shall disclose the name, address and occupation of every person or firm to whom made, and shall list the date and amount of such expenditure and keep a receipted bill for each;

(d) Maintain all receipted bills and accounts required by this section for a period of four (4) years from the date he files his last report under KRS 121.180(2)(a).

(3) A candidate may remove a campaign treasurer at any time.

(4) In case of the death, resignation or removal of a campaign treasurer the candidate shall within three (3) days after receiving notice thereof by certified or registered mail appoint a successor and shall file his name and address with the registry. The candidate shall be disqualified if he fails to meet this filing requirement.

(5) A person may serve as campaign treasurer for more than one candidate, but all reports must be made separately for each individual candidate.

(6) The candidate may pay a campaign treasurer a salary for his services which shall be considered a campaign expense and must comply with the reporting provisions of KRS 121.015 and 121.100 to 121.200.

KRS 121.220(1) Campaign Depositories.

Each candidate and each committee is required to designate one primary depository and they may also designate secondary depositories.

ROBERT L. SLOSS, Chairman

ADOPTED: November 8, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: November 20, 1974 at 12:45 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Executive Director, Registry of Election Finance, 310 W. Liberty Street, Louisville, Kentucky 40202.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
(803 KAR 1:005)

RELATES TO: KRS 337.275, 337.285
PURSUANT TO: KRS 337.295, 13.082
NECESSITY AND FUNCTION: KRS 337.010(2)(c) defines employe as any person employed by or suffered or permitted to work for an employer. The function of this regulation is to discuss what constitutes an employe-employer relation. This will guide the department in carrying out its responsibilities under the law.

Section 1. The employment relation. (1) In order for the Act to apply there must be an employe-employer relation. This requires an employer and employe and the act or condition of employment.

(2) The courts have made it clear that the employment relation under similar laws, such as the Fair Labor Standards Act, is broader than the traditional common law concept of the master and servant relation. The difference between the employment relation in the Act and the common law employment relation arises from the language that employe includes to suffer or permit to work. The courts have indicated that, while "to permit" requires a more positive action than "to suffer," both terms imply much less positive action than required by the common law. Mere knowledge by an employer of work done for him by another is sufficient to create the employment relation under the Act.

(3) The fact that no compensation is paid and the worker is dependent entirely on tips does not negate his status as an employe, if other indications of employment are present. If the worker is paid, the fact that he is paid by the piece or by the job or on a percentage or commission basis rather than on the basis of work time does not preclude a determination that he is, on the facts, an employe with respect to the work for which such compensation is received.

Section 2. Religious, charitable, and nonprofit organizations, schools, institutions, volunteer workers, members of religious orders. (1) There is no special provision in the Act which precludes an employe-employer relationship between a religious, charitable or nonprofit organization and persons who perform work for such an organization. For example, a church or religious order may operate an establishment to print books, magazines, or other publications and employ a regular staff who do this work as a means of livelihood. In such cases there is an employe-employer relationship for purposes of the Act.

(2) Persons such as nuns, monks, lay brothers, deacons, and other members of religious orders who serve pursuant to their religious obligations in the schools, hospitals, and other institutions operated by their church or religious order shall not be considered to be employes.

(3) In many cases the nature of religious, charitable and similar nonprofit organizations, and schools is such that individuals may volunteer their services in one capacity or another, usually on a part-time basis, not as employes or in contemplation of pay for the services rendered. For example, members of civic organizations may help out in a sheltered workshop; women's organizations may send members or students into hospitals or nursing homes to provide certain personal services for the sick or the elderly; mothers may assist in a school library or cafeteria as a public duty to maintain effective services for their children; or fathers may drive a school bus to carry a football team or band on a trip. Similarly, individuals may volunteer to perform such tasks as driving vehicles or folding bandages for the Red Cross, working with retarded or handicapped children or disadvantaged youth, helping in youth programs as camp counselors, scoutmasters, den mothers, providing child care assistance for needy working mothers, soliciting contributions or participating in benefit programs for such organizations and volunteering other services needed to carry out their charitable, educational, or religious programs. The fact that services are performed under such circumstances is not sufficient to create an employe-employer relationship.

(4) Although the volunteer services (as described in subsection (3) above) are not considered to create an employment relationship, the organizations for which they are performed will generally also have employes performing compensated service whose employment is subject to the standards of the Act. Where such an employment relationship exists, the Act requires payment of not less than the statutory wages for all hours worked in the workweek. However, there are certain circumstances where such an employe may donate services as a volunteer, and the time so spent is not considered to be compensable work. For example, an office employe of a hospital may volunteer to sit with a sick child or elderly person during off-duty hours as an act of charity. The department will not consider that an employe-employer relationship exists with respect to such volunteer time between the establishment and the volunteer or between the volunteer and the person for whose benefit the service is performed. Another example is where an office employe of a church may volunteer to perform non-clerical services in the church preschool during off duty time from his or her office work as an act of charity. Conversely, a preschool employe may volunteer to perform work in some other facets of the church's operations without an employment relationship being formed with respect to such volunteer time. However, this does not mean that a regular office employe of a charitable organization can volunteer services on an uncompensated basis to handle correspondence in connection with a special fund drive or to handle other work arising from exigencies of the operations conducted by the employer.

(5) As part of their overall educational program, public or private schools and institutions of higher learning may permit or require students to engage in activities in connection with dramatics, student publications, glee clubs, bands, choirs, debating teams, radio stations, intramural and interscholastic athletics and other similar endeavors. Activities of students in such programs, conducted primarily for the benefit of the participants as a part of the educational opportunities provided to the students by the school or institution, are not work of the kind contemplated by the Act and do not result in an employe-employer relationship between the student and the school or institution. Also, the fact that a student may receive a minimal payment for participation in such activities would not necessarily create an employment relationship.

(6) The sole fact that a student helps in a school lunchroom or cafeteria for periods of thirty (30) minutes to an hour per day in exchange for his lunch is not considered to be sufficient to make him an employe of the school, regardless of whether he performs such work regularly or only on occasion. Also, the fact that students on occasion do some cleaning up of a classroom, serve the school as junior patrol officers or perform minor clerical work in the school office or library for periods of an hour per day or less without contemplation of compensation or in exchange for a meal or for a cash amount reasonably equivalent to the price of a meal or, when a cash amount is given in addition to a meal, it is only a nominal sum, is not considered sufficient in itself to characterize the students as employes of the school. A similar policy will be followed where the students perform such tasks less frequently but for a full day, with an arrangement to perform their academic work for such days at other times. For example, the students may perform full-day cafeteria service four (4) times per year. In such cases, the time devoted to cafeteria work in the aggregate would be less than if the student worked an hour per day. However, if there are other indicia of employment or the students normally devote more than an hour each day or equivalent to such work, the circumstances of the arrangement will be reviewed carefully.

(7) In the ordinary case, tasks performed as a normal part of a program of treatment, rehabilitation, or vocational training in the following situations will not be considered as work of a kind requiring a hospital patient, school student, or institutional inmate to be considered an employe of the hospital, school, or institution conducting the program, for purposes of the Act:

(a) Tasks performed by patients in tuberculosis, mental, and other hospitals who are required to remain under treatment for extended periods, when performed as a part of a program of activities which have been determined, as a matter of medical judgment, to have therapeutic or rehabilitative value in the treatment of such patients;

(b) Tasks performed by individuals committed to training schools of a correctional nature, which are required as a part of the correctional program of the institution as a part of the institutional discipline and by reason of their value in providing needed therapy, rehabilitation, or training to help prepare the inmate to become self-sustaining in a lawful occupation after release; and

(c) Tasks performed by students in special schools for the mentally handicapped or retarded or for the blind or deaf, as a part of the school program to provide activities of therapeutic value for the handicapped student and to develop such capacities as he may have for doing useful things and, to the extent possible, qualifying for gainful employment.

(8) The department will not assert that patients under treatment in mental hospitals are employes when placed in another establishment, such as a private employer, for the performance of tasks which are a continuation of a program of activities which have been determined, as a matter of medical judgment, to have therapeutic or rehabilitative value in their treatment. A different situation prevails, however, after an employment relationship clearly has developed. This shift may occur shortly after the placement or it may occur later. The department will examine the facts of the relationship to determine if an employe-employer relationship exists.

(9) In a program such as described in subsection (8), it is possible that placements may be made with successive employers for short periods of time. It is not expected in the ordinary course that such successive placements will either be very long with a particular employer or that the total time involved with various employers will last for a long period of time. If situations arise where successive placements as part of therapeutic or rehabilitative treatment continue for more than about six (6) months, all the facts of the situations will be closely examined.

(10) The department will not assert that mentally retarded students' initial participation in a school-work program constitute an employment relationship if certain conditions are met. However, after an employment relationship has developed, the provisions of the Act will be applicable. The conditions under which an employment relationship initially will not be asserted are:

(a) The activities are basically educational, are conducted primarily for the benefit of the participants, and comprise one of the facets of the educational opportunities provided to the students. The student may receive some payment for his work in order to have a more realistic work situation, or as an incentive to the student or to insure that the

employer will treat the student as a worker; and

(b) The time in attendance at the school plus the time in attendance at the experience station (either in the school or with an outside employer) does not substantially exceed the time the student would be required to attend school if following a normal academic schedule. Time in excess of one (1) hour beyond the normal school schedule or attendance at the experience station on days when school is not in session would be considered substantial; and

(c) The student does not displace a regular employe or impair the employment opportunities of others by performing work which would otherwise be performed by regular employes who would be employed by the school or an outside employer.

(11) The shift to an employment relationship may occur shortly after the placement or it may occur later. As a general guide, work for a particular employer, either a private employer or the school, after three (3) months will be assumed by the Department to be part of an employment relationship unless the facts indicate that the training situation has not materially changed.

Section 3. Outside work or homework performed by independent contractor. (1) For investigation purposes, it can be assumed that a homeworker is an employe, even though there may be a buying and selling arrangement between the parties.

(2) If the employer asserts his outside work or homework is performed by independent contractors, the following factors will be considered concerning the employe-employer relationship:

(a) Does the employer have the right to control the manner of the performance of the work or the time in which the work is to be done?

(b) Is the employer paying taxes for social security, unemployment, or workmen's compensation insurance?

(c) Has the homeworker ever collected any benefits, such as unemployment or workmen's compensation, because of employment by the employer?

(d) Does the employer furnish the material, or finance directly or indirectly the purchase of the material which the homeworker uses?

(e) When did the practice of buying and selling between the employer and the homeworker begin, and what are the mechanics of the transaction?

(f) Does the homeworker bill the employer for the work done? Are bills of sale prepared? Are sales taxes paid, or are state or local exemptions obtained because of retail purposes? Are payments made in cash or by check?

(g) How does the homeworker's profit under the buying-selling arrangement compare with his or her wages as a homeworker?

(h) Whom does the homeworker consider to be the employer?

(i) Does the homeworker have a license to do business?

(j) What equipment is used, what is its value, and who furnishes it?

Section 4. Test of the employment relation. (1) The principal test for determining whether an employment relation exists is whether the possible employer controls or has the right to control the work to be done by the possible employe to the extent of prescribing how the work shall be performed. Additional considerations are the method of payment and how free the possible employer is to replace the possible employe with another. A determination of the employer-employe relationship cannot be based on isolated factors or upon a single characteristic, but rather upon the circumstances of the whole activity.

(2) The factors which are considered significant, although no single one is regarded as controlling are:

(a) The extent to which the services in question are an integral part of the employer's business;

(b) The amount of the alleged contractor's investment in facilities and equipment;

(c) The alleged contractor's opportunities for profit and loss; and

(d) The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent enterprise.

(3) Where the facts clearly establish that the possible employe is the subordinate party, the relation is one of employment. To determine the amount of control consider:

(a) Whether there are restrictive provisions in the contract between the possible employer and possible employe which require that the work must be satisfactory to the possible employer and detailing, or giving the possible employes the right to detail how the work is to be performed;

(b) Whether the possible employer has control over the business of the person performing work for him, even though the possible employer does not control the particular circumstances of the work;

(c) Whether the contract is for an indefinite period or for a relatively long period;

(d) Whether the possible employer may discharge employes of the alleged independent contractor;

(e) Whether the possible employer may cancel the contract at his discretion, and on how much notice;

(f) Whether the work done by the alleged independent contractor is the same or similar to that done by admitted employes.

(4) Since the determination of whether an employment relation exists depends upon the circumstances of the whole activity, particular factors to be considered are:

(a) Is the alleged independent contractor listed on the payroll with the appropriate tax deductions, or are the payments to him charged to the labor and salary account or selling expense account instead of to the account to which attorney's fees, auditor's fees, and the like are charged?

(b) Must employes of the alleged independent contractor be approved by the possible employer?

(c) Does the possible employer keep the books and prepare the payroll for the possible employe?

(d) Is the alleged independent contractor assigned to a particular territory without freedom of movement outside thereof?

(e) Does the alleged independent contractor have an independent economic or other interest in his work, other than increasing his own pay?

(f) How do the respective tax returns of the parties list the remuneration paid?

(g) If the possible employer has control over the manner in which the work is to be performed, the absence of any or all of the factors will not indicate an absence of the employe-employer relation. However, where the element of control cannot be firmly established, they will help in determining whether the relation is one of employer and employe or of independent contractor.

(5) The following factors are immaterial to the determination of whether the relation is one of employer-employe or of independent contractors:

(a) The state or local government grants a license to the alleged independent contractor;

(b) The measurement, method, or designation of compensation;

(c) The fact that no compensation is paid and the alleged independent contractor must rely entirely on tips;

(d) The place where the work is performed; and

(e) The absence of a formal employment agreement.

(6) (a) An employment relation may exist between the parties to a transaction which is nominally a sale. Thus, house-to-house canvassers who sell at retail the products of a particular company are employes of the company, although their contracts with the company are in the form of dealer contracts under which the company purports to sell its products to them at fixed wholesale prices and to recommend retail prices at which the products should be sold, where the control exercised by the company over the so-called dealers is not substantially different than that exercised by an employer over his outside salesman.

(b) Likewise, an employe is not converted into an independent contractor by virtue of a fictitious sale of the goods produced by him to an employer, so long as the other indications of the employment relation exist. Homeworkers who sell their products to a manufacturer are his employes where the control exercised by him over the homeworkers through his ability to reject or refuse to buy the product is not essentially different from the control ordinarily exercised by a manufacturer over employes performing work for him at home on a piece rate basis.

(7) The subject matter of the employment relation must be work or its equivalent. The essential elements of work are:

(a) Physical or mental exertion (whether burdensome or not);

(b) Controlled or required by the employer; and

(c) Pursued necessarily and primarily for the benefit of the employer and his business.

(d) Once it is determined that one who is reputedly an independent contractor, lessee, partner, or the like, is in fact an employe, then all the employes of the so-called independent contractor engaged in the work for the principal employer likewise become the employes of the principal employer, who must guarantee compliance with the Act. Thus, the one who is responsible will be charged with seeing to compliance with the Act and must keep the records of the employes.

Section 5. Trainees and student-trainees. (1) The Supreme Court has held that the words "to suffer or permit to work, to define employ, do not make all persons employes who, without any express or implied compensation agreement, may work for their own advantage on the premises of another."

(2) Whether trainees or students are employes of an employer under the Act will depend upon all of the circumstances surrounding their activities on the premises of the employer. If all six (6) of the following criteria apply, the trainees or students are not employes within the meaning of the Act:

(a) The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;

(b) The training is for the benefit of the trainees or students;

(c) The trainees or students do not displace regular employes, but work under their close observation;

(d) The employer that provides the training derives no immediate advantage from the activities of the trainees or students, and on occasion his operations may actually be impeded;

(e) The trainees or students are not necessarily entitled to a job at the conclusion of the training period; and

(f) The employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.

GEORGE R. WAGONER, Deputy Commissioner, for
JAMES R. YOCOM, Commissioner of Labor

ADOPTED: November 13, 1974
APPROVED: ELJAH M. HOGGE, Secretary
RECEIVED BY LRC: November 20, 1974 at 12:46 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 1:060)

RELATES TO: KRS 337.285
PURSUANT TO: KRS 337.295, 13.082
SUPERSEDES: LAB 7 and LAB 13

NECESSITY AND FUNCTION: This regulation constitutes the official interpretations of the Department of Labor with respect to the meaning and application of the overtime pay requirements contained in KRS 337.285. It is the function of this regulation to make available in one place the interpretations of these provisions which will guide the Department of Labor in the performance of their duties under the law unless and until they are otherwise directed by authoritative decisions of the courts or conclude, upon re-examination of an interpretation, that it is incorrect.

Section 1. Application of overtime provisions generally. Since there is no absolute limitation in KRS 337.285 on the number of hours that an employe may work in any workweek, he may work as many hours a week as he and his employer see fit, so long as the required overtime compensation is paid him for hours worked in excess of forty (40) hours as prescribed in KRS 337.285. This statute does not require, however, that an employe be paid overtime compensation for hours in excess of eight (8) per day, or for work on Saturdays, Sundays, holidays or regular days of rest. If no more than forty (40) hours are actually worked in the workweek, overtime compensation pursuant to KRS 337.285 need not be paid. Nothing in the statute, however, will relieve an employer of any obligation he may have assumed by contract or of any obligation imposed by other state or federal laws to limit overtime hours of work or to pay premium rates for work in excess of a daily standard or for work on Saturdays, Sundays, holidays, or other periods outside of or in excess of the normal or regular workweek or work day.

Section 2. The workweek as the basis for applying KRS 337.285. If in any workweek an employe is covered by KRS 337.285 and is not exempt from its overtime pay requirements, the employer must total all the hours worked by the employe for him in that workweek, and pay overtime compensation for each hour worked in excess of the forty (40) hours.

Section 3. Each workweek stands alone. The statute takes a single workweek as its standard and does not permit averaging of hours over two or more weeks. Thus, if an employe works thirty (30) hours one week and fifty (50) hours the next, he must receive overtime compensation for the overtime hours worked beyond the applicable maximum in the second week, even though the average number of hours worked in the two weeks is forty (40). This is true regardless of whether the employe works on a standard or swing-shift schedule and regardless of whether he is paid on a daily, weekly, biweekly, monthly, or other basis. The rule is also applicable to pieceworkers and employes paid on a commission basis. It is therefore necessary to determine the hours worked and the compensation earned by pieceworkers and commission employes on a weekly basis.

Section 4. Determining the workweek. An employe's workweek is a fixed and regularly recurring period of 168 hours, seven (7) consecutive twenty-four (24) hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of the day. For purposes of computing pay due under this statute, a single workweek may be established for a plant or other establishment as a whole or different workweeks may be established for different employes or groups of employes. Once the beginning time of an employe's workweek is established, it remains fixed regardless of the schedule of hours worked by him. The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade the overtime requirements of the statute. The proper method of computing overtime pay in a period in which a change in the time of commencement of the workweek is made, is explained in Section 12 of this regulation.

Section 5. General standard for overtime pay. The general overtime pay standard in KRS 337.285 requires that overtime must be compensated at a rate not less than one and one-half (1 1/2) times the hourly rate at which the employe is employed. The hourly rate of pay at which the employe is employed may in no event be less than the statutory minimum. If the employe's hourly rate of pay is higher than the statutory minimum, his overtime compensation must be computed at a rate not less than one and one-half (1 1/2) times such higher rate.

Section 6. The overtime compensation is an hourly rate. The overtime compensation under KRS 337.285 is based on the rate per hour. The statute does not require employers to compensate employes on an hourly rate basis; their earnings may be determined on a piece-rate, salary, commission, or other basis, but in such case the overtime compensation due to employes must be computed on the basis of the hourly rate derived therefrom and, therefore, it is necessary to compute the hourly rate of such employes during each workweek. The hourly rate of pay of an employe 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. The following section gives some examples of the proper method of determining the regular hourly rate of pay in particular instances.

Section 7. (1) Hourly rate employe. If the employe is employed solely on the basis of a single hourly rate the overtime work he must be paid, in addition to his straight-time hourly earnings, a sum determined by multiplying one-half (1/2) the hourly rate by the number of hours worked in excess of forty (40) in the workweek. If the employe receives, in addition to his earnings at the hourly rate, an additional production bonus, the overtime must be paid on the total hourly rate received by the employe. This would be computed by adding the additional pay to the regular hourly rate and dividing by the total number of hours worked.

(2) Pieceworker. When an employe is employed on a piece-rate basis, his hourly rate of pay is computed by adding together his total earnings for the workweek from piece rates and all other sources. This sum is then divided by the number of hours worked in the week for which compensation was paid, to yield the pieceworker's hourly rate for that week. For his overtime work the pieceworker is entitled to be paid, in addition to his total weekly earnings at this hourly rate for all hours worked, a sum equivalent to one-half (1/2) this rate of pay multiplied by the number of hours worked in excess of forty (40) in the week.

(3) Day rates and job rates. If the employe is paid a flat sum for a day's work or for doing a particular job, without regard to the number of hours worked in the day or at the job, and if he receives no other form of compensation for services, his hourly rate is determined by totaling all the sums received at such day rates or job rates in the workweek and dividing by the total hours actually worked. He is then entitled to extra half-time pay at this rate for all hours worked in excess of forty (40) in the workweek.

(4) Salaried Employe:

(a) If the employe is employed solely on a weekly salary basis, his hourly rate of pay, on which time and a half must be paid, is computed by dividing the salary by the number of hours which the salary is intended to compensate.

(b) Where the salary covers a period longer than a workweek, such as a month, it must be reduced to its workweek equivalent. A monthly salary is subject to translation to its equivalent weekly wage by multiplying by twelve (12) (the number of months) and dividing by fifty-two (52) (the number of weeks). A semi-monthly salary is translated into its equivalent weekly wage by multiplying by twenty-four (24) and dividing by fifty-two (52). Once the weekly wage is arrived at, the hourly rate of pay will be calculated as indicated in the previous paragraph.

(5) Employes working at two (2) or more rates. Where an employe in a single workweek works at two (2) or more different types of work for which different non-overtime rates of pay have been established, his hourly rate for that week is the weighted average of such rates. That is, his total earnings are computed to include his compensation during the workweek from all such rates, and are then divided by the total number of hours worked at all jobs.

(6) Payments other than cash. Where payments are made to employes in the form of goods or facilities which are regarded as part of wages, the reasonable cost to the employer or the fair value of such goods or of furnishing such facilities must be included in the hourly rate. Where, for example, an employer furnishes lodging to his employes in addition to cash wages, the reasonable cost or the fair value of the lodging must be added to the cash wages before the hourly rate is determined.

(7) Commission payments:

(a) Commissions (whether based on a percentage of total sales or of sales in excess of a specified amount, or on some other formula) are payments for hours worked and must be included in the hourly rate. This is true regardless of whether the commission is the sole source of the employe's compensation or is paid in addition to a guaranteed salary or hourly rate, or on some other basis, and regardless of the method, frequency, or regularity of computing, allocating and paying the commission. It does not matter whether the commission earnings are computed daily, weekly, biweekly, semi-monthly, monthly, or at some other interval. The fact that the commission is paid on a basis other than weekly, and that payment is delayed for a time past the employe's normal payday or pay period, does not excuse the employer from including this payment in the employe's hourly rate.

(b) When the commission is paid on a weekly basis, it is added to the employe's other earnings for that workweek, and the total is divided by the total number of hours worked in the workweek to obtain the

employe's hourly rate for the particular workweek. The employe must then be paid extra compensation at one-half (1/2) of that rate for each hour worked in excess of forty (40) hours in the workweek.

(c) If the calculation and payment of the commission cannot be completed until sometime after the regular payday for the workweek, the employer may disregard the commission in computing the hourly rate until the amount of commission can be ascertained. Until that is done he may pay compensation for overtime at a rate of not less than one and one-half (1 1/2) the hourly rate paid the employe, exclusive of the commission. When the commission can be computed and paid, additional overtime compensation due by reason of the inclusion of the commission in the employe's regular hourly rate must also be paid. To compute this additional overtime compensation, it is necessary, as a general rule, that the commission be apportioned back over the workweeks of the period during which it was earned. The employe must then receive additional overtime compensation for each week during the period in which he worked in excess of the forty (40) hours. The additional compensation for that workweek must be not less than one-half (1/2) of the increase in the hourly rate of pay attributable to the commission for that week multiplied by the number of hours worked in excess of the forty (40) hours in that workweek.

(8) Other methods of determining the regular hourly rate are permitted as long as they provide for each employe employed by an employer to be paid a rate of not less than one and one-half (1 1/2) times the hourly rate at which the employe is employed and does not attempt to evade the provisions of KRS 337.285.

Section 8. Payments excluded from computing hourly rate. As used in KRS 337.285 the "hourly rate at which he is employed" shall be deemed to include all remuneration for employment paid to, or on behalf of, the employe, but shall not be deemed to include: (1) Sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency. Such sums may not, however, be credited toward overtime compensation due under the statute. To qualify for this exclusion the bonus must be actually a gift or in the nature of a gift. If it is measured by hours worked, production, or efficiency, the payment is geared to wages and hours during the bonus period and is no longer to be considered as in the nature of a gift. If the payment is so substantial that it can be assumed that employes consider it a part of the wages for which they work, the bonus cannot be considered to be in the nature of a gift. Obviously, if the bonus is paid pursuant to contract, it is not in the nature of a gift.

(2) Payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employe in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employe which are not made as compensation for his hours of employment. However, since such payments are not made as compensation for the employe's hours worked in any workweek, no part of such payments can be credited toward overtime compensation due under the statute.

(3) Sums paid in recognition of services performed during a given period if either, (i) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employe to expect such payments regularly; or (ii) the payments are made pursuant to a bona fide profit-sharing plan or trust of bona fide thrift or savings plan. Such sums may not, however, be credited toward overtime compensation due under the statute. In order for a bonus to qualify for exclusion as a discretionary bonus the employer must retain discretion both as to the fact of payment and as to the amount until a time quite close to the end of the period for which the bonus is paid. The sum to be paid as a bonus is determined by the employer without prior promise or agreement. The employe has no contract right, express or implied, to any amount. If the employer promises in advance to pay a bonus, he has abandoned his discretion with regard to it.

(4) Contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employes. Such sums may not, however, be credited toward overtime compensation under the statute.

(5) Extra compensation provided by a premium rate paid for certain hours worked by the employe in any day or workweek because such hours are hours worked in excess of eight (8) in a day or in excess of the maximum workweek applicable to such employe's normal working hours. Extra compensation paid for these hours shall be creditable toward overtime compensation under the statute.

(6) Extra compensation provided by a premium rate paid for work by the employe on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than one and one-half (1 1/2) times the rate established in good faith for like work performed in nonovertime hours on other days. Extra compensation paid for these hours shall be creditable toward overtime compensation under the statute.

(7) Extra compensation provided by a premium rate paid to the employe, in pursuance of an applicable employment contract or collective bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday, where such premium rate is not less than one and one-half (1 1/2) times the rate established in good faith by the contract or agreement for like work performed during such workday or workweek. Extra compensation paid for these hours shall be creditable toward overtime compensation under the statute.

Section 9. Requirements of a "Bona Fide Profit-Sharing Plan of Trust." (1) A bona-fide profit-sharing plan or trust is required to meet all of the standards set forth in the following paragraphs:

(a) The profit-sharing plan or trust constitutes a definite program or arrangement in writing, communicated or made available to the employes, which is established and maintained in good faith for the purpose of distributing to the employes a share of profits as additional remuneration over and above the wages or salaries paid to employes which wages or salaries are not dependent upon or influenced by the existence of such profit-sharing plan or trust or the amount of the payments made pursuant thereto.

(b) All contributions or allocations by the employer to the fund or trust to be distributed to the employes are: (i) derived solely from profits of the employer's business as a whole, or an established branch or division of the business which is recognized as such for general business purposes and for which profits are separately and regularly calculated in accordance with accepted accounting practice; and (ii) made periodically, but not more frequently than is customary or consonant with accepted accounting practice to make periodic determinations of profit.

(c) Eligibility to share in profits extends: (i) at least to all employes who are subject to the minimum wage and overtime provisions of the act, or to all such employes in an established part of the employer's business as described in paragraph (b) of this subsection: provided, however, that such eligibility may be determined by factors such as length of service or minimum schedule of hours or days of work which are specified in the plan or trust, and further, that eligibility need not extend to officers of the employer; or (ii) to such classifications of employes as the employer may designate with the approval of the commissioner upon a finding, after notice to interested persons, including employe representatives, and an opportunity to present their views either orally or in writing.

(d) The amounts paid to individual employes are determined in accordance with a definite formula or method of calculation specified in the plan or trust. The formula or method of calculation may be based on any one or more of such factors as straight-time earnings, total earnings, base rate of pay of the employe, straight-time hours or total hours worked by employes, or length of service, or distribution may be made on a per capita basis.

(e) An employe's total share determined in accordance with paragraph (d) of this subsection may not be diminished because of any other remuneration received by him.

(f) Provision is made either for payment to the individual employes of their respective shares of profits within a reasonable period after the determination of the amount of profits to be distributed, or for the irrevocable deposit by the employer or his employe's distributive shares of profits with a trustee for deferred distribution to such employes of their respective shares after a stated period of time or upon the occurrence of appropriate contingencies specified in the plan or trust; provided, however, that the right of an employe to receive his share is not made dependent upon his continuing in the employ of the employer after the period for which the determination of profits has been made.

(2) No plan or trust which contains any one of the following provisions shall be deemed to meet the requirements of a bona fide profit-sharing plan or trust:

(a) if the share of any individual employe is determined in substance on the basis of attendance, quality or quantity of work, rate of production, or efficiency;

(b) if the amount to be paid periodically by the employer into the fund or trust to be distributed to the employes is a fixed sum;

(c) if periodic payments of minimum amounts to the employes are guaranteed by the employer;

(d) if any individual employe's share, by the terms of the plan or trust, is set at a predetermined fixed sum or is so limited as to provide in effect for the payment of a fixed sum, or is limited to or set at a predetermined specified rate per hour or other unit of work or worktime;

(e) if the employer's contributions or allocations to the fund or trust to be distributed to the employes are based on factors other than profits such as hours of work, production, efficiency, sales or savings in cost.

(3) As used in this section a "profit-sharing plan" means any such program or arrangement as qualifies hereunder which provides for the distribution by the employer to his employes of their respective shares of profits; and "profit-sharing trust" means any such program or arrangement as qualifies under this part which provides for the irrevocable deposit by the employer of his employes' distributive shares of profits with a trustee for deferred distribution to such employes of their respective shares.

Section 10. Requirements of a "Bona-Fide Thrift or Savings Plan." (1) A bona-fide thrift or savings plan is required to meet all of the standards set forth in the following paragraphs:

(a) The thrift or savings plan constitutes a definite program or arrangement in writing, adopted by the employer or by contract as a result of collective bargaining and communicated or made available to the employes, which is established and maintained, in good faith, for the purpose of encouraging voluntary thrift or savings by employes by providing an incentive to employes to accumulate regularly and retain cash savings for a reasonable period of time or to save through the regular purchase of public or private securities.

(b) The plan specifically shall set forth the category or categories of employes participating and the basis of their eligibility. Eligibility may not be based on such factors as hours of work, production, or efficiency of the employes; provided, however, that hours of work may be used to determine eligibility of part-time or casual employes.

(c) The amount any employe may save under the plan shall be specified in the plan or determined in accordance with a definite formula specified in the plan, which formula may be based on one or more factors such as the straight-time earnings or total earnings, base rate of pay, or length of service of the employe.

(d) The employer's total contribution in any year may not exceed fifteen percent (15%) of the participating employes' total earnings during that year. In addition, the employer's total contribution in any year may not exceed the total amount saved or invested by the participating employes during that year; provided, however, that a plan permitting a greater contribution may be submitted to the commissioner and approved by him as a bona fide thrift or savings plan.

(e) The employer's contributions shall be apportioned among the individual employes in accordance with a definite formula or method of calculation specified in the plan, which formula or method of calculation is based on the amount saved or the length of time the individual employe retains his savings or investment in the plan; provided, that no employe's share determined in accordance with the plan may be diminished because of any other remuneration received by him.

(2) (a) No employe's participation in the plan shall be on other than a voluntary basis.

(b) No employe's wages or salary shall be dependent upon or influenced by the existence of such thrift or savings plan or the employer's contributions thereto.

(c) The amounts any employe may save under the plan, or the amounts paid by the employer under the plan may not be based upon the employe's hours of work, production or efficiency.

Section 11. Conditions for exclusion of benefit-plan contributions under Section 8(1) of this regulation. (1) In order for an employer's contribution to qualify for exclusion from the regular hourly rate the following conditions must be met:

(a) The contributions must be made pursuant to a specific plan or program adopted by the employer, or by contract as a result of collective bargaining, and communicated to the employes. This may be either a company-financed plan or an employer-employe contributory plan.

(b) The primary purpose of the plan must be to provide systematically for the payment of benefits to employes on account of death, disability, advanced age, retirement, illness, medical expenses, hospitalization, and the like.

(c) In the plan or trust, either: (i) The benefits must be specified or definitely determinable on an actuarial basis; or (ii) There must be both a definite formula for determining the amount to be contributed by the employer and a definite formula for determining the benefits for each of the employes participating in the plan; or (iii) There must be both a formula for determining the amount to be contributed by the employer and a provision for determining the individual benefits by a method which is consistent with the purposes of the plan or trust.

(d) The employer's contributions must be paid irrevocably to a trustee or third person pursuant to an insurance agreement, trust or other funded arrangement. 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 nor in any way divert the funds to his own use or benefit. (It should also be noted that in the case of joint employer-employe contributory plans, where the employe contributions are not paid over to a third person or to a trustee unaffiliated with the employer, violations of the statute may result if the employe contributions cut into the required minimum or overtime wages.) Although an employer's 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 of 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.

(e) The plan must not give an employe the right to assign his benefits under the plan nor the option to receive any part of the employer's contributions in cash instead of the benefits under the plan; provided, however, that if a plan otherwise qualifies as a bona fide benefit plan, it will still be regarded as a bona fide plan even though it provides, as an incidental part thereof, for the payment to an employe in cash of all or a part of the amount standing to his credit: (i) at the time of the severance of the employment relation due to causes other than retirement, disability, or death, or (ii) upon proper termination of the plan, or (iii) during the course of his employment under circumstances specified in the plan and not inconsistent with the general purposes of the plan to provide the benefits.

(2) Where the benefit plan or trust has been approved by the Bureau of Internal Revenue as satisfying the requirements of section 401(a) of the Internal Revenue Code in the absence of evidence to the contrary, the plan or trust will be considered to meet the conditions specified in paragraphs (a), (d), and (e) of subsection (1) of this section.

Section 12. Overlapping when change of workweek is made. (1) As stated in Section 4 of this regulation, the beginning of the workweek may be changed for an employe or for a group of employes if the change is intended to be permanent and is not designed to evade the overtime requirements of the statute. A change in the workweek necessarily results in a situation in which one or more hours or days fall in both the old workweek as previously constituted and the new workweek. Thus, if the workweek in a plant commenced at 7 a.m. on Monday and it is now proposed to begin the workweek at 7 a.m. on Sunday, the hours worked from 7 a.m. Sunday to 7 a.m. Monday will constitute both the last hours of the old workweek and the first hours of the newly established workweek.

(2) When the beginning of the workweek is changed, if the hours which fall within both old and new workweeks as explained in the above subsection are hours in which the employe does no work, his overtime compensation for each workweek is, of course, determinable in precisely the same manner as it would be if no overlap existed. If, on the other hand, some of the employe's working time falls within hours which are included in both workweeks, the Department of Labor, as an enforcement policy, will assume that the overtime requirements of the statute have been satisfied if computation is made as follows:

(a) Assume first that the overlapping hours are to be counted as hours worked only in the old workweek and not in the new; compute straight-time and overtime compensation due for each of the two (2) workweeks on this basis and total their sums.

(b) Assume now that the overlapping hours are to be counted as hours worked only in the new workweek and not in the old, and complete the total computation accordingly.

(c) Pay the employe an amount not less than the greater of the amounts computed by methods in paragraphs (a) and (b).

JAMES R. YOCOM, Commissioner

ADOPTED: November 6, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: November 20, 1974 at 8:44 a.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 1:065)

RELATES TO: KRS 337.275, 337.285
PURSUANT TO: KRS 337.295, 13.082
SUPERSEDES: LAB 12

NECESSITY AND FUNCTION: KRS 337.275 requires that each employe, not specifically exempted, to receive a specified minimum wage. KRS 337.285 provides that employes may not be employed for more than a stated number of hours a week without receiving at least one and one-half (1 and 1/2) times their rate of pay for the overtime hours. The amount of money an employe should receive cannot be determined without

knowing the number of hours worked. The function of this regulation is to discuss the principles involved in determining what constitutes working time for the purpose of applying this to KRS 337.275 and 337.285. By providing these interpretations, it will guide the department in the performance of their duties under the law, unless and until they are otherwise directed by decisions of the courts, or conclude, upon re-examination of an interpretation, that it is incorrect.

Section 1. Definition of employe. By statutory definition the term "employe" is any person employed by or suffered or permitted to work for an employer. The statute, however, contains no definition of work. The following sections are intended to give interpretations as to the meaning of "suffered or permitted to work."

Section 2. Suffered or permitted to work. (1) General. Work not requested but suffered or permitted is work time. For example, an employe may voluntarily continue to work at the end of the shift. He may be a pieceworker, he may desire to finish an assigned task or he may wish to correct errors, paste work tickets, prepare time reports or other records. The reason is immaterial. The employer knows or has reason to believe that he is continuing to work and the time is working time.

(2) Work performed away from premises. The rule is also applicable to work performed away from the premises or the job site, or even at home. If the employer knows or has reason to believe that the work is being performed, he must count the time as hours worked.

(3) Duty of management. In all such cases it is the duty of the management to exercise its control and see that the work is not performed if it does not want it to be performed. It cannot sit back and accept the benefits without compensating for them. The mere promulgation of a rule against such work is not enough. Management has the power to enforce the rule and must make every effort to do so.

Section 3. Waiting time. (1) General. Whether waiting time is time worked under the act depends upon particular circumstances. The determination involves scrutiny and construction of the agreements between particular parties, appraisal of their practical construction of the working agreement by conduct, consideration of the nature of the service, and its relation to the waiting time, and all of the circumstances. Facts may show that the employe was engaged to wait, or they may show that he waited to be engaged. Such questions must be determined in accordance with common sense and the general concept of work or employment.

(2) On duty. A stenographer who reads a book while waiting for dictation, a messenger who works a crossword puzzle while awaiting assignments, fireman who plays checkers while waiting for alarms and a factory worker who talks to his fellow employes while waiting for machinery to be repaired are all working during their periods of inactivity. The rule also applies to employes who work away from the plant. For example, a repair man is working while he waits for his employer's customer to get the premises in readiness. The time is worktime even though the employe is allowed to leave the premises or the job site during such periods of inactivity. The periods during which these occur are unpredictable. They are usually of short duration. In either event the employe is unable to use the time effectively for his own purpose. It belongs to and is controlled by the employer. In all of these cases waiting is an integral part of the job. The employe is engaged to wait.

(3) Off duty. (a) Periods during which an employe is completely relieved from duty and which are long enough to enable him to use the time effectively for his own purposes are not hours worked. He is not completely relieved from duty and cannot use the time effectively for his own purposes unless he is definitely told in advance that he may leave the job and that he will not have to commence work until a definitely specified hour has arrived. Whether the time is long enough to enable him to use the time effectively for his own purposes depends upon all of the facts and circumstances of the case.

(b) A truck driver who has to wait at or near the job site for goods to be leaded is working during the loading period. If the driver reaches his destination and while awaiting the return trip is required to take care of his employer's property, he is also working while waiting. In both cases the employe is engaged to wait. Waiting is an integral part of the job. On the other hand, for example, if the truck driver is sent from Louisville to Paducah, leaving at 9 a.m. and arriving at 2 p.m., and is completely and specifically relieved from all duty until 8 p.m. when he again goes on duty for the return trip, the idle time is not working time. He is waiting to be engaged.

(4) On-call time. An employe who is required to remain on call on the employer's premises or so close thereto that he cannot use the time effectively for his own purposes is working while on call. An employe who is not required to remain on the employer's premises but is merely required to leave word at his home or with company officials where he may be reached is not working while on call.

Section 4. Rest and meal periods. (1) Rest. Rest periods of short duration, running from five (5) minutes to about twenty (20) minutes, are common in industry. They promote the efficiency of the employe and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time.

(2) Meals. Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employe must be completely relieved from duty for the purpose of eating regular meals. Ordinarily, thirty (30) minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employe is not relieved if he is required to perform any duties, whether active or inactive, while eating. It is not necessary that an employe be permitted to leave the premises if he is otherwise completely freed from duties during the meal period.

Section 5. Sleeping time and certain other activities. (1) Under certain conditions an employe is considered to be working even though some of his time is spent is sleeping or in certain other activities.

(2) An employe who is required to be on duty is working even though he is permitted to sleep or engage in other personal activities when not busy. A telephone operator, for emample, who is required to be on duty for specified hours is working even though she is permitted to sleep when not busy answering calls. It makes no difference that she is furnished facilities for sleeping. Her time is given to her employer. She is required to be on duty and the time is worktime.

(3) Residing on employer's premises or working at home. An employe who resides on his employer's premises on a permanent basis or for extended periods of time is not considered as working all the time he is on the premises. Ordinarily, he may engage in normal private pursuits and thus have enough time for eating, sleeping, entertaining, and other periods of complete freedom from all duties when he may leave the premises for purposes of his own. It is, of course, difficult to determine the exact hours worked under these circumstances and any reasonable agreement of the parties which takes into consideration all of the pertinent facts will be accepted. This rule would apply, for example, to the pumper of a stripper well who resides on the premises of his employer and also to a telephone operator who has the switchboard in her own home.

Section 6. Lectures, meetings and training programs. (1) General. Attendance at lectures, meetings, training programs and similar activities need not be counted as working time if the following criteria are met:

(a) Attendance is outside of the employe's regular working hours;
(b) Attendance is in fact voluntary;
(c) The course, lecture, or meeting is not directly related to the employe's job; and
(d) The employe does not perform any productive work during such attendance.

(2) Involuntary attendance. Attendance is not voluntary if it is required by the employer. It is not voluntary if the employe is given to understand or led to believe that his present working conditions or the continuance of his employment would be adversely affected by nonattendance.

(3) Training directly related to employe's job. The training is directly related to the employe's job if it is designed to make the employe handle his job more effectively as distinguished from training him for another job, or to a new or additional skill. Where a training course is instituted for the bona fide purpose of preparing for advancement through upgrading the employe to a higher skill, and is not intended to make the employe more efficient in his present job, the training is not considered directly related to the employe's job even though the course incidentally improves his skill in doing his regular work. If an employe on his own initiative attends an independent school, college or independent trade school after hours, the time is not hours worked for his employer even if the courses are related to his job.

(4) Special situations. There are some special situations where the time spent in attending lectures, training sessions and courses of instruction is not regarded as hours worked. For example, an employer may establish for the benefit of his employes a program of instruction which corresponds to courses offered by independent bona fide institutions of learning. Voluntary attendance by an employe at such courses outside of working hours would not be hours worked even if they are directly related to his job, or paid for by the employer.

(5) Apprenticeship training. Time spent is an organized program of related, supplemental instruction by employes working under bona fide apprenticeship programs may be excluded from working time if the following criteria are met:

(a) The apprentice is employed under a written apprenticeship agreement or program which has been approved by the Supervisor of Apprenticeship and Training, Kentucky Department of Labor; and
(b) Such time does not involve productive work or performance of the apprentice's regular duties. If the above criteria are met, the time spent in such related supplemental training shall not be counted as hours worked unless the written agreement specifically provides that it is hours worked. The mere payment or agreement to pay for time spent in related instruction does not constitute an agreement that such time is hours worked.

Section 7. Travel time. (1) General. The principles which apply in determining whether or not time spent in travel is working time depend upon the kind of travel involved.

(2) Home to work. An employe who travels from home before

his regular workday and returns to his home at the end of the workday is engaged in ordinary home to work travel which is a normal incident of employment. This is true whether he works at a fixed location or at different job sites. Normal travel from home to work is not worktime.

(3) Travel that is worktime. Time spent by an employe in travel as part of his principal activity, such as travel from job site to job site during the workday, must be counted as hours worked. Where an employe is required to report at a meeting place to receive instructions or to perform other work there, the travel from the designated place to the work place is part of the day's work, and must be counted as hours worked.

(4) Travel away from home. Travel that keeps an employe away from home overnight is travel away from home. Travel away from home is worktime when it cuts across the employe's workday. The employe is simply substituting travel for other duties.

Section 8. Recording working time. The law does not require any special method of keeping a record of time worked by employes. In cases where time clocks are used or other methods whereby the employe records the starting and ending time, employes who voluntarily come in before their regular starting time or remain after their closing time, do not have to be paid for such periods provided, of course, that they do not engage in any work. Their early or late recording of their time may be disregarded. Minor differences between the time clock or sign-in record and actual hours worked cannot ordinarily be avoided, but major discrepancies should be discouraged since they raise a doubt as to the accuracy of the records of the hours actually worked.

Section 9. The principles discussed in this regulation are intended to guide the department in the enforcement of the statutes and to assist employes, employers, and other persons who may be concerned with the provisions of the law. Special situations not discussed in this regulation may arise in determining hours worked by employes. In making a determination of these situations, the department will make the determination in accordance with common sense and the general concept of work or employment.

JAMES R. YOCOM, Commissioner
ADOPTED: November 6, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: November 20, 1974 at 8:45 a.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 1:070)

RELATES TO: KRS 337.275, 337.285
PURSUANT TO: KRS 337.295, 13.082
SUPERSEDES: LAB 6
NECESSITY AND FUNCTION: KRS 337.010(2)(c)(ii) exempts any individual employed in a bona fide executive, administrative, supervisory, or professional capacity, or in the capacity of outside salesman, or as an outside collector as such terms are defined by administrative regulations of the commissioner from both the minimum wage and overtime requirements set forth in KRS 337.275 and 337.285. The function of this regulation is to define what constitutes an individual employed in a bona fide executive, administrative, supervisory or professional capacity, or in the capacity of an outside salesman and outside collector.

Section 1. The term "individual employed in a bona fide executive capacity" shall mean any employe:

(1) whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof;

(2) who customarily and regularly directs the work of two (2) or more other employes therein;

(3) who has the authority to hire or fire other employes or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employes will be given particular weight;

(4) who customarily and regularly exercises discretionary powers;

(5) who does not devote more than twenty percent (20%), or, in the case of an employe of a retail or service establishment who does not devote as much as forty percent (40%), of his hours of work in the workweek to activities which are not directly and closely related to the performance of the work described in subsections (1) through (4) of this section; provided, that this subsection shall not apply in the case of an employe who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a twenty percent (20%) interest in the enterprise in which he is employed; and

(6) who is compensated for his services on a salary basis at a rate of not less than $160 per week, exclusive of board, lodging, or other facilities; provided, that an employe who is compensated on a salary basis at a rate of not less than $300 per week, exclusive of board, lodging, or other facilities, and whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two (2) or more other employes therein, shall be deemed to meet all of the requirements of this section.

Section 2. The term "individual employed in a bona fide administrative capacity" shall mean any employe:

(1) whose primary duty consists of either: (i) the performance of office or non-manual work directly related to management policies or general business operations of his employer or his employer's customers; or (ii) the performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein;

(2) who customarily and regularly exercises discretion and independent judgment;

(3) (a) who regularly and directly assists a proprietor, or an employe employed in a bona fide executive or administrative capacity, or

(b) who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge, or

(c) who executes under only general supervision special assignments and tasks; and

(4) who does not devote more than twenty percent (20%), or, in the case of an employe of a retail or service establishment who does not devote as much as forty percent (40%), of his hours worked in the workweek to activities which are not directly and closely related to the performance of the work described in subsections (1) through (2) of this section;

(5) (a) who is compensated for his services on a salary or fee basis at a rate of not less than $160 per week, exclusive of board, lodging, or other facilities, or

(b) who, in the case of academic administrative personnel, is compensated for his services as required by subsection (5)(a) of this section, or on a salary basis which is at least equal to the entrance salary for teachers in the school system, educational establishment, or institution by which he is employed; provided, that an employe who is compensated on a salary or fee basis at a rate of not less than $300 per week, exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance of work described in subsection (1) of this section, which includes work requiring the exercise of discretion and independent judgment, shall be deemed to meet all of the requirements of this section.

Section 3. The term "individual employed in a bona fide professional capacity" shall mean any employe:

(1) whose primary duty consists of the performance of:

(a) work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or

(b) work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employe, or

(c) teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher certified or recognized as such in the school system or educational establishment or institution by which he is employed;

(2) whose work requires the consistent exercise of discretion and judgment in its performance;

(3) whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;

(4) who does not devote more than twenty percent (20%) of his hours worked in the workweek to activities which are not an essential part of and necessarily incident to the work described in subsections (1) through (3) of this section; and

(5) who is compensated for his services on a salary or fee basis at a rate of not less than $185 per week, exclusive of board, lodging, or other facilities; provided, that this subsection shall not apply in the case of an employe who is engaged in the practice of a physician or a lawyer who is the holder of a valid license permitting such practice, nor in the case of an employe who is the holder of the requisite academic degree to practice as a physician and is engaged in an internship or resident program pursuant to the practice, nor in the case of an employe employed and engaged as a teacher as provided in subsection (1)(c) of this section; and provided further, that an employe who is compensated on a salary or fee basis at a rate of not less than $300 per week, exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance either of work described in subsection (1)(a) or (c) of this section, which includes work requiring the consistent exercise of discretion and judgment, or of work requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet

all of the requirements of this section.

Section 4. The term "individual employed in a bona fide supervisory capacity" shall mean any employe:

(1) who customarily and regularly directs the work of two (2) or more other employes where he is employed;

(2) who does not devote more than twenty percent (20%), or, in the case of an employe of a retail or service establishment who does not devote as much as forty percent (40%), of his hours of work in the workweek to activities of the same nature as the employes under his supervision; and

(3) who is compensated for his services on a salary basis at a rate of not less than $160 per week, exclusive of board, lodging, or other facilities; provided, that an employe who is compensated on a salary basis at a rate of not less than $300 per week, exclusive of board, lodging, or other facilities, and whose primary duty consists of customarily and regularly directing the work of two (2) or more other employes, shall be deemed to meet all of the requirements of this section.

Section 5. The term "individual employed in the capacity of outside salesman" shall mean any employe:

(1) who is employed for the purpose of and who is customarily and regularly engaged away from his employer's place or places of business in:

(a) making sales, which shall mean the transfer of title to both tangible and intangible property, or

(b) obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer;

(2) whose hours of work of a nature other than those described in subsection (1) of this section do not exceed twenty percent (20%) of the hours worked in the workweek by nonexempt employes of the employer; provided, that work performed incidental to and in conjunction with the employe's own outside sales or solicitations, including incidental deliveries and collections, shall not be regarded as nonexempt work.

Section 6. The term "individual employed as an outside collector" shall mean any employe:

(1) who is employed for the purpose of and who is customarily and regularly engaged away from his employer's place or places of business in:

(a) collecting money for goods or services previously or presently furnished by his employer, or

(b) collecting money for an account placed in the hands of his employer for collection; and

(2) whose hours of work of a nature other than those described in subsection (1) of this section do not exceed twenty percent (20%) of the hours worked in the workweek by nonexempt employes of the employers; provided, that work performed incidental to and in conjunction with the employe's own outside collections, shall not be regarded as nonexempt work.

Section 7. Salary basis. (1) An employe will be considered to be paid "on a salary basis" within the meaning of this regulation if under his employment agreement he regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of his compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. Subject to the exceptions provided below, the employe must receive his full salary for any week in which he performs any work without regard to the number of days or hours worked. This policy is also subject to the general rule that an employe need not be paid for any workweek in which he performs no work.

(a) An employe will not be considered to be "on a salary basis" if deductions from his predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the business. Accordingly, if the employe is ready, willing and able to work, deductions may not be made for time when work is not available.

(b) Deductions may be made, however, when the employe absents himself from work for a day or more for personal reasons, other than sickness or accident. Thus, if an employe is absent for a day or longer to handle personal affairs, his salaried status will not be affected if deductions are made from his salary for such absences.

(c) Deductins may also be made for absences of a day or more occasioned by sickness or disability, if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by both sickness and disability. Thus, if the employer's particular plan, policy or practice provides compensation for such absences, deductions for absences of a day or longer because of sickness or disability may be made before an employe has qualified under such plan, policy, or practice, and after he has exhausted his leave allowance thereunder. It is not required that the employe be paid any portion of his salary for such day or days for which he receives compensation for leave under such plan, policy or practice. Similarly, if the employer operates under a state sickness and disability insurance law, or a private sickness and disability insurance plan, deductions may be made for absences of a working day or longer if benefits are provided in accordance with the particular law or plan. In the case of an industrial accident, the "salary basis" requirement will be met if the employe is compensated for loss of salary in accordance with the applicable compensation law or the plan adopted by the employer, provided the employer also has some plan, policy or practice of providing compensation for sickness and disability other than that relating to industrial accidents.

(d) Deductions may not be made for absences of an employe caused by jury duty, attendance as a witness, or temporary military leave. The employer may, however, offset any amounts received by an employe as jury or witness fees or military pay for a particular week against the salary due for that particular week without loss of the exemption.

(e) The effect of making a deduction which is not permitted under these interpretations will depend upon the facts in the particular case. Where deductions are generally made when there is no work available, it indicates that there was no intention to pay the employe on a salary basis. In such a case the exemption would not be applicable to him during the entire period when such deductions were being made. On the other hand, where a deduction not permitted by these interpretations is inadvertant, or is made for reasons other than lack of work, the exemption will not be considered to have been lost if the employer reimburses the employe for such deductions and promises to comply in the future.

(2) It should be noted that the salary may consist of a predetermined amount constituting all or part of the employe's compensation. In other words, additional compensation besides the salary is not inconsistent with the salary basis of payment.

(3) Failure to pay the full salary in the initial or terminal week of employment is not considered inconsistent with the salary basis of payment. In such weeks the payment of a proportionate part of the employe's salary for the time actually worked will meet the requirement. However, this should not be construed to mean that an employe is on a salary basis within the meaning of the regulation if he is employed occasionally for a few days and is paid a proportionate part of the weekly salary when so employed.

Section 8. Fee basis. (1) The requirements for exemption as a professional or administrative employe may be met by an employe who is compensated on a fee basis as well as by one who is paid on a salary basis.

(2) Little or no difficulty arises in determining whether a particular employment arrangement involves payment on a fee basis. Such arrangements are characterized by the payment of an agreed sum for a single job regardless of the time required for its completion. These payments in a sense resemble piecework payments with the important distinction that generally speaking a fee payment is made for the kind of job which is unique rather than for a series of jobs which are repeated an indefinite number of times and for which payment on an identical basis is made over and over again. Payments based on the number of hours or days worked and not on the accomplishment of a given single task are not considered payments on a fee basis.

(3) The adequacy of a fee payment, whether it amounts to payment at a rate of not less than $185 per week to a professional employe or at a rate of not less than $160 per week to an administrative employe, can ordinarily be determined only after the time worked on the job has been determined. In determining whether payment is at the rate required in this regulation, the amount paid to the employe will be tested by reference to a standard workweek of forty (40) hours. Thus compliance will be tested in each case of a fee payment by determining whether the payment is at a rate which would amount to at least $185 per week to a professional employe or at a rate of not less than $1o0 per week to an administrative employe if forty (40) hours were worked.

GEORGE R. WAGONER, Deputy Commissioner, for
JAMES K. YOCOM, Commissioner of Labor
ADOPTED: October 15, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: November 13, 1974 at 4:08 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 1:075)

RELATES TO: KRS 337.275, 337.285
PURSUANT TO: KRS 337.295, 13.082
SUPERSEDES: LAB 11
NECESSITY AND FUNCTION: KRS 337.010 excludes certain types of employes from being subject to the minimum wage and overtime provisions of the act and KRS 337.285 excludes certain employes from its coverage. The function of this regulation is to define these exclusions. These definitions will guide the department 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. Definitions. (1) The term "retail store or

service industry" shall mean an establishment seventy-five percent (75%) of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry.

(2) The term "hotel" means an establishment known to the public as a hotel, which is primarily engaged in providing lodging or lodging and meals for the general public. Included are hotels operated by membership organizations and open to the general public and apartment hotels which provide accommodations for transients. However, an establishment whose income is primarily from providing a permanent place of residence or from providing residential facilities complete with bedrooms and kitchen for prolonged periods would not be considered a hotel.

(3) The term "motel" means an establishment which provides services similar to that of a hotel described in subsection (2) of this section, but which caters mostly to the motoring public, providing it with motor car parking facilities either adjacent to the room or cabin rented or at some other easily accessible place. Included in the term "motel" are those establishments known to the public as motor hotels, motor lodges, motor courts, motor inns, tourist courts, and tourist lodges.

(4) The term "restaurant" means an establishment which is primarily engaged in selling and serving to purchasers at retail prepared food and beverages for consumption. This includes such establishments commonly known as lunch counters, refreshment stands, cafes, cafeterias, coffee shops, diners, dining rooms, lunch rooms, or tea rooms. The term "restaurant" does not include drinking establishments, such as bars or cocktail lounges, whose sale of alcoholic beverages exceed the receipts from sales of prepared foods and non-alcoholic beverages or establishments offering meal service on a boarding or term basis or providing such service only as an incident to the operation of a business of another kind and primarily to meet institutional needs for continuing meal service to persons whose continued presence is required for such operation, such as a boarding house, dining facilities of a boarding school, college or university which serves its students and faculty, lunchroom facilities for private and public day school students, and other institutional food service facilities providing long-term meal service to stable groups of individuals as an incident to institutional operations in a manner wholly dissimilar to the typical transactions between a restaurant and its customers.

(5) "Excise taxes" are taxes levied on the manufacture, sale or consumption of a commodity, and taxes levied on license to pursue certain occupations and corporate privileges.

Section 2. Hotel or motel. The primary function of a hotel or motel, is to provide lodging facilities to the public. In addition, most hotels or motels provide food for their guests and many sell alcoholic beverages. These establishments also may engage in some minor revenue producing activities; such as, the operation of valet services offering cleaning and laundering service for the garments of their guests, news stands, hobby shops, renting out of their public rooms for meetings, lectures, dances, trade exhibits and weddings. The exemption provided for hotels and motels in KRS 337.010(2)(c)(vi) and KRS 337.285 will not be defeated simply because a hotel or a motel engages in all or some of these activities, if it is primarily engaged in providing lodging facilities, food and drink to the public.

Section 3. Exemptions from minimum wage and overtime. (1) Employes of retail stores, service industries, hotels, motels, and restaurant operations whose average annual gross volume of sales made for business done is less than ninety-five thousand dollars ($95,000) for the five (5) preceding years exclusive of excise taxes at the retail level are exempt from both the minimum wage and overtime provisions of the act.

(2) To qualify for this exemption, the establishment must be recognized as retail in the particular industry. Typically a retail or service establishment is one which sells goods or services to the general public. It serves the everyday needs of the community in which it is located. The retail or service establishment performs a function in the business organization which is at the very end of the stream of distribution, disposing in small quantities of the products and skills of such organization and does not take part in the manufacturing process.

(3) (a) To compute the average annual gross volume of sales made for business done, it will be necessary for the business to add all the sales made for business done for the five (5) preceding years, exclusive of excise taxes at the retail level, and divide by five (5). If this average is less than ninety-five thousand dollars ($95,000), the establishment would be exempt.

(b) If the establishment has been in business for less than five (5) years, the gross sales will be totaled for the years the establishment has been in business and divided by the number of years. If this average is less than ninety-five thousand dollars ($95,000), the establishment would be exempt.

(c) If the establishment has been in business for less than one (1) year, the gross sales will be totaled for the number of months the establishment has been in business and divided by the number of months. This amount will then be multiplied by twelve (12). If this amount is less than ninety-five thousand dollars ($95,000), the establishment would be exempt.

(d) Excise taxes at the retail level are not computed in totaling the gross volume of sales. Excise taxes which are leveled at the manufacturer's, wholesaler's or other distributive level will not be excluded in calculating the dollar volume of sales.

Section 4. Exemptions from overtime. (1) Employes of retail stores whose principal duties are connected with the selling, purchasing, and distributing of goods and employes of a restaurant, hotel and motel operation are exempt from the overtime provisions of KRS 337.285.

(2) Employes of a retail store whose principal duties are not connected with the selling, purchasing, and distributing of the goods will not be considered as exempt employes, nor will employes of a service establishment which does not sell goods, but is in the business of selling a service.

GEORGE R. WAGONER, Deputy Commissioner, for
JAMES R. YOCOM, Commissioner of Labor
ADOPTED: November 6, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: November 20, 1974 at 12:47 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.

CABINET FOR PUBLIC PROTECTION AND REGULATION
Public Service Commission
(807 KAR 2:020)

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 278.160(1), 13.082
SUPERSEDES: PSC:Tar-1
NECESSITY AND FUNCTION: KRS 278.160(1) provides that the commission shall prescribe rules under which each utility shall file schedules showing all rates and conditions established by it and collected or enforced.

Section 1. General. All utilities under the jurisdiction of the Public Service Commission shall file with the secretary of the commission two (2) cover letters and four (4) complete copies of a tariff containing schedules of all its rates, charges, tolls and maps or plats of the area in which it offers service and all its rules and regulations and shall keep a copy of said tariff open to public inspection in its offices and places of business, as required by KRS 278.160, in substantially the form and manner hereinafter set out. If a utility furnishes more than one (1) kind of service (water and electricity for example), a separate tariff must be filed for each kind of service. For the purpose of the commission's rules and regulations, the utilities office or place of business shall be deemed a location at which the utility regularly employs and stations one (1) or more employees and is open to the public.

Section 2. Form and Size of Tariffs. (1) All tariffs must be printed from type not smaller than six (6) point or typewritten, mimeographed or produced by similar process, on hard calendared paper of good quality.

(2) The pages of a tariff shall be 8-1/2 by 11 inches in size.

(3) Utilities shall publish tariffs in loose-leaf form using one side of the paper only, with not more than one (1) schedule to the page.

(4) The front cover page of a tariff shall contain the following:

(a) Name of the utility and location of principal office.
(b) Statement of kind of service offered.
(c) General statement of territory served.
(d) Date of issue and date tariff is to become effective.
(e) Signature of the officer of the utility authorized to issue tariffs.
(f) Identifying designation in the upper righthand corner as required by Section 4 of this regulation.

(5) The second and succeeding pages shall contain:

(a) All the rules and regulations of the utility.
(b) Rate schedules showing all rates and charges for the several classes of service.
(c) Signature of the officer of the utility authorized to issue tariffs.
(d) Date of issue and date tariff is to become effective.
(e) Identifying designation in upper righthand corner as required by Section 4 of this regulation.

(6) In that portion of the tariff dealing with rates, the desired information shall be shown under the following captions in the order listed:

(a) Applicable: Show territory covered by tariff.
(b) Availability of Service: Show classes of customers affected, such as domestic, commercial, etc.
(c) Rates: List all rates covered by tariff.
(d) Minimum Charge: State amount of charge and quantity allowed.
(e) Delayed Payment Charge: State if penalty or discount.
(f) Term: If contracts are made for certain periods, give length of term.
(g) Special Rules: If any special rules and regulations are in effect covering this tariff, list same hereunder.

(7) The secretary of the commission will furnish standard forms of tariffs on request.

Section 3. Contents of Schedules. (1) Each rate schedule in addition to a clear statement of all rates thereunder must state the city, town, village or district in which rates are applicable; provided, however, that schedules applicable in a large number of communities must be accompanied by an accurate index by which each community in which the rates are applicable may be readily ascertained, in which case the applicability of a schedule may be indicated by reference to the index sheet. (Example: Applicable within the corporate limits of the City of_____, or see Tariff Sheet No. 2B for applicability.)

(2) Each rate schedule must state that class of service available under the rates stated therein. (Example: Available for domestic lighting, or available for all purposes, etc.)

(3) For a tariff in which a number of schedules are shown available for various uses, each schedule shall be identified by a number or by a group of letters, and if by a group of letters, the designation shall be indicative of the class of service for which the schedule is available. (Example: Schedule No. 1 or Tariff D.U.R. indicating that the schedule states domestic utility rates.)

(4) (a) Each page of the tariff shall bear the P.S.C. Kentucky Number of the tariff, the date issued and effective, the signature of the issuing officer, and in the upper righthand corner, a further designation, such as "Original Sheet No. 1", "Original Sheet No. 2", etc.

(b) In the case of a change in the text of any page as hereinafter provided the further designation shall be "First Revised Sheet No. 1, cancelling Original Sheet No. 1," etc.

(c) Tariffs may be further divided into section, and so designated if required by their size and contents.

(5) All schedules shall state whether a minimum charge is made, and if so, they shall set out all such charges, and further state whether such minimum charge is subject to prompt payment discount or delayed payment penalty.

Section 4. Designation of Tariffs. All tariffs must bear in the upper righthand corner of the front cover page the P.S.C. Kentucky number thereof. Subsequent tariffs filed as provided by Sections 5 through 8 of this regulation, must continue such designation in consecutive numerical order. Any subsequent tariff must also show the P.S.C. Kentucky number of the tariff cancelled, changed or modified by it.

Section 5. Change or Withdrawal of Rate Schedules or Regulations. (1) No tariff, or any provision thereof, may be changed, cancelled or withdrawn except upon such terms and conditions as the commission may impose and in compliance with KRS 278.180 and Sections 5 through 8 of this regulation.

(2) (a) All revisions in tariff sheets shall contain a symbol in the margin indicating the change made. These symbols are as follows:
(C) To signify changed regulation.
(D) To signify discontinued rate, regulation or test.
(I) To signify increase.
(N) To signify new rate and/or new test.
(R) To signify reduction.
(T) To signify a change in text.

(b) In the case of a change in the text of any tariff sheet where the rate remains the same, the effective date shall remain the same as that on the amended sheet. The issued date of the change shall be the date the filing is made with the commission.

(c) All tariff filings which involve the furnishing of equipment or services to the customer by the utility shall be accompanied by a description of the equipment or service involved in the filing and a cost of service study justifying the proposed charges.

(3) New tariffs stating changes in any provision of any effective tariff may be issued and put into effect by either of the two (2) following methods:

(a) By order of the commission upon formal application by the utility, and after hearing, as provided by Section 6 of this regulation.

(b) By issuing and filing on at least twenty (20) days notice to the commission and the public a complete new tariff (or revised sheet of an existing tariff) stating all the provisions and schedules proposed to become effective as provided by Sections 7 and 8 of this regulation.

(4) The provisions or rates stated on any sheet or page of a tariff may be modified or changed by the filing of a revision of such sheet or page in accordance with the provisions of this regulation. Such revisions must be identified as required herein.

Section 6. Adjustment of Rates on Application. Upon the granting of authority for a change in rates, the utility shall file a tariff setting out the rate, classification, charge, or rule and regulation authorized by the commission to become effective the order may direct, and each page of the tariff so filed shall state that it is "Issued by authority of an order of the Public Service Commission in Case No._____, dated_____, 19_____."

Section 7. Notice to the Public. (1) Notice to the public of a change of rates and charges or rules and regulations shall be given by the utility in the following manner:

(a) The tariff or revised sheet stating the proposed rates, rules, and regulations, etc., shall be exhibited at the offices and places of business of the utility in the territory affected for at least twenty (20) days prior to the proposed effective date of such tariff or revised sheet. If after review of said tariff or revision the commission deems it necessary to hold a public hearing in order to determine the reasonableness of the proposed revision, notice of such hearing shall be served on the utility. The tariff or revised sheets shall be exhibited as set out above the twenty (20) days prior to the date of hearing.

(b) If the proposed change will result in an increase of rates or charges to any customer, typewritten notice of the proposed rates or charges shall be mailed by the utility to each customer to be so affected at least twenty (20) days prior to the effective date of the proposed rates or charges, or where a hearing on the proposed increase has been set by the commission, at least twenty (20) days prior to the date of hearing; provided, however, that when more than twenty (20) patrons will be so affected by the proposed change, it will be sufficient within the meaning of this rule if such notice is published once a week for three (3) consecutive weeks prior to the effective date of such proposed rates or charges or when a hearing has been scheduled, for three (3) consecutive weeks prior to the date of hearing, in some newspaper of general circulation in the community or communities in which the customers to be affected reside, and provided further, that the commission, upon request of the utility, may modify the requirements as to notice other than by posting in any case in which it appears proper to do so. Notice provided for in this section shall contain the proposed rates, and when applicable, the date, time and place of hearing.

(2) The agent or representative of the utility in charge of an office or place of business shall give information regarding its tariffs (present and proposed) requested of him by any consumer or prospective consumer or his agent, and shall accord said persons, or their agents, opportunity to examine any of the tariffs of the utility at any reasonable time.

Section 8. Statutory Notice to the Commission. (1) When a new tariff has been so issued and notice thereof given to the commission and the public in all respects as hereinbefore provided, such tariff will become effective on the date stated therein unless the operation thereof be suspended and the rates and regulations therein be deferred by an order of the commission pending a hearing concerning the propriety of the proposed rates and regulations under KRS 278.190.

(2) All information and notice required by these rules shall be furnished to the commission at the time of the filing of any proposed revisions in rates or regulations, and the twenty (20) days statutory notice to the commission will not commence to run and will not be computed until such information and notice is filed.

Section 9. Change of Ownership — Adoption Notice. (1) In case of change of ownership or control of a utility, or when a utility or a part of its business is transferred from the operating control of one company to that of another, or when its name is changed, the company which will thereafter operate the utility business must use the rates, classifications and regulations of the former operating company (unless authorized to change by the commission), and shall issue, file and post an adoption notice, on a form furnished by the commission, adopting, ratifying and making its own all rates, rules, classifications and regulations of the former operating utility, on file with the commission and effective at the time of such change of ownership or control.

(2) Adoption notices must likewise be filed by receivers and trustees assuming possession and operation of utilities. Adoption notices may be filed and made effective without previous notice.

(3) Adoption notices filed with the commission by each utility shall be in consecutive numerical order, beginning with P.S.C. Kentucky Adoption Notice No. 1.

(4) Within ten (10) days after the filing of an adoption notice as aforesaid by a public utility which then had no tariffs on file with the commission, said utility shall issue and file in its own name the tariff of the predecessor utility then in effect and adopted by it, or such other tariff as it proposes to put into effect in lieu thereof, in the form prescribed in Sections 1 through 4 of this regulation with proper identifying designation. (Example: P.S.C. Kentucky No. 1 cancels P.S.C. Kentucky Adoption Notice No. 1.)

(5) Within ten (10) days after the filing of an adoption notice, as required by subsection 2 of this section, by a public utility which then had other tariffs on file with the commission, said utility shall issue and file in its own name rate schedules and regulations (on additional or revised sheets to its existing tariff, or by a complete reissue of its existing tariff, or otherwise), which shall set out the rates and regulations of the predecessor utility then in effect and adopted by it, or such other rates and regulations as it proposes to put into effect in lieu thereof, in accordance with the provisions of these rules with proper identifying designation. (Example: First Revision of Original Sheet No. 2A, P.S.C. Kentucky No. 11, cancels Original Sheet No. 2A, also cancels P.S.C. Kentucky Adoption Notice No. 6; or P.S.C. Ken-

tucky No. 12 cancels P.S.C. Kentucky No. 11, also cancels P.S.C. Kentucky Adoption Notice No. 6.)

(6) When a tariff or revision is issued by a utility in compliance with these rules which states the rates, rules and regulations of the predecessor utility without change in any of the provisions thereof, the same may be filed without notice; but when such tariff or revision states any change in the effect of the rates, rules and regulations of the predecessor utility, such tariff or revision shall be subject to Sections 7 and 8 of this regulation.

Section 10. Posting Tariffs, Regulations and Statutes. (1) Every utility shall provide a suitable table or desk in its office and place of business, on which shall be available to the public at all times the following:

(a) A copy of all effective tariffs and supplements setting out its rates, classifications, charges, rules and regulations, together with forms of contracts and applications applicable to the territory served from that office or place of business.
(b) Copies of the Kentucky Revised Statutes applicable to the utility.
(c) A copy of the regulations governing such utility, adopted by the Public Service Commission.
(d) A suitable placard, in large type, giving information to the public that said tariffs, rules and regulations and statutes are kept there for public inspection.

Section 11. Special Contracts. Every utility shall file true copies of all special contracts entered into governing utility service which set out rates, charges or conditions of service not included in its general tariff. The provisions of this regulation applicable to tariffs containing rates, rules and regulations, and general agreements, shall also apply to the rates and schedules set out in said special contracts, so far as practicable.

Section 12. Deviations from Rules. In special cases for good cause shown upon application to and approval by, the Commission may permit deviations from these rules.

Section 13. Forms. In submitting to the commission information required by these rules the following forms shall be followed where applicable:

(1) Form of cover sheet for tariffs.
(2) Form for filing rules and regulations.
(3) Form for filing rate schedules.
(4) Form of certificate of notice to the public of change in tariff where no increase of charges results.
(5) Form of certificate of notice to the public of change in tariff which results in increased charges.
(6) Form of adoption notice.

Section 13. (1)

FORM OF COVER SHEET FOR TARIFFS

P.S.C. KY. NO._____

CANCELS P.S.C. KY. NO._____

(NAME OF COMPANY)

of

(LOCATION OF COMPANY)

Rates, Rules and Regulations for Furnishing

(SERVICE RENDERED)

at

(LOCATION SERVED)

FILED WITH PUBLIC SERVICE COMMISSION
OF KENTUCKY

Issued_____, 19___Effective_____, 19___

Issued by_____
(Name of Utility)

By_____

Section 13. (2)

FORM FOR FILING RULES & REGULATIONS

(Page 2 of Tariff)

Name of Utility

RULES & REGULATIONS

Date of Issue Effective Date

Issued By

Name Title

Section 13. (3)

FORM FOR FILING RATE SCHEDULES
(Page 3 of Tariff)

For_____
Community, Town or City

P.S.C. NO._____

____(Original) Sheet No._____
(Revised)

Name of Issuing Corporation

Canceling P.S.C. No._____

____(Original) Sheet No._____
(Revised)

CLASSIFICATION OF SERVICE

APPLICABLE: (Show territory covered by tariff.)

AVAILABILITY OF SERVICE: (Show classes of customers affected, such as domestic, commercial, etc.)

RATES: (List all rates covered by tariff.)

MINIMUM CHARGE: (State if penalty or discount.)

DATE OF ISSUE_____
Month Day Year

DATE EFFECTIVE_____
Month Day Year

ISSUED BY_____
Name of Officer Title Address

ISSUED BY AUTHORITY OF K.P.S.C.
ORDER NO._____

Section 13. (4)

FORM OF CERTIFICATE OF NOTICE TO THE PUBLIC
OF CHANGE IN TARIFF WHERE NO
INCREASE OF CHARGES RESULTS

(2 Copies Required)

To the PUBLIC SERVICE COMMISSION OF KENTUCKY, FRANKPORT, KENTUCKY

Pursuant to the Rules Governing Tariffs (effective_____), I hereby certify that I am_____of the (Name of Utility)_____ a public utility furnishing (Kind of Service)_____service within the Commonwealth of Kentucky, which on the ____day of_____, 19__, issued* Tariff P.S.C. Kentucky No._____, canceling Tariff P.S.C. Kentucky No._____, to become effective_____, 19__, and that notice to the public of the issuing of the same is being given in all respects as required by Section 7 of said Regulation, as follows:

On the_____day of_____, 19__, the same was exhibited for public inspection at the offices and places of business of the Company in the territory affected thereby, to wit, at the following places; (Give location of offices where rates are posted)_____and that the same will be kept open to public inspection at said offices and places of busi-

ness in conformity with the requirements of Section 7 of said Regulation.

I further certify that the proposed changes in tariff of said utility will not result in an increase in the rates or charges of any customer.

Given under my hand this_____day of_____, 19__.

Address_____

_____

* If a revised sheet, or additional sheet of a loose-leaf tariff is used to state changes in rates or regulations, the filing should be described as_____Revision of Original Sheet No._____P.S.C. Kentucky No._____, canceling_____Original Sheet No._____; P.S.C. Kentucky No._____, canceling P.S.C. Kentucky Adoption Notice No._____.

Section 13. (5)

FORM OF CERTIFICATE OF NOTICE TO THE PUBLIC
OF CHANGE IN TARIFF WHICH RESULTS
IN INCREASED CHARGES

(2 Copies Required)

To the PUBLIC SERVICE COMMISSION OF KENTUCKY, FRANKFORT, KENTUCKY

Pursuant to the Rules Governing Tariffs (effective_____,) I hereby certify that I am (Title of Officer)_____of the (Name of Utility)_____a public utility furnishing_____service within the Commonwealth of Kentucky, which on_____day of_____, 19__, issued its *Tariff P.S.C. Kentucky No._____ canceling Tariff P.S.C. Kentucky No._____to become effective_____, 19__and that notice to the public of the issuing of the same is being given in all respects as required by Section 7 of said Regulation, as follows:

On the_____day of_____, 19__, the same was exhibited for public inspection at the offices and places of business of the Company in the territory affected thereby, to wit, at the following places: (Give location of offices where rates are posted) _____and that the same will be kept open to public inspection at said office and places of business in conformity with the requirements of Section 7 of said Regulation.

**On the_____day of_____, 19__, typewritten or printed notice of the proposed rates or regulations was mailed to each of the_____customers of the company whose rates or charges will be increased thereby, a copy of said notice being attached thereto.

Given under my hand this_____day of_____, 19__.

Address_____

_____

* If a revised sheet or additional sheet of a loose-leaf tariff is used to state changes in rates or regulations, the filing should be described as Revision of Original Sheet No._____, P.S.C. Kentucky No._____, or Original Sheet No._____P.S.C. Kentucky No._____canceling P.S.C. Kentucky Adoption Notice No._____.
** If Notice is given by publication as provided by Section 7, use the following:

That more than 20 customers will be affected by said change by way of an increase in their rates or charges, and on the_____day of_____, 19__, there was delivered to the_____, a newspaper of general circulation in the community in which the customers affected reside, for publication therein once a week for three consecutive weeks prior to the effective date of said change, a notice of the proposed rates or regulations, a copy of said notice being attached hereto. A certificate of the publication of said notice will be furnished the Public Service Commission upon the completion of the same in accordance with Section 8(2), of said Regulation.

Section 13. (6)

FORM OF ADOPTION NOTICE
P.S.C. Ky. Adoption Notice No._____
ADOPTION NOTICE

The undersigned (Name of Utility)_____ of _____ hereby adopts, ratifies, and makes its own, in every respect as if the same had been originally filed and posted by it, all tariffs and supplements containing rates, rules and regulations for furnishing (Nature of Service)_____service at_____in the Commonwealth of Kentucky, filed with the Public Service Commission of Kentucky by (Name of Predecessor)_____of_____, and in effect on the_____day of_____, 19__, the date on which the public service business of the said (Name of Predecessor)_____was taken over by it.

This notice is issued on the_____day of_____, 19__, in conformity with Section 9 of PSC Tariff Regulations adopted by the Public Service Commission of Kentucky.

_____

By _____
WILLIAM A. LOGAN, Chairman

ADOPTED: October 22, 1974
APPROVED:
RECEIVED BY LRC: November 13, 1974 at 4:12 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 2:025)

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 278.280(2), 13.082
SUPERSEDES: PSC:Gas-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 gas utilities.

Section 1. General. (1) The purpose of this regulation is to provide standard rules governing the service of gas utilities operating under the jurisdiction of the Public Service Commission of Kentucky.

(2) Utilities serving customers under KRS 278.485 or other retail customers, under the jurisdiction of this commission, directly from transmission or gathering lines are exempt from Sections 6, 7, 8, 9, 10, 12, 14, 15, 16, and 17 of this regulation insofar as they apply to these customers.

(3) Each utility shall make all reasonable efforts to prevent interruptions of service and when such interruptions occur shall endeavor to re-establish service with the shortest possible delay consistent with the safety of its consumers and the general public. Planned interruptions shall always be preceded by adequate notice to all affected customers.

(4) (a) Every utility transmitting gas by any pipeline intended to be subjected to pressures in excess of 100 psig shall:

1. Within ninety (90) days from the date of the effective date of this regulation file with the Public Service Commission a report setting forth the respects in which such pipeline and its appurtenances conform or do not conform, as the case may be, to the standards, requirements and safeguards enumerated in these rules. Such statement shall be based upon records of the utility, including records of tests, specifications or other available data, and upon current investigations and surveys, not requiring excavation or interruption of service.
2. In each instance where any gas corporation required by subparagraph 1. to file a report claims that it is not possible or practicable to obtain the necessary data to prepare the same, a report setting forth such claim shall nevertheless be filed within the period required by subparagraph 1., and the basis for such claim shall be set forth in such verified statement.
3. In each instance in which the report required to be filed by this section states that any portion of such pipeline or its appurtenances does not conform to the standards, requirements and safeguards enumerated in these rules or that it is not possible or practicable to obtain the necessary data to prepare such a statement, the report shall state whether or not in the opinion of the person preparing the report, such portion of pipeline and its appurtenances is in safe operating condition.

(b) In each instance where it is stated that such pipeline or its appurtenances or any portion thereof is in safe operating condition, the basis for such statement shall be set forth including the operating conditions under which the opinion is expressed, and such report may be accompanied by an application of the gas corporation to the Public Service Commission for an exemption from the application of the rules herein enumerated.

Section 2. Definitions. (1) Meter. The word "meter" shall be construed to mean any device used for the purpose of measuring the quantity of gas delivered by a utility to a customer.

(2) Transmission Line. "Transmission line" means a pipeline other than a gathering line that:

(a) transports gas from a gathering line or storage facility;
(b) operates at a hoop stress of twenty percent (20%) or more of SMYS; or
(c) transports gas within a storage field.

(3) Distribution Line. "Distribution line" means a pipeline other than a gathering line or transmission line.

(4) Service Line. The term "service line" shall be construed to mean the line from the property line to the place of consumption.

(5) Service Connection. The term "service connection" shall be construed to mean the line from the main to the customer's property line, and shall include all of the pipe fittings and valves necessary to make the connection.

(6) The term "cubic foot of gas" as used in these rules shall have the following meanings:

(a) In cases where gas is supplied and metered to customers at the standard distribution pressure, a cubic foot of gas shall be defined to be the volume of gas which, at the temperature and pressure existing in the meter, occupies one (1) cubic foot.

(b) In cases where gas is supplied to customers through orifice or positive displacement meters at other than standard distribution pressure a cubic foot of gas shall be defined to be that volume of gas which, at 60°F. and at absolute pressure of 14.73 pounds per square inch, (30 inches of mercury), occupies one (1) cubic foot; except that in cases where different bases that are considered by the commission to be fair and reasonable are provided for in gas sales contracts or in rules or practices of a utility, such different bases shall be effective.

(c) The standard cubic foot of gas for testing the gas itself for heating value, shall be that volume of gas which, when saturated with water vapor and at a temperature of 60° F., and under a pressure equivalent to that of thirty (30) inches of mercury (mercury at 32°F., and under standard gravity) occupies one (1) cubic foot.

(7) The term "British thermal unit" shall mean the quantity of heat required to raise the temperature of one (1) pound of water 1°F.

(8) The term "therm" shall mean a unit of heating value equivalent to 100,000 British thermal units.

Section 3. Construction Standards. (1) The following publications and codes are hereby adopted, and filed by reference, as standards of accepted good practice to be followed by all utilities under the jurisdiction of the Public Service Commission of Kentucky except when such codes or publications conflict with the regulations of this commission.

(a) The commission being certified and financed by the Office of Pipeline Safety, Department of Transportation, hereby adopts the "Minimum Federal Safety Standards, Title 49 CFR Part 192", as published in the Federal Register on August 19, 1970, (35 F.R. 13247) and subsequent amendments as Minimum Gas Safety Standards for the Public Service Commission of Kentucky. The said Federal Minimum Standards shall apply except where the rules adopted by this commission are more stringent than and not inconsistent with the federal standards. Nothing contained in these standards, however, shall prevent the commission from adopting, after due notice and hearing, additional or more stringent standards for intrastate gas facilities now under the commission's jurisdiction, provided that such standards are not inconsistent with the federal standards.

(b) National Fire Protection Association Standard No. 54, "National Fuel Gas Code" 1974 edition as published by the National Fire Protection Association, 470 Atlantic Avenue, Boston, Mass. 02210.

(c) National Fire Protection Association Standard No. 59, "LP Gases At Utility Gas Plants" 1974 edition as published by the National Fire Protection Association, 470 Atlantic Avenue, Boston, Massachusetts 02210.

(d) "Standard Methods of Gas Testing", Circular No. 48, National Bureau of Standards, 1916.

(e) "Testing Large Capacity Rotary Gas Meters", Research Paper No. 1741, National Bureau of Standards Journal of Research, September 1946.

(f) "Standard Method Test for Calorific Value of Gaseous Fuels by the Water-flow Calorimeter", American Society for Testing Materials, Standard D 900-55, 1964 edition as published by the American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania.

(2) Reports and Records of Proposed Construction:

(a) At least thirty (30) days prior to the construction or major reconstruction of any gas pipeline intended to be subjected to pressure in excess of 100 psig, or twenty percent (20%) of minimum yield strength, whichever is lower, a report shall be filed with the Public Service Commission setting forth the specifications for such pipeline and the maximum allowable operating pressure.

(b) Every gas utility shall, on the 15th day of each month, submit a report to the Public Service Commission setting forth the progress of such construction or major reconstruction as of the end of the preceeding month.

(c) Before any gas pipeline or main is placed in operation intended to be subjected to pressures in excess of 100 psig, or twenty percent (20%) of minimum yield strength, whichever is lower, a report shall be filed with the Public Service Commission certifying the maximum pressure to which the line is intended to be subject and also certifying that the pipeline has been constructed and tested in accordance with the requirements of the rules herein prescribed, and a further report shall be filed within sixty (60) days thereafter including the results of all tests made pursuant thereto. No gas pipeline or main shall be operated at pressures in excess of the pressure for which it was certified to the Public Service Commission.

(d) The responsibility for the maintenance of necessary records to establish that compliance with these rules and regulations has been accomplished rests with the utility. Such records shall be available for inspection at all times by the commission or the commission's staff.

(3) The Minimum Federal Safety Standards, Title 49 CFR Part 192, as published in the Federal Register on August 19, 1970, (35 F.R. 13247) and subsequent amendments being the presently effective code the commission hereby adopts the following modifications and changes thereto:

(a) To 192.163 add: (The following is numbered in accordance with Title 49 CFR Part 192.)

"(f) Air Piping System:

"(1) All air piping within gas compressing stations shall be constructed in accordance with Section 2 of the USAS B31.1 Code for Pressure Piping.

"(2) The starting air pressure, storage volume, and size of connecting piping shall be adequate to rotate the engine at the cranking speed and for the number of revolutions necessary to purge the fuel gas from the power cylinder and muffler. The recommendations of the engine manufacturer may be used as a guide in determining these factors. Consideration should be given to the number of engines installed and to the possibility of having to start several of these engines within a short period time.

"(3) A check valve shall be installed in the starting air line near each engine to prevent backflow from the engine into the air piping system. A check valve shall also be placed in the main air line on the immediate outlet side of the air tank or tanks. It is recommended that equipment for cooling the air and removing the moisture and entrained oil be installed between the starting air compressor and the air storage tanks.

"(4) Suitable provision shall be made to prevent starting air from entering the power cylinders of an engine and activating moving parts while work is in progress on the engine or on equipment driven by the engines. Acceptable means of accomplishing this are installation of a blind flange, removal of a portion of the air supply piping or locking closed a stop valve and locking open a vent downstream from it.

"(g) Air Receivers. Air receivers or air storage bottles, for use in compressor stations, shall be constructed and equipped in accordance with Section VIII, Unfired Pressure Vessels, of the ASME Boiler and Pressure Vessel Code.

"(h) Lubricating Oil Piping. All lubricating oil piping with gas compressing stations shall be constructed in accordance with USA Standard Code for Pressure Piping, Petroleum Refinery Piping, USAS B31.3.

"(i) Water and Steam Piping. All water and steam piping within gas compressing stations shall be constructed in accordance with USA Standard Code for Pressure Piping, Power Piping, USAS B31.1.0.

"(j) Hydraulic Piping. All hydraulic power piping within gas compressing stations shall be constructed in accordance with USA Standard Code for Pressure Piping, Petroleum Refinery Piping, USAS B31.3."

(b) To 192.167 add: "(c) All emergency valves and controls shall be identified by signs. All important gas pressure piping shall be identified by signs or color codes as to their function."

(c) To 192.171 add: "(f) All fuel gas lines within a compressor station, serving the various buildings and residential areas, shall be provided with master shutoff valves located outside of any building or residential area."

(d) To 192.183 add: "(d) Vault or pit openings shall be located so as to minimize the hazards of tools or other objects falling upon the regulator, piping or other equipment. The control piping and the operating parts of the equipment installed shall not be located under a vault or pit opening where workmen can step on them when entering or leaving the vault or pit, unless such parts are suitably protected.

"(e) Whenever a vault or pit opening is to be located above equipment which could be damaged by a falling cover, a circular cover should be installed or other suitable precautions taken."

(e) To 192.243(d) delete (3), renumbering 4 to 5, and add:

"(3) In class 3 locations, 100 percent if practicable, but not less than 90 percent.

"(4) In class 4 locations and within 500 feet of buildings intended for human occupancy, 100 percent."

(f) To 192.279 add: "Copper pipe shall be joined by using either a compression type coupling or a brazed or soldered lap joint. The fillet material used for brazing shall be a copper-phosphorous alloy or silver base alloy. Butt welds are not permissible for joining copper pipe or tubing. Connections using a copper or cast bronze service line tee or extension fitting sweat-brazed to the copper main, are recommended for service line connections to copper mains."

(g) To 192.305 add: "The inspector shall have authority to order the removal and replacement of any section

that fails to meet the standards of this code."

(h) To 192.307 add: "Plastic pipe and tubing shall be adequately supported during storage and thermoplastic pipe, tubing and fittings shall be protected from long term exposure to direct sunlight."

(i) To 192.321 add to (a): "...and shall conform to the applicable provisions of 192.327 except that plastic pipelines and mains shall be installed with a minimum cover of 24 inches at all stress levels."

(j) To 192.357(b) delete and add: "(b) The use of standard weight close (all thread) nipples is prohibited."

(k) To 192.361 add: "(g) Joining of Service Lines. All underground steel service lines shall be jointed by threaded and coupled joints, compression type fillings, or by qualified welding or brazing methods, procedures and operators.

"(h) When coated steel pipe is to be installed as a service line in a bore, care shall be exercised to prevent damage to the coating during installation. For all installations to be made by boring, driving, or similar methods or in a rocky type soil, the following practices or their equivalents are recommended.

"(1) The coated pipe should not be used as the bore pipe or drive pipe and left in the ground as part of the service line. It is preferable to make such installations by first making an average bore, removing the pipe used for boring and then inserting the coated pipe.

"(2) Coated steel pipe preferably should not be inserted through a bore in exceptionally rocky soil when there is a likelihood of damage to the coating resulting from the insertion.

"(3) The recommendations in 1 and 2 do not apply where coated pipe is installed under conditions where the coating is not likely to be damaged, such as in sandy soil."

(l) To 192.467(f) add: "A study must be made in collaboration with the electric company on the common problems of corrosion and electrolysis taking the following factors into consideration:

"(1) The possibility of the pipeline carrying either unbalanced line currents or fault currents.

"(2) The possibility of lightning or fault currents inducing voltages sufficient to puncture pipe coatings or pipe.

"(3) Cathodic protection of the pipeline, including location of ground beds, especially if the electric line is carried on steel towers.

"(4) Bonding connections between the pipeline and either the steel tower footings or the buried ground facilities or the ground-wire of the overhead electric system."

(m) To 192.5 delete entirely and add: "192.5 Class Locations: (a) Class location is determined by applying the criteria set forth in this section. Two population density indexes, determined at the time of initial construction, are used to classify locations for design and testing purposes.

"(1) The one-mile density index, which applies to any specific mile of pipeline; and (2) the ten-mile density index, which applies to any specific ten-mile length of pipeline

"To determine the one-mile density indexes for a proposed pipeline, lay out a zone one-half mile wide along the route of the pipeline with the pipeline on the center line of this zone. Divide the zone into lengths, each containing one mile of pipeline. Count the number of buildings intended for human occupancy in each of these lengths. These numbers are the one-mile indexes for the pipeline.

"To determine the ten-mile density indexes for any given ten-mile length of pipeline, proceed as follows: Add the one-mile density indexes for the ten-mile section. In case a one-mile index equals or exceeds 20, it is to be included in the sum as 20. Divide the sum thus obtained by 10. The quotient is the ten-mile density index for the section.

"For the purposes of this section, each separate dwelling unit in a multiple dwelling unit building is counted as a separate building intended for human occupancy."

"(b) Class 1 Locations: Class 1 locations include waste lands, deserts, rugged mountains, grazing land, farm land, and combinations of these; provided however, that:

"(1) The ten-mile density index for any section of line does not exceed 5.

"(2) The one-mile density index for any one mile of line does not exceed 10."

"(c) Class 2 Locations: Class 2 locations include areas where the degree of development is intermediate between Class 1 locations and Class 3 locations. Fringe areas around cities and towns, and farm or industrial areas where the one-mile density index exceeds 10 or the ten-mile density index exceeds 5 fall within this location class."

"(d) Class 3 Locations: Class 3 locations include areas legally subdivided for residential or commercial purposes where a Class 4 classification is not called for and any area where the pipeline lines within 100 yards of a building or well-defined outside area that is occupied by 20 or more persons during normal use, such as a playground, recreation area, outdoor theater, or other place of public assembly."

"(e) Class 4 Locations: Class 4 locations include each city and incorporated village and the adjacent areas in which there is a substantially equivalent population density or in which a significant increase in population density can reasonably be expected.

"(f) The boundaries of the class locations determined in accordance with paragraphs (a) through (e) of this section may be adjusted as follows:

"(1) A Class 4 location ends 440 yards from the nearest building within a class four location.

"(2) When a cluster of buildings intended for human occupancy requires a Class 3 location, the Class 3 location ends 440 yards from the nearest building in the cluster.

"(3) When a cluster of buildings intended for human occupancy requires a Class 2 location, the Class 2 location ends 440 yards from the nearest building in the cluster."

(n) To 192.503 delete (c) and add: "(c) Except as provided in 192.505(a), if air is used as the test medium, the following maximum hoop stress limitations apply:

Maximum Hoop Stress Permissible During Test

	Percent of Specified Minimum Yield			
Location Class	1	2	3	4
Test Medium Air	75	75	50	40

"

(o) To 192.505 delete entirely and add: "192.505 Strength test requirements for steel pipeline to operate at a hoop stress of 30 percent or more of SMYS:

"(a) Except for service lines, each segment of a steel pipeline that is to operate at a hoop stress of 30 percent or more of SMYS must be strength tested in accordance with this section to substantiate the proposed maximum allowable operating pressure. In Class 1 locations, pipelines shall be tested to 1.25 times the maximum operating pressure and in Class 2 locations pipelines shall be tested to 1.50 times the maximum operating pressure. The test medium may be either air or water except that if there is a building intended for human occupancy within 300 feet of the pipeline water must be used as the test media while the hoop stress exceeds 50 percent of SMYS unless the buildings are evacuated during the test. Pipelines and mains in Class 3 and 4 locations shall be tested hydrostatically to a pressure not less than 1.50 times the maximum operating pressure.

"(b) In a Class 1 or Class 2 location, each compressor station, regulator station, and measuring station, must be tested to at least Class 3 location test requirements.

"(c) Test pressure shall be maintained until the pressure has stabilized as far as possible in all portions of the test sections giving due consideration to changes in ambient temperatures. In no event shall the duration of the test be less than 24 hours following such stabilization except that, in the case of a length of pipeline, main or piping which has not been backfilled prior to the test where, throughout its entire length, its entire circumference can be readily examined visually for the detection of leakage, the duration of the test shall be not less than 4 hours following such stabilization.

"(d) Where water is utilized as the test medium, adequate provisions shall be made for disposal of the water and steps shall be taken to guard against contamination.

"(e) Requirements for hydrostatic testing of mains and pipelines in Class locations 3 and 4 do not apply if at the time the pipeline or main is first ready for test the ground temperature at pipe depth is 32°F or less, or might fall to that temperature before the hydrostatic test could be completed. In such cases an air test to 1.50 times the maximum operating pressure shall be made. Precautions shall be taken to protect the public.

"(f) Other provisions of these rules notwithstanding, pipelines and mains crossing highways and railroads may be tested in each case in the same manner and to the same pressure as the pipelines on each side of the crossing.

"(g) If a component other than pipe is the only item being replaced or added to a pipeline, a strength test after installation is not required, if the manufacturer of the component certifies that:

"(1) The component was tested to at least the pressure required for the pipeline to which it is being added; or

"(2) The component was manufactured under a quality control system that ensures that each item manufactured is at least equal in strength to a prototype and

that the prototype was tested to at least the pressure required for the pipeline to which it is being added.

"(h) For fabricated units and short sections of pipe, for which a post installation test is impractical, a pre-installation strength test must be conducted by maintaining the pressure at or above the test pressure for at least 4 hours."

(p) To 192.507 delete entirely and add: "192.507 Except for service lines and plastic pipelines, each segment of a pipeline that is to be operated at a hoop stress less than 30 percent of SMYS and above 100 psig must be tested in accordance with the following table except that air may be used as the test medium within the maximum limits set in 192.503(c).

Test Requirements for Pipelines and Mains to Operate at Hoop Stresses of 30% or less of the Specified Minimum Yield Strength of the Pipe and above 100 psig

1 Location Class	2 Permissible Test Fluid	3 Prescribed Test Pressure Minimum	4 Maximum
1	Water	1.25 x m.o.p.	None
	Air	1.25 x m.o.p.	1.25 x d.p.
2	Water	1.50 x m.o.p.	None
	Air	1.50 x m.o.p.	1.25 x d.p.
3	Water	1.50 x m.o.p.	None
4	Water	1.50 x m.o.p.	None

m.o.p. — maximum operation pressure
d.p. — design pressure

"(a) The pipeline operator must use a test procedure that will insure discovery of all potentially hazardous leaks in the segment being tested.

"(b) If during the test, the segment is to be stressed to 20 percent or more of SMYS and air is the test medium:

"(1) A leak test must be made at a pressure between 100 psig and the pressure required to produce a hoop stress of 20 percent of SMYS; or

"(2) The line must be walked to check for leaks while the hoop stress is held at approximately 20 percent of SMYS.

"(c) The pressure must be maintained at or above the test pressure for at least 1 hour."

(q) To 192.509 add: "(c) If substantial protective coatings are used that would seal a split pipe seam the leak test pressure shall be 100 psi."

(r) To 192.511(c) change fourth line to read as follows: "...must be tested to the maximum operating pressure or 100 psig, whichever is greater, except..."

(s) To 192.55 add: "(f) New or used pipe of unknown specification and all used pipe the strength of which is impaired by corrosion of other deterioration, shall be retested hydrostatically either length by length in a mill type test or in the field after installation before being placed in service, and the test pressure used shall establish the maximum allowable operating pressure subject to the following limitations:

"(1) P for furnace butt welded pipe shall not exceed 60 percent of the mill test pressure.

"(2) P shall not exceed 85 percent of the mill test pressure for all other pipes; provided however, that pipe, mill tested to a pressure less than 85 percent of the pressure required to produce a stress equal to the specified minimum yield, may be retested with a mill type hydrostatic test or tested in place after installation. In the event the pipe is retested to a pressure in excess of the mill test pressure, then P shall not exceed 85 percent of the retest pressure rather than the initial test pressure. It is mandatory to use a liquid as the test medium in all tests in place after installation where the test pressure exceeds the mill test pressure."

(t) To 192.619(2)(ii) change Factor Table to read as follows:

Class Location	Factor Segment Installed before (Nov. 12, 1970)	Segment Installed after (Nov. 11, 1970)
1	1.25	1.25
2	1.50	1.50
3	1.50	1.50
4	1.50	1.50

(u) To 192.723 delete (b) — (1) and add: "(1). At least once a year a gas detector survey shall be conducted in business districts, involving tests of the atmosphere in gas, electric, telephone, sewer and water system manholes, and where access is not denied at inside basement walls of public and commercial buildings located adjacent to gas mains and service lines, at cracks in pavement and sidewalks and at other locations providing an opportunity for finding gas leaks."

(v) To 192.747 delete and add: "192.747 Valve Maintenance: Distribution Systems:
"Valves, the use of which may be necessary for the safe operation of a gas distribution system, shall be checked and serviced, including lubrication where necessary, at sufficiently frequent intervals (at least once each year) to assure their satisfactory operation. Inspection shall include checking of alignment to permit use of a key or wrench and cleaning from the valve box or vault any debris which would interfere with or delay the operation of the valve. A similar inspection shall be made of distribution curb valve boxes one year after installation where the alignment may be subject to movement and at meter change intervals thereafter."

(w) To 192.749(a) change 4th line to read: "...content of 100 cubic feet or more, must be..."

(x) To 192.751 add: "(d) When a pipeline or main can be kept full of gas during a welding or cutting operation, the following procedures are recommended:

"(1) Keep a slight flow of gas moving toward the point where cutting or welding is being done.

"(2) The gas pressure at the site of the work shall be controlled by suitable means.

"(3) Close all slots or open ends immediately after they are cut with tape, and/or tightly fitted canvas or other suitable material.

"(4) Do not permit two openings to remain uncovered at the same time. This is doubly important if the two openings are at different elevations.

"(e) No welding or acetylene cutting may be done on a pipeline, main or auxiliary apparatus that contains air if it is connected to a source of gas, unless a suitable means has been provided to prevent the leakage of gas into the pipeline or main.

"(f) In situations where welding or cutting must be done on facilities which are filled with air and connected to a source of gas and precautions recommended above cannot be taken, one or more of the following precautions, depending upon circumstances at the job, are required.

"(1) Purging of the pipe or equipment upon which welding or cutting is to be done, with combustible gas or inert gas.

"(2) Testing of the atmosphere in the vicinity of the zone to be heated before the work is started and at intervals as the work progresses, with a combustible gas indicator or by other suitable means.

"(3) Careful verification before the work starts that the valves that isolate the work from a source of gas do not leak.

"(g) When the main is to be separated a bonding conductor must be installed across the point of separation and maintained while the pipeline is separated. If overhead electric transmission lines parallel the pipeline right-of-way the current carrying capacity of the bonding conductor should be at least one-half of the capacity of the overhead line conductors."

(4) Venting of customer's service regulators. Each gas utilities' customers service regulator installed indoors shall be vented to the outside atmosphere and shall have a vent pipe sized no smaller than the manufacturer's vent connection built into the regulator.

(5) Exterior shut-off valves. Exterior shut-off valves shall be installed on all lines entering and leaving regulator stations for use in an emergency to stop the flow of gas, such valves to be installed at an accessible point and location where such valves can be operated in case of an emergency but in any event at least forty (40) feet from the regulator station if operation is below sixty (60) psig. if operating above sixty (60) psig. the valve shall be placed at least 100 feet from the station; if operated above 100 psig. the valve location shall be at least 200 feet from the station. A check valve may be used as the exterior shut-off valve on the downstream line in lieu of other valve it forty (40) feet from regulator. No connection shall be made between the inlet and the outlet shut-off valves, except the connections to the regulating station. A regulator station may contain metering equipment or other similar apparatus. The shut-off valve may be a sectionalizing valve. For the purpose of this rule the maximum pressure possible on the regulator station shall be controlling. Such valve shall be operated, tested and checked at least once a year to insure proper operating condition.

(6) Proximity to Buildings. Gas pipelines operated at 100 psig. or greater shall not be installed within 500 feet of any building intended for human occupancy unless line construction within 300 feet of the vicinity of the building complies with Class 4 construction.

Section 4. Waste. All practices in the production, distribution, consumption, or use of natural gas which are wasteful, such as flambeau lights and the like, are hereby expressly prohibited.

Section 5. Measuring Production and Shipment into and out of the State. (1) All gas produced and purchased by a utility in Kentucky shall be measured and the quantity thereof recorded.

(2) All gas piped out of or brought into the State of Kentucky by a utility shall be measured and quantity thereof recorded.

Section 6. Odorization. (1) Any gas distributed to customers through gas mains or gas services, used for domestic purposes or in compressor plants or transmitted through Class 3 or Class 4 locations shall have a distinctive odor of sufficient intensity so that the presence of the gas may be detected down to a concentration in air of one percent (1%) by volume (approximately twenty percent (20%) of the lower explosive limit) to normal or average olfactory senses of a person coming from fresh ungasified air into a closed room, or by appropriate instruments. Whenever necessary to maintain this level of intensity, a suitable odorant shall be added in accordance with the specification in this rule.

(2) Odorants in the concentrations used shall be: harmless to humans, noncorrosive to steel, iron, brass, copper and leather and not soluble in water to an extent greater than 2.5 parts by weight of odorant to 100 parts by weight of water.

(3) Odorizing equipment shall be designed to maintain a reasonable uniform level of odor in the gas.

(4) Each utility shall make periodic checks to determine that proper level of odorization is maintained and keep records of same.

Section 7. Purity of Gas. (1) All gas supplied to customers shall contain no more than: a trace of hydrogen sulphide; thirty (30) grains of total sulphur per 100 cubic feet, or five (5) grains of ammonia per 100 cubic feet. No gas shall contain impurities which may cause excessive corrosion of mains or piping or form corrosive or harmful fumes when burned in a properly designed and adjusted burner.

(2) When necessary, tests for the present of hydrogen sulphide shall be made at least once each day, except Sundays and holidays, with the standard lead acetate paper method. Results shown by these test papers shall be properly recorded and filed, as specified by the commission.

(3) Manufactured and mixed gas shall be tested at least once each month for the presence or total sulphur and ammonia, except that any gas containing no coal gas need not be tested for ammonia. Approved methods of testing shall be used. Records of all tests shall be preserved as specified by the commission.

Section 8. Heating Value of Gas. (1) Each utility shall establish and maintain a standard heating value for its gas. The heating value standard adopted shall comply with the following conditions:

(a) It shall be consistent with good service.

(b) It shall be that value which the utility, from its experience, determines is the most practicable and economical to manufacture and/or supply to its customers.

(2) Each utility shall file with the commission as a part of its schedule of rates or rules and regulations, the average total heating value of the gas, together with the indicated maximum expected fluctuation above and below the average total heating value which may be expected of a gas supplied by it in each district, division or community served.

(3) The utility shall be prepared to justify to the commission the standards adopted. The BTU standard adopted shall be expressed as part of the schedule of rates on file with the commission and shall not be changed without approval of the commission.

(4) The utility shall maintain the heating value of the gas with as little variation as is practicable, but such variation shall not be more than five percent (5%) above, or five percent (5%) below the standard adopted.

(5) The standard adopted shall be the monthly average total heating value of the gas, as delivered to customers at any point within one mile of the manufacturing plant or center of distribution, and shall be obtained in the following manner: To obtain the monthly average, the results of all tests of heating value made on any day during the calendar month shall be averaged and the average of all such daily averages shall be used in computing the monthly average. Each utility selling more than three hundred million (300,000,000) cu. ft. of gas annually shall make tests of heating value to conform at least to the minimum requirements of the following schedule:

Annual Sales of Gas — M Cubic Ft.	Minimum No. of Tests Per Week Day	Minimum Interval Between Consecutive Tests in Hours
300,000 to 500,000	2	4
500,000 to 1,000,000	4	2
1,000,000 upward	6	2

(6) Definition of Total Heating Value. The total heating value of a gas is the number of British thermal units produced by the combustion at constant pressure, of the amount of gas which would occupy a volume of one (1) cubic foot at a temperature of sixty (60) degrees Fahrenheit, if saturated with water vapor and under a pressure equivalent to that of thirty (30) inches of mercury at thirty-two (32) degrees Fahrenheit and under standard gravity, with air of the same temperature and pressure as the gas, when the products of combustion are cooled to the initial temperature of gas and air, and when the water formed by combustion is condensed to the liquid stage.

(7) Compressed Gas. Gas which has been compressed to more than five (5) pounds per square inch shall be tested for heating value after compression.

(8) Testing Equipment. Each utility selling more than three hundred million cu. ft. of gas annually shall provide and maintain an approved standard calorimeter and all necessary accessories therefor for testing the heating value of gas. Such equipment shall be subject to approval and calibration by the commission. Utilities served directly from transmission lines shall be exempt from this rule if there is a provision for measuring the heating value of the gas on the transmission line and if such calorimeters are available to the commission for testing and certification.

(9) Whenever the standard heating value of the gas supplied is changed sufficiently to necessitate readjustment of appliances, it shall be incumbent upon the utility to properly adjust the customer's appliances to the new heating value as adopted under this rule.

(10) Where any unusual conditions exist any utility may apply to the commission to be relieved in part of the requirements of this rule.

(11) Any change in the heating value greater than subsection (4) of this section shall not be made without the approval of the commission and without adequate notice to the affected customers. In such event, the utility shall make any necessary adjustments to the customer's appliances without charge and shall conduct the adjustment program with a minimum of inconvenience to the customers.

Section 9. Extension of Service. (1) Normal Extensions. An extension of one hundred (100) feet or less shall be made by a utility to an existing distribution main without charge for a prospective customer who shall apply for and contract to use service for one (1) year or more and provides guarantee for such service.

(2) Other Extensions.

(a) When an extension of the utility's main to serve an applicant or group of applicants amounts to more than one hundred (100) feet per customer, the utility may if not inconsistent with its filed tariff require the total cost of the excessive footage over one hundred (100) feet per customer to be deposited with the utility by the applicant or the applicants, based on the average estimated cost per foot of the total extension.

(b) Each customer receiving service under such extension will be reimbursed under the following plan: each year for a period of not less than ten (10) years which, for the purpose of this rule, shall be the refund period, the utility shall refund to the customer or customers who paid for the excessive footage, the cost of the one hundred (100) feet of the extension in place for each additional customer connected during the year whose service line is directly connected to the extension installed, and not to extensions or laterals therefrom, but in no case shall the total amount refunded exceed the amount paid the utility. After the end of the refund period no refund will be required to be made.

(3) An applicant desiring an extension to a proposed real estate subdivision may be required to pay the entire cost of the extension. Each year for a period of not less than ten (10) years the utility shall refund to the applicant who paid for the extension a sum equivalent to the cost of one hundred (100) feet of the extension installed for each additional customer connected during the year but in no case shall the total amount refunded exceed the amount paid to the utility. After the end of the refund period from the completion of the extension no refund will be required to be made.

(4) Nothing contained herein shall be construed to prohibit the utility from making extensions under different arrangements provided such arrangements have been approved by the commission.

(5) Nothing contained herein shall be construed as to prohibit a utility from making at its expense greater extensions than herein prescribed, should its judgment so dictate, provided like free extensions are made to other customers under similar conditions.

(6) Upon complaint to and investigation by the commission a utility may be required to construct extensions greater than one hundred (100) feet upon a finding by the commission that such extension is reasonable.

Section 10. Service Connections. (1) Ownership of service.

(a) Utility's Responsibility. In urban areas with well defined streets the utility shall furnish and install at its own expense for the purpose of connecting its distribution system to the customer's premises that portion of the service pipe from its main to the property line or to and including the curb stop and curb box if used. The curb stop may be installed at a convenient place between the property line and the curb. In cases where meters are located outdoors, the curb box and curb stop may be omitted if the meter installation is provided with a stopcock and the connection to the distribution main is made with a service tee that incorporates a positive shutoff device that can be operated with ordinary, readily available tools and the service tee is not located under pavement.

(b) Customers Responsibility. The customer shall furnish and lay the necessary pipe to make the connection from the curb stop to the place of consumption and shall keep the service line in good repair and in accordance with such reasonable requirements of the utility as may be incorporated in its rules and regulations.

(c) Inspection. In the installation of a service line the customer shall not install any tees or branch connections and must leave the trench open and pipe

uncovered until it is examined by an inspector of the utility and shown to be free from any irregularity or defect. The utility shall test the customer's piping for gas leaks, each time the gas is turned on by the utility, by observing that no gas passes through the meter when all appliances are turned off. The utility shall refuse to serve until all gas leaks so disclosed have been properly repaired.

(2) Location of Service. The customer's service line shall extend to that point on the curb line easiest of access to the utility from its distribution system. When a reasonable doubt exists as to the proper location of the service line, the utility shall be consulted and its approval of the location secured.

(3) All services shall be equipped with a stopcock near the meter. If the service is not equipped with an outside shut-off, the inside shut-off shall be of a type which can be sealed in the off position.

Section 11. Method of Measuring Service. (1) All gas sold by a utility and all gas consumed by a utility in the State of Kentucky shall be metered through approved type meters except in cases of emergency or when otherwise authorized by the commission. Each meter shall bear an identifying number. When gas is sold at high pressures or large volumes, the contract or rate schedule shall specify the standards used to calculate the gas volume. Prepayment meters shall not be used except where there is no other satisfactory method of collecting payment for the service rendered.

(2) All gas delivered as compensation for leases, rights of way, or for other reasons, not charged for at the utility's regular schedule of charges, shall be metered and a record kept thereof. All meters and regulators installed for the purpose of measuring gas and for the purpose of regulating the pressure of gas shall be under the control of the utility and subject to the rules of the utility and the rules of the commission.

(3) The utility shall make no charge for furnishing and installing any meter or meter accessories necessary to measure the gas furnished, except by mutual agreement in special cases or except where duplicate or check meters are requested by the customer.

(4) Each gas utility shall adopt a standard method of meter and service line installation insofar as practicable. Such methods shall be set out with a written description and/or with drawings to the extent necessary for a clear understanding of the requirements, all of which shall be filed with the commission. Copies of these standard methods shall be made available to prospective customers and contractors or others engaged in the business of installing pipe for gas utilization. All meters shall be set in place by the utility.

(5) Each customer shall be metered separately except in cases of multi-occupants under the same roof with a common entrance or within an enclosure where it is unreasonable or uneconomical to measure each unit separately.

(6) The utility may render temporary service to a customer and may require the customer to bear all of the cost of installing and removing the service in excess of any salvage realized. In this respect, a temporary service shall be considered to be service that is not required or used for more than one (1) year.

Section 12. Location of Meters. (1) Meters shall be easily accessible for reading, testing and making necessary adjustments and repairs, and where indoor type meters are necessary they shall be installed in a clean, dry, safe, convenient place. Unless absolutely unavoidable, meters shall not be installed in any location where the visits of the meter reader or tester will cause annoyance to the customer or a severe inconvenience to the utility. Existing meters which are located in places not permitted by this rule shall be relocated by the customer or owner to an approved location.

(2) Proper provision shall be made by the customer for the installation of the utility's meter. At least six (6) inches clear space shall be available, if possible on all sides of the meter and not less than thirty (30) inches in front of it.

(3) When a number of meters are placed in the same location, each meter shall be tagged or marked to indicate the customer metered by it and such identification shall be preserved and maintained by the owner of the premises served.

(4) When the distance between the utility's main and the nearest point of consumption is more than one hundred fifty (150) feet, the meter shall be located as near to the utility's main as may be practicable. This shall apply whether or not all or part of the service line shall have been constructed by either the customer or utility.

(5) When customers are served from high pressure lines, the meters, regulator or regulators and safety devices shall be located as near to the utility's main as practicable.

Section 13. Accuracy Requirements for Meters. (1) All tests to determine the accuracy of registration of any gas meters shall be made by a qualified meter man and with suitable facilities.

(a) Positive displacement meters:

1. Before being installed for the use of any customer, every positive displacement gas meter, whether new, repaired or removed from service for any cause shall be in good order and shall be adjusted to be correct to within one-half of one percent, plus or minus, when passing gas at approximately twenty percent (20%) and one hundred percent (100%) of the rated capacity of the meter as given by the manufacturer at .5" H20 differential. A pilot test to determine that the meter will register at one-half of one percent (1/2 of 1%) of the rated capacity shall be made before placing meters in service.

2. Meters removed from service for any reason shall be tested for accuracy as soon as practical after removal. An "as found" test shall be made at a flow-rate of approximately twenty percent (20%) and one hundred percent (100%) of the rated capacity at .5" H20 differential and results of said tests algebraically averaged to determine the accuracy. If the error is less than two percent (2%) this shall be reported as the "as found" test. If the error is more than two percent (2%) two (2) additional tests shall be made at twenty percent (20%) and one hundred percent (100%) and the average of the three tests shall be reported as the "as found" test. The three (3) test procedures shall apply to any customer request test, complaint test, or bill adjustment made on the basis of the meter.

(b) Large capacity meters:

1. All meters other than positive displacement meters, regardless of type, shall be tested at approved intervals by the utility meter man using flow provers or other approved methods either in the shop or on location of use at the option of the utility with the approval of the commission of facilities and methods used.

a. The accuracy of these meters shall be maintained as near one hundred percent (100%) as possible.

b. Test ranges and procedures shall be as prescribed in adopted standards or approved by the commission.

2. All meter installation shall be inspected for proper design and construction and all instruments, regulators and valves used in conjunction with the installation shall be tested for desired operation and accuracy before being placed in service. This inspection shall be made by a competent meter man employed by the utility or by a competent person employed by the manufacturer of the meter installation. Test data as to conditions found, corrected if in error, and conditions as left shall be made available for inspection by the commission. Subsequent test results shall be a portion of regular meter test reports to the commission by the utility.

Section 14. Pressure Gauges. (1) Each utility shall keep continually in use on its distribution system or systems one (1) or more accurate recording pressure gauges at each point of supply to the system or systems. These gauges must be located at such point or points and in such a manner as to give continuous record of the gas pressure and character of service being furnished.

(2) In addition to the recording pressure gauges required in subsection (1) of this section, all utilities distributing gas shall provide themselves with one (1) or more portable recording pressure gauges with which pressure surveys shall be made in sufficient number to indicate the service furnished and to satisfy the commission of the utility's compliance with pressure requirements.

(3) All recording pressure gauge charts shall be preserved and filed in a systematic manner and each chart shall show the date and location when the record was made. All charts must be kept on file by the utility for a period of at least two (2) years.

Section 15. Standard Pressure. (1) All utilities supplying gas for light, heat, power or other purposes shall, subject to the approval of the commission, adopt and maintain a standard pressure as measured at the customer's meter outlet. In adopting such standard pressure the utility may divide its distribution system into districts and establish a separate standard pressure for each such district, or the utility may establish a single standard pressure for its distribution system as a whole.

(2) The standard pressure to be adopted as herein provided shall be a part of the utility's schedule of rates and general rules and regulations.

(3) No change shall be made by a utility in the standard pressure or pressure adopted except in case of emergency.

Section 16. Allowable Variations of Standard Service Pressure. (1) The variations of standard pressure as established under the preceding rule shall not exceed the following under normal operating conditions:

Established Standard Service Pressure	Minimum Pressure Allowable	Maximum Pressure Allowable
4 oz.	2 oz.	6 oz.
6 oz.	3 oz.	9 oz.
8 oz.	4 oz.	12 oz.

(2) A utility supplying gas shall not be deemed to have violated subsection (1) of this section, if it can be shown that variations from said pressures are due to:

(a) Use of gas by the customer in violation of contract of the rules of the utility.

(b) Infrequent fluctuations of short duration due to unavoidable conditions of operation.

(3) Allowable variations in standard pressure other than those covered by subsection (1) of this section will be established by the commission when application is made and good cause shown therefor.

(4) The gas pressures required above shall be maintained at the outlet of the meter in such a manner to provide safe and efficient utilization of gas in properly adjusted appliances supplied through adequately sized customer's facilities.

Section 17. Continuity of Service. (1) The utility shall keep a complete record of all interruptions on its entire system or on major divisions thereof. The record shall show the cause of interruption, date, time, duration, remedy, and steps taken to prevent recurrence. The commission shall be notified of major interruptions as soon as they come to the attention of the utility and a complete report made after restoration of service.

(2) An interruption of service, as the term is used here, shall also mean the interval of time during which the pressure drops below fifty percent (50%) of such adopted standard pressure on the entire system, or on one (1) or more entire major division or divisions for which an average standard pressure has been adopted.

Section 18. Meter Testing Facilities and Equipment. (1) Meter Shop:

(a) Each utility, unless specifically excused by the commission, shall maintain a meter shop for the purpose of inspecting, testing, and repairing meters. The shop shall be open for inspection by authorized representatives of the commission at all reasonable times, and the facilities and equipment, as well as the methods of measurements and testing employed, shall be subject to the approval of the commission.

(b) The meter shop shall consist of a repair room or shop proper and a proving room. The proving room shall be designed so that the meters and meter testing apparatus are protected from excessive changes in temperature and other disturbing factors. The proving room or the entire meter shop shall be air conditioned if necessary to achieve satisfactory temperature control.

(c) The proving room shall be well lighted and preferably not on an outside wall of the building. Temperature changes in the room shall be no greater than five (5) degrees F over a twenty-four (24) hour period. Temperatures at any one point in the room shall not vary from a simultaneous temperature at any other point in the room by more than one (1) degree F.

(2) Working Standards:

(a) Each utility, unless specifically excused by the commission, shall own and make proper provision to operate at least one (1) approved belltype meter prover, preferably of ten (10) cubic feet capacity, but in no case of less than five (5) cubic feet capacity. The prover shall be equipped with suitable thermometers and other necessary accessories, and such equipment shall be maintained in proper condition and adjustment so that it shall be capable of determining the accuracy of any service meter, practical of test by it, to within one-half of one percent (1/2 of 1%) plus or minus.

(b) The prover shall be accurate to within three tenths (.3) of one percent (1%) at each point used in testing meters.

(c) The prover shall not be located near any radiator, heater, stem pipe, or hot or cold air duct. Direct sunlight shall not be allowed to fall on the prover or the meters under test.

(d) During conditions of satisfactory operation the temperature of the air in the prover shall be within one (1) degree F of the ambient temperature, and the temperature of the oil in the prover shall not differ from the temperature of the ambient air by more than one (1) degree F.

(e) The meters to be tested shall be stored in such manner that the temperature of the meters is substantially the same as the temperature of the prover. In order to achieve this the meters shall be placed in the environment of the prover for a minimum of about five (5) hours, and preferably overnight.

(3) All testing instruments and other equipment shall at all times be accompanied by a certificate giving the date when it was last tested and adjusted and must be signed by a proper authority or a tag referring to such certificate may be attached when practicable. These certificates, when superseded, shall be kept on file in the office of the utility.

(4) Sixty (60) days after the effective date of this regulation, each utility shall advise the commission in writing as to the kind and amount of testing equipment available.

Section 19. Periodic Tests. (1) Periodic tests (of all meters) shall be made according to the following schedule:

(a) All positive-displacement meters, with a rated capacity up to and including 500 feet per hour, shall be tested at least once every ten (10) years.

(b) All positive-displacement meters, with a rated capacity above 500 cubic feet per hour, up to and including 1,500 cubic feet per hour, shall be tested at least once every five (5) years.

(c) All positive-displacement meters above 1,500 cubic feet per hour shall be tested at least once every year.

(d) All orifice meters shall have their recording gauges tested at least once every six (6) months and the constant of the orifice plate tested every five (5) years.

(2) All meters in service on and after the effective date of this regulation for which there is on file in the utility's office no record of test within the time equal to the period of test for that class and rating of meter as specified in subsection (1) of this section, shall be tested as soon thereafter as circumstances will permit and the meters with the greatest time elapsed since the last test shall be tested first. In no case shall the time of test of said meters, subsequent to the effective date of this regulation exceed one-half (1/2) of the required period of tests for meters of that class and rating as specified in subsection (1) of this section. Whenever the number of meters of any type which register in error beyond the limits specified in these rules is deemed to be excessive, then this type shall be tested with such additional frequency as the commission may direct.

Section 20. Deviations from Rules. In special cases for good cause shown upon application to and approval by, the commission may permit deviations from these rules.

WILLIAM A. LOGAN, Chairman

ADOPTED: October 22, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: November 20, 1974 at 8:46 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary, Public Service Commission, Capital Plaza Tower, Frankfort, Kentucky 40601.

CABINET FOR PUBLIC PROTECTION AND REGULATION
Public Service Commission
(807 KAR 2:030)

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 278.485(3), 13.082
SUPERSEDES: PSC:Gas, Sp-1
NECESSITY AND FUNCTION: KRS 278.485(1) provides that gas service shall be furnished at rates and charges as determined by the commission. KRS 278.485(3) requires that the installation and standards of safety for the installation of service lines may be prescribed by the commission. This proposed regulation establishes the rules which apply to service from natural gas gathering pipeline systems.

Section 1. Construction Standards. Instances not covered by this regulation must meet, where applicable, the requirements of the "USA Standard Code for Pressure Piping, Gas Transmission and Distribution Piping Systems (USAS b31.8)" 1968 edition as published by the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, N. Y. 10017; herein filed by reference.

Section 2. Definitions. (1) "Gathering line" means any pipeline gathering gas from a producing gas well; excluding pipelines on the discharge side of compressor stations.

(2) "Service line" means any pipeline beginning at the point of connection to the gathering line and ending at the point or points of consumption.

(3) "Gas company" means the owner of any producing gas well and/or gathering line.

Section 3. Requirements for Service. (1) Persons desiring gas service under KRS 278.485 shall file applications at the local gas company office, which shall contain the following information:

(a) Name and address of the applicant.
(b) Purpose for which gas is requested.
(c) Name and address of contractor installing service line and other facilities required to be furnished by applicant.
(d) Name and address of gas company from which service is requested.

(2) Gas company shall furnish applicant with construction drawing showing installation and material meeting the company's specifications as approved by the commission for service installation.

(3) After receipt of the application, the gas company shall furnish the commission in Frankfort the name and address of the applicant and forward a copy of the application to the commission's representative in that area.

(4) Applicant's gas service line shall be inspected and approved by the commission representative before service is commenced. No service line will be inspected for which an application has not been received.

(5) The commission will notify the applicant by mail if the service line does not meet the requirements of its rules and regulations. If the defects are not corrected within the time permitted, the commission will notify the gas company and the application shall be discontinued by the company until such defects are corrected.

(6) The gas company shall furnish, install and maintain the meter which shall remain its property.

(7) The service tap including saddle and first service shutoff valve shall be installed by the gas company and shall remain its property.

(8) All other equipment and material required for such service shall be furnished, installed and maintained by applicant at his expense and shall remain applicant's property.

(9) If leaks or other hazardous conditions are detected in the service line, the gas company shall have the right to discontinue service until such leaks or other hazardous condi-

tions are repaired or remedied by consumer.

Section 4. Connections to High Pressure Gathering Lines. (1) Connections shall be two (2) inches or less in diameter but smaller than the diameter of the gathering line.
(2) Connections shall be on the upper one-half (1/2) of the pipe surface, preferably at an angle of forty-five degrees (45°).
(3) Connections shall be at right angles to the center line of the gathering line.
(4) A service shut-off shall immediately follow the connection to the gathering line.
(5) A drip tank shall be installed preceding the regulating equipment, but may be omitted upon approval of the commission's representative.

Section 5. Control and Limiting of Gas Pressure. (1) When maximum pressures may exceed sixty (60) p.s.i. a service regulator and a secondary regulator located upstream from the service regulator shall be installed. The regulators shall be spring type, and the secondary regulator shall in no case be set to maintain a pressure higher than sixty (60) p.s.i. A spring type relief valve shall be installed between the secondary regulator and the service regulator to limit the pressure on the inlet of the service regulator to sixty (60) p.s.i. or less in case the secondary regulator fails to function properly.
(2) Every service line shall be equipped with an adequate spring type relief valve on the outlet side of the meter installation.
(3) Regulators shall not be by-passed.
(4) Each relief valve shall be vented into the outside air.
(5) Vents shall be covered to prevent water and insects from entering.
(6) All metering and regulating equipment shall be as near to the gathering line as practicable, in accordance with safe and accepted operating practices.
(7) Each service shall have an insulating joint which shall follow the regulating units.
(8) Regulating equipment shall be properly protected by the applicant.

Section 6. Service Lines and Metering Facilities. (1) The customer shall furnish and install the service line from tap to point of consumption. The customer shall also secure all rights-of-way, railroad, highway and other crossing permits. The customer's service line shall be laid on undistributed or well compacted soil in a separate trench avoiding all structures and hazardous locations. Where service line passes through cultivated land, the trench shall be of sufficient depth to permit a backfill cover of twenty-four (24) inches above the service line. In other locations, the trench depth shall be eighteen (18) inches where practicable. No structure shall be erected over the service line.
(2) No branch tee or other connection shall be permitted on the line to serve any user other than the applicant except with the prior written consent of the gas company and the applicant, in which event the service to each user shall have an automatic shut-off valve with manual reset located on the riser in a horizontal position. Such shut-off valve shall have an operating pressure of eight (8) ounces with a shut-off pressure setting of not less than two (2) ounces.
(3) Service lines shall be constructed so as to avoid subsurface structures but in no case shall service lines be constructed within a distance of less than thirty-six (36) inches from any subsurface structure or parallel thereto closer than thirty-six (36) inches.
(4) Service lines shall be purged for at least fifteen (15) minutes after testing to remove any air accumulations.
(5) Metering pressure shall not exceed eight (8) ounces.
(6) Service lines shall be constructed of new black steel pipe from the gas meter to the outlet side of the stopcock located on the riser entering into the building and shall be of a size not less than one and one-fourth (1-1/4) inches.
(7) Service lines shall enter buildings above the ground level with shut-off valve located on the riser.
(8) Each service shall have an automatic cut-off valve with manual reset to shut off gas if gas pressure fails. The valve may be part of the final stage regulator when only one (1) customer is served from the service line.

Section 7. Payment of Bills or Other Default. (1) The customer shall pay the installation charge and thereafter pay the gas company for all gas delivered at rates determined therefor by the commission. The gas company shall render statements to the customer at regular monthly or bi-monthly intervals for gas delivered, which said statements shall be rendered not later than ten (10) days following each billing period. No gas company shall discontinue service to any customer for nonpayment of bills (including delayed payment 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, but the cutoff shall not be effected before fifteen (15) days after the mailing date of the original bill. Service shall not be re-established until the customer has paid the gas company all amounts due for gas delivered plus a turn-on charge of five dollars ($5), and placed himself in full compliance with the regulations of the commission pertaining to such service. In the event the customer fails or refuses to pay such unpaid bill(s) and turn-on charge and/or place himself in compliance with the regulations of the commission within thirty (30) days from the date the gas is turned off, the gas company may disconnect customer's service line from its gathering line and service shall not be re-established until the customer has complied with the regulations of the commission pertaining to initial service.
(2) The gas company shall have the right, if it so elects, to require a cash deposit or other guaranty from the customer to secure payments of bills.

Section 8. General Provisions. The gas company shall at all times have access to the premises where the connection is made and the meter is located with the right to shut off the gas and remove its property from said premises upon reasonable notice for any of the following reasons: for repairs or because of leakage; for non-payment of any bills; for failure to make a cash deposit, if such be required; for any violation of this regulation; moving of the customer from the premises; for fraudulent tampering with the meter, regulators or connections; for shortage of gas or reasons of safety; for larceny of gas; for any action by a customer to secure through his meter gas for purposes other than those requested, or for any other party without the written consent of the gas company; for false representation with respect to the ownership of property to which service is furnished.

Section 9. Rates and Charges. (1) Each gas company may make and collect an initial charge of fifty dollars ($50) for each service tap, including saddle and first shut-off valve which, under this regulation, are required to be furnished and installed by the gas company. No part of this charge shall be refunded by the gas company.
(2) The monthly charges for gas service, except as hereinafter expressly provided, shall be as follows:

For the First	2 MCF	$ .80 per MCF
For the Next	28 MCF	.60 per MCF
For the Next	570 MCF	.50 per MCF
All Over	600 MCF	.40 per MCF
The minimum bill shall be		1.60 per month

(3) The only exception to the charges outlined above shall be that when any gas producing area is served by one company, such company may elect to apply its own tariffs which have been filed and approved by the commission, plus the fifty-dollar ($50) charge for the service tap, including saddle and first service shut-off valve.
(4) The provisions contained herein shall apply only to connections and services made pursuant to the provisions of KRS 278.485 as amended by the 1956 Kentucky General Assembly and subsequent to the effective date of this regulation.

Section 10. Deviation from Rules. In special cases for good cause shown upon application to and approval by, the commission may permit deviations from these rules.

WILLIAM A. LOGAN, Chairman
ADOPTED: October 22, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: November 13, 1974 at 4:10 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary, Public Service Commission, Capital Plaza Tower, Frankfort, Kentucky 40601.

CABINET FOR PUBLIC PROTECTION AND REGULATION
Public Service Commission
(807 KAR 2:040)

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 278.280(2), 13.082
SUPERSEDES: PSC:W-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 water utilities.

Section 1. General. The purpose of this regulation is to provide standard rules and regulations governing the service of water utilities operating under the jurisdiction of the Public Service Commission of Kentucky.

Section 2. Definitions. (1) Meter. The word "meter" shall be construed to mean any device used for the purpose of measuring the quantity of water delivered by a utility to a customer.
(2) Transmission Main. The transmission main is used for conveying water to the distribution system, reservoirs, tanks or stand pipes, and has generally no service connections with customers.
(3) Distribution Main. The distribution main is one from which service connections with customers are taken at frequent intervals.
(4) Service Line. The term "service line" shall be construed to mean the line from the property line to the place of consumption.
(5) Service Connection. The term "service connection" shall be construed to mean the line from the main to the customer's property line, and shall include all of the pipe fittings and valves necessary to make the connection.
(6) Department for Natural Resources. The term "Department for Natural Resources" means the Kentucky Department for Natural Resources and Environmental Protection, Bureau of Environmental Quality, Division of Sanitary Engineering.

Section 3. Information Available to Customers. (1) Characteristics of Water. A description in writing of the treated water as to chemical constituents and bacteriological standards.

(2) Rates. A schedule of rates for water service applicable to the service to be rendered to the customer.

(3) Reading Meters. Information about method of reading meters.

(4) Bill Analysis. A statement of the past readings of a customer's meter for a period of two years.

Section 4. Quality of Water. (1) General. Any utility furnishing water service for human consumption or for domestic uses shall provide water that is wholesome, potable, free from objectionable odors and taste, and not harmful or dangerous to public health.

(2) Compliance with Department for Natural Resources. Any utility furnishing water service for human consumption or domestic use shall conform to all legal requirements of the Department for Natural Resources for construction and operation of its water system as pertains to sanitation and potability of the water.

(3) Water Supply. In absence of comparable requirements of the Department for Natural Resources, water supplied by any utility shall be:

(a) Adequately protected by artificial treatment to include continuous disinfection throughout the distribution system.

(b) Free from objectionable color, turbidity, taste, and odor.

(c) From a source reasonably adequate to provide a continuous supply of water.

(d) Of such quality at all times as to meet the "Public Health Service Drinking Water Standards", Revised 1962 edition, Publication No. 956, U.S. Government Printing Office, Washington, D.C. 20402; herein filed by reference.

(4) Operation of Supply System.

(a) The water supply system, including wells, reservoirs, pumping equipment, treatment works, mains, and service pipes shall be free from sanitary defects.

(b) No physical connection between the distribution system of a public potable water supply and that of any other water supply shall be permitted, unless such other water supply maintains a safe sanitary quality in accordance with this regulation and the inter-connections of the supplies are approved by the commission.

(c) The growth of algae in the water at the source of supply, in reservoirs or other basins, and in the water mains, shall be controlled by proper treatment.

(d) Utilities obtaining water supplies from driven or drilled wells must maintain the tightness of well casings and provide protection at the surface of the ground to prevent the infiltration of water other than that from the strata tapped by such wells and 300 feet from any source of pollution.

(5) Testing of Water.

(a) Test. Each utility shall have representative samples of water supplied by it examined by the state or local Department for Natural Resources or by a competent chemist and bacteriologist skilled in the sanitary examination of water, under methods approved by the State department for Natural Resources, at intervals sufficient to insure a safe water supply.

(b) Report to the Commission. In the event that the above prescribed tests show that the water furnished by the utility is contaminated or otherwise unsafe for human consumption, the utility shall forward a report of such test to the commission or other state agency having correctional jurisdiction without delay, and shall take immediate steps to correct the condition.

Section 5. Continuity of Service. (1) Emergency Interruptions. Each utility shall make all reasonable efforts to prevent interruptions of service and when such interruptions occur shall endeavor to re-establish service with the shortest possible delay consistent with the safety of its consumers and the general public. Where an emergency interruption of service affects the service to any public fire protection device, the utility shall immediately notify the fire chief or other public official responsible for the fire protection.

(2) Scheduled Interruptions. Whenever any utility finds it necessary to schedule an interruption of its service, it shall notify all customers to be affected by the interruption, stating the time and anticipated duration of the interruption. Whenever possible, scheduled interruptions shall be made at such hours as will provide least inconvenience to the customers. Where public fire protection is provided by the mains affected by the interruptions, the utility shall notify the fire chief or other officials responsible for fire protection, of the interruption, stating the time and anticipated duration. The fire chief or other official responsible for fire protection shall be notified immediately upon restoration of service.

(3) Standby Equipment. When the system pressure is maintained by mechanical means, emergency standby pumping equipment shall be provided to maintain a reasonable pressure in the main in the event of failure of the primary pumping facilities.

(4) Storage. Each utility shall provide water storage to insure a minimum of one (1) days supply of its average daily water usage or such minimum amount deemed adequate by the commission.

(5) Record of Interruptions. Each utility shall keep a complete record of all interruptions on its entire system or on major divisions thereof. This record shall show the cause of interruption, date, time, duration, remedy and steps taken to prevent recurrence.

Section 6. Pressures. (1) Standard Pressure. Each utility shall, subject to the approval of the commission, adopt and maintain a standard pressure in its distribution system at locations to be designated as the point or points of "standard pressure". The selection of such points shall be confined to locations fairly representative of average conditions. In selecting points for fixed standard pressure a utility may divide its distribution system into districts, when division is necessary, due to differences of elevation or loss of pressure because of friction, or due to both of said causes; and may adopt a standard pressure for each such division, or it may establish a single standard pressure for its distribution system as a whole. In no case shall the constant difference between the highest and lowest pressures in a district for which a standard has been adopted exceed fifty percent (50%) of such standard. In the interpretation of this rule it shall be understood that in districts of widely varying elevations or low customer density a utility may undertake to furnish a service which does not comply with the foregoing specifications if the customer is fully advised of the conditions under which average service may be expected. It shall be understood that nothing shall prevent the commission from requiring improvements when, upon investigation, it appears right and proper that such betterments should be made. In no event, however, shall the pressure at the customer's service pipe under normal conditions fall below thirty (30) p.s.i.g. nor shall the static pressure exceed 150 p.s.i.g.

(2) Pressure Gauges. Each utility shall provide itself with one (1) or more recording pressure gauges for the purpose of making pressure surveys as required by these rules. These gauges shall be suitable to record the pressure experienced on the utility's system and shall be able to record a continuous 24-hour test. One of these recording pressure gauges shall be maintained in continuous service at some representative point on the utility's mains.

(3) Pressure Surveys. At least once annually, each utility shall make a survey of pressures in its distribution system of sufficient magnitude to indicate the quality of service being rendered at representative points in its system. The pressure charts for these surveys shall show the date and time of beginning and end of the test and the location at which the test was made. Records of these pressure surveys shall be maintained at the utility's principal office in the state and shall be made available to the commission upon request.

Section 7. Water Supply Measurement. (1) Measuring Devices. Each utility shall install a suitable measuring device at each source of supply in order that a record may be maintained of the quantity of water produced by each source.

(2) Records. At least once each month, the quantity produced from each source of supply shall be determined. Twelve (12) month totals by sources shall be recorded and transmitted to the commission in the utility's annual report to the commission.

Section 8. Standards of Construction. The design and construction of the utility's water plant shall conform to good standard engineering practice. The plans and specifications for water supplies shall be prepared by an engineer registered in the State of Kentucky, with the submitted plans bearing the engineer's seal. The plant shall be designed and operated so as to provide adequate and safe service to its consumers and shall conform to the requirements of the Department for Natural Resources with reference to sanitation and potability of water.

Section 9. Distribution Mains. (1) Depth of Mains. Water mains shall be placed a minimum of twenty-four inches (24") below ground level and shall be protected sufficiently to prevent freezing during the coldest weather normally experienced in the community in which laid, and to prevent damage by traffic.

(2) Dead Ends. Insofar as practicable, the utility shall design its distribution system so as to avoid dead ends in its mains. Where dead ends are necessary, the utility shall provide hydrants or valves for the purpose of flushing the mains. Mains with dead ends shall be flushed as often as necessary to maintain the quality of the water; but in any event they shall be flushed at least once each year.

(3) Segmentation of System. Valves or stopcocks shall be provided at reasonable intervals in the mains so that repairs may be effected with interruptions to the service of as few customers as is practicable.

(4) Disinfection of Water Mains. All new mains shall be thoroughly disinfected before being connected to the system. The method of disinfecting shall be in compliance with the Department for Natural Resources.

(5) Grid Systems. Wherever feasible the distribution system shall be laid out in a grid so that in case of breaks or repairs the interruptions of service to the customers will be at a minimum.

Section 10. Service Lines. (1) Size of Service Line. The size, design and material and installation of the service line

shall conform to such reasonable requirements of the utility as may be incorporated in its rules and regulations, provided, however, that the minimum size of the line shall not be less than three-fourths inch (3/4") nominal size except under unusual circumstances which shall be clearly defined.

(2) Depth of Service Line. All service lines shall be laid at a depth sufficient to prevent freezing during the coldest weather normally experienced except where services are not intended for use during freezing weather and are actually drained during such periods.

(3) Inspection of Service Line. In the installation of a service line, the customer shall leave the trench open and pipe uncovered until it is inspected by the utility and shown to be free from any tee, branch connection, irregularity or defect.

Section 11. Construction Requirements. (1) The system shall be adequate to deliver all reasonable water requirements of its customers and meet the requirements of Section 6(1) of this regulation except under emergency conditions.

(2) Distribution System.

(a) Minimum Pipe Sizes. The distribution system shall be of adequate size and so designed in conjunction with related facilities to maintain the minimum pressures required by Section 6(1) of this regulation. The maximum length of any individual small pipe line shall be as follows:

	Circulating	Non-Circulating
1 inch nominal size	150 feet	100 feet
1 1/2 inch nominal size	300 feet	200 feet
2 inch nominal size	500 feet	250 feet

In the case of rural water lines, where hydraulic studies indicate they can comply with Section 6(1) of this regulation and can provide adequate flow of water to serve the peak requirements of customers, the above maximum extension lengths may be extended with approval of the commission.

(b) Fire Protection. Specifications, location, installation, and the responsibility for the maintenance of fire hydrants, public and private fire protection facilities, connecting mains, and their ownership may be subject to negotiation between the utility and the applicant. Fire hydrants and public and private fire protection facilities shall be installed as required by the utility and when owned by the utility shall be subject to such conditions as the commission may impose, based upon the compensation received for this service.

(3) Transmission Systems. The transmission pipe lines from sources of supply shall be designed to deliver in combination with related storage facilities and to the limits of the capacity of those sources of supply the maximum requirements of that portion of the system which is dependent upon such transmission pipe lines.

(4) Water Supply Requirements. The quantity of water delivered to the utility's distribution system from all source facilities shall be sufficient to supply adequately, dependably and safely the total reasonable requirements of its customers under maximum consumption, and shall be determined so as to maintain the specified pressures as required by Section 6(1) of this regulation.

(5) Materials. Metallic and non-metallic materials may be used separately and in combination to construct component parts of a water system including, but not limited to, conduits, pipes, couplings, caulking materials, protective linings and coatings, services, valves, hydrants, pumps, tanks and reservoirs, provided:

(a) The material shall have a reasonable useful service life.

(b) The material shall be capable of withstanding with ample safety factors the internal and external forces to which it may be subjected in service.

(c) The material shall not cause the deterioration of the potability of the water supply.

(d) Materials and equipment shall be so selected as to mitigate corrosion, electrolysis and deterioration.

Section 12. Extension of Service. (1) Normal Extension. An extension of fifty (50) feet or less shall be made by a utility to its existing distribution main without charge for a prospective customer who shall apply for and contract to use service for one (1) year or more and provides a guarantee for such service.

(2) Other Extensions.

(a) When an extension of the utility's main to serve an applicant or group of applicants amounts to more than fifty (50) feet per applicant, the utility may if not inconsistent with its filed tariff require the total cost of the excessive footage over fifty (50) feet per customer to be deposited with the utility by the applicant or the applicants, based on the average estimated cost per foot of the total extension.

(b) Each customer receiving service under such extension will be reimbursed under the following plan: Each year for a period of not less than ten (10) years, which for the purpose of this rule shall be the refund period, the utility shall refund to the customer or customers who paid for the excessive footage the cost of fifty (50) feet of the extension in place for each additional customer connected during the year whose service line is directly connected to the extension installed and not to extensions or laterals therefrom; but in no case shall the total amount refunded exceed the amount paid the utility. After the end of the refund period, no refund will be required to be made.

(3) An applicant desiring an extension to a proposed real estate subdivision may be required to pay the entire cost of the extension. Each year for a period of not less than ten (10) years the utility shall refund to the applicant who paid for the extension a sum equivalent the cost of fifty (50) feet of the extension installed for each additional customer connected during the year but in no case shall the total amount refunded exceed the amount paid to the utility. After the end of the refund period from the completion of the extension, no refund will be required to be made.

(4) Nothing contained herein shall be construed to prohibit the utility from making extensions under different arrangements provided such arrangements have been approved by the commission.

(5) Nothing contained herein shall be construed as to prohibit a utility from making at its expense greater extensions than herein prescribed, should its judgment so dictate, provided like free extensions are made to other customers under similar conditions.

(6) Upon complaint to and investigation by the commission a utility may be required to construct extensions greater than fifty (50) feet upon a finding by the commission that such extension is reasonable.

(7) Municipal Systems.

(a) Subsections (1) to (6) of this section shall not apply to municipally owned water utilities.

(b) Each municipally owned water utility serving customers outside the corporate limits, and within five (5) miles thereof, shall, upon application or request to extend its mains in such area, supply the service in accordance with subsection (c) herein, unless the commission determines that such request is unreasonable, infeasible or will adversely affect the adequacy or quality of service to existing customers of the municipality both inside and outside the corporate limits or will otherwise impair the service or the financial structure of such municipally owned water utility.

(c) Each municipally owned water utility shall provide facilities to furnish water under subsection (b) hereof in accordance with such rules and regulations as it may file with and be approved by the commission.

Section 13. Service Connections. (1) Ownership of Service.

(a) Utility's Responsiblity. In urban areas with well-defined streets the utility shall furnish and install at its own expense for the purpose of connecting its distribution system to the customer's premises that portion of the service line from its main to and including the curb box, if curb box is used, otherwise to the curb stop. The curb stop may be installed at a convenient place between the property line and the curb. All services shall include a curb stop.

(b) Customer's Responsibility. The customer shall furnish and lay the necessary pipe to make the connection from the curb stop to the place of consumption and shall keep the service line in good repair and in accordance with such reasonable requirements of the utility as may be incorporated in its rules and regulations.

(2) Location of Service. The customer's service line shall extend to that point on the curb line easiest of access to the utility from its distribution system. When a reasonable doubt exists as to the proper location of the service line, the utility shall be consulted and its approval of the location secured.

Section 14. Measurement of Service. (1) Metering. All water sold by a utility shall be upon the basis of metered volume sales except that the utility may at its option provide flat rate or estimated service for the following:

(a) Temporary service where the water used can be readily estimated.

(b) Public and private fire protection service.

(c) Water used for street sprinkling and sewer flushing, when provided for in a contract between the utility and a municipality or other local governmental authority.

(2) Registration of Meter. All meters used for metered sales shall have registration devices indicating the volume of water measured in either cubic feet or U.S. gallons. Where a constant or multiplier is necessary to convert the meter reading to cubic feet or gallons, the constant shall be indicated upon the face of the meter.

(3) Charge for Service Line and Meter Installation.

(a) No utility shall charge for the installation or the use of its portion of the service line or of any devices for metering service to a customer, except for temporary service where the utility may charge its actual cost of installation and removal of service lines and metering devices.

(b) A water district, organized under KRS Chapter 74, may, subject to the approval of the commission, make a charge or "tapping fee" for installing service to its customers. Said "tapping fee" shall include a

service tap, meter, meter vault, and installation thereof.

(4) Standard Method of Meter and Service Line Installation. Each utility shall adopt a standard method of installing meters and service lines and shall file with the commission a written description and/or drawings in sufficient detail that the requirements are clearly understandable. Copies of these standard methods shall be made available to prospective customers and contractors or others engaged in the business of placing pipe for water utilization. All meters shall be set in place by the utility.

Section 15. Meter Test Facilities and Equipment. (1) Test Facilities. Each utility furnishing metered water service shall provide the necessary standard facilities, instruments and other equipment for testing its meters in compliance with this regulation.

(2) Shop Equipment. The utility's meter test shop shall, insofar as practicable, simulate the actual service conditions of temperature, inlet pressure, and outlet pressure. It shall be provided with the necessary fittings, including a quick acting valve for controlling the starting and stopping of the test and a device for regulating the flow of water through the meter under test within the requirements of this regulation. The overall accuracy of the test equipment and test procedures shall be sufficient to enable test of service meters within the requirements of this regulation. In any event the inherent overall accuracy of the equipment shall permit tests with an overall error not to exceed three-tenths of one percent (.3 of 1%).

(3) Test Measurement Standards.

(a) Basic Standard. Measuring devices for testing meters shall consist of a calibrated tank for volumetric measurement or a tank mounted upon scales for weight measurement. If a volumetric standard is used, it shall be certificated as to its accuracy by the Public Service Commission, within the preceding twenty-four (24) months. If a weight standard is used, the scales shall be tested and calibrated at least once a year and certified as to accuracy by the Public Service Commission.

(b) Size of Basic Standards. When meters are tested by weight method, it is required that utilities whose measure of quantity is the cubic foot use test equipment capable of holding not less than two (2) cubic feet of water. Utilities whose measure of quantity is the U.S. gallon shall use equipment holding not less than twenty (20) U.S. gallons.

(c) Standard Meter. By special permission of the commission, a standard meter may be provided and used by any utility for the purpose of testing meters in place. This standard meter shall be tested and calibrated periodically to insure its accuracy within the limits required by this regulation. In any event, such test shall be made at least once each week while the standard meter is in use and a record of such tests shall be kept by the utility.

Section 16. Accuracy Requirements of Water Meters. (1) General. All meters used for measuring the quantity of water delivered to a customer shall be in good mechanical condition and shall be adequate in size and design for the type of service which they measure.

(2) New or Repaired Meters. All new meters, and all meters removed from service for repairs or test in accordance with this regulation, shall be tested as specified herein prior to being placed in service.

(a) Test Flows. The test flow and normal test flow limits, for the various types of cold water meters, are as follows:

DISPLACEMENT TYPE

Nominal Meter Size Inches	Minimum Test Flow Gallons per Minute	Normal Test Flow Gallons per Minute
5/8	1/4	1 to 20
3/4	1/2	2 to 30
1	3/4	3 to 50
1 1/2	1 1/2	5 to 100
2	2	8 to 160
3	4	16 to 300
4	7	28 to 500
6	12	48 to 1000

CURRENT TYPE

Nominal Meter Size Inches	Minimum Test Flow Gallons per Minute	Normal Test Flow Gallons per Minute
1 1/2	7	12 to 100
2	10	16 to 160
3	15	24 to 350

CURRENT TYPE

Nominal Meter Size Inches	Minimum Test Flow Gallons per Minute	Normal Test Flow Gallons per Minute
4	20	40 to 600
6	30	80 to 1400
8	50	144 to 2500
10	75	224 to 3800
12	100	320 to 5800
16	150	400 to 11500

COMPOUND TYPE

Nominal Meter Size Inches	Minimum Test Flow Gallons per Minute	Normal Test Flow Gallons per Minute
1 1/2	1/2	2 to 100
2	1/2	2 to 160
3	1	4 to 320
4	1 1/2	6 to 500
6	3	10 to 1000
8	4	16 to 1600
10	8	32 to 2300
12	14	32 to 3100

FIRE SERVICE TYPE

Nominal Meter Size Inches	Minimum Test Flow Gallons per Minute	Normal Test Flow Gallons per Minute
3	2	8 to 400
4	2	8 to 700
6	4	16 to 1600
8	7	28 to 2800
10	12	48 to 4400
12	12	48 to 6400

PROPELLER-DRIVEN CURRENT TYPE

Meter Size Inches	Normal Range of Flow Gallons per Minute
2	15 to 80
3	30 to 200
4	45 to 400
5	75 to 600
6	90 to 900
8	100 to 1200
10	125 to 1500

PROPELLER-DRIVEN CURRENT TYPE

Meter Size Inches	Normal Range of Flow Gallons per Minute
12	150 to 2000
14	250 to 2500
16	275 to 3500
18	400 to 4500
20	475 to 5500
24	700 to 8000
30	1200 to 12000
36	1500 to 16000

(b) Determination of Accuracy. Meters shall be tested at the minimum test flow and at least two (2) test flows in the normal test flow limits, one (1) of which shall be not less than seventy-five percent (75%) of the rated maximum capacity of the meter and the other shall be at approximately twenty-five percent (25%) of the rated maximum capacity. No new meter shall be placed in service if it registers less than ninety-five percent (95%) of the water passed through it at the minimum test flow or over registers or under registers more than one and one-half percent (1-1/2%) in the normal test flow limits as set out in paragraph (a) above. No repaired or reconditioned meter shall be placed in service if it registers less than eighty percent (80%) of the water passed through it at the minimum test flow or over-registers or under-registers more than one and one-half percent (1-1/2%) in the normal test flow limits as set out in paragraph (a) above.

(3) As Found Tests. All meters tested in accordance with the rules for periodic, request or complaint tests, shall be tested in the condition as found in the customer's service prior to any alteration or adjustment in order to determine the average meter error. This test shall consist of two (2) rates of flow in the normal test flow range for that type of meter as set out in subsection 2(a) above and the average meter error shall be the algebraic average of the errors of the two tests. (For example, a meter testing one percent (1%) fast at one rate of flow and three percent (3%) slow at the other would have an average meter error of one percent (1%) slow.)

(4) Determination of Meter Error for Bill Adjustment Purposes. When upon periodic, request or complaint test, a meter is found to be in error in excess of the limits allowed by the commission's regulations, three (3) additional tests shall be made; one (1) at seventy-five percent (75%) of rated maximum capacity; one (1) at fifty percent (50%) of rated maximum capacity; one at twenty-five percent (25%) of the rated maximum capacity. The average meter error shall be the algebraic average of the errors of the three (3) tests.

Section 17. Periodic Tests. (1) Each utility shall test periodically all water meters so that no meter will remain in service without test for a period longer than specified in the following table:

Size of Meter Inches	Interval Between Tests Years
5/8	5
3/4	5
1	5
1 1/4	4
1 1/2	4
2	4
3	2
4 and larger	1

(2) "Periodic test periods" for testing meters in the systems of utilities supplying water of high turbidity, or of peculiar characteristics, will be determined by the commission from time to time.

(3) Meters of the current and compound type shall be cleaned at least once each year. When filtered or exceptionally clear water is delivered, the interval between cleaning may, upon application to the commission and upon receipt of authority therefor, be made longer.

(4) Whenever the number of meters of any type which register in error beyond the limits specified in this regulation is found by the commission to be excessive, then this type shall be tested with such additional frequency as the commission may direct.

WILLIAM A. LOGAN, Chairman
ADOPTED: October 22, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: November 13, 1974 at 4:10 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary, Public Service Commission, Capital Plaza Tower, Frankfort, Kentucky 40601.

CABINET FOR PUBLIC PROTECTION AND REGULATION
Public Service Commission
(807 KAR 3:010)

RELATES TO: KRS Chapters 338 and 278
PURSUANT TO: KRS 338.041(3), 278.280(2), 13.082
SUPERSEDES: PSC:OSH-1
NECESSITY AND FUNCTION: To establish regulations for the enforcement of occupational safety and health standards and to establish procedures to be followed by employers and employees subject to such regulations and standards. The following regulations apply to all utilities as defined in KRS 278.010 and their employees and work areas.

Section 1. Definitions. As used in these regulations:

(1) "Employer" shall mean any entity for whom a person is employed except those employers excluded in KRS 278.010.

(2) "Employee" shall mean any person employed except those employees excluded in KRS 278.010.

(3) The term "occupational safety and health standard" means a standard which requires conditions, or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment. "Standard" has the same meaning as, and includes, the words "regulation" and "rule."

(4) "Occupational safety and health hazard" means any practice or condition in a place of employment which may be deemed detrimental to the safety and health of employees.

(5) "Occupational injury or illness" means any abnormal condition or disorder of an employee caused by exposure to factors associated with this employment.

(6) "Board" means the Kentucky Occupational Safety and Health Standards Board established under KRS Chapter 338.

(7) "Review Commission" means the Kentucky Occupational Safety and Health Review Commission established under KRS Chapter 338.

(8) The term "national consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(9) The term "established federal standard" means any operative occupational safety and health standard established by any agency of the United States government.

(10) "Working days" means Monday through Friday but shall not include Saturdays, Sundays, or federal or state holidays. In computing fifteen (15) working days, the day of receipt of any notice shall not be included, and the last day of the fifteen (15) working days shall be included.

(11) "Compliance Safety and Health Officer" means a person authorized by the Chairman of the Public Service Commission to conduct inspections.

(12) The Chairman of the Public Service Commission means the Public Service Commission or any person designated by order of the commission to perform the functions set out herein.

(13) "Legal proceeding" includes any proceeding before a court of law, administrative board or commission, hearing officer, or other body conducting a legal or administrative proceeding.

(14) "Legal Counsel" means the Legal Counsel, Kentucky Public Service Commission.

Section 2. Scope of Regulations. 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 3. Posting of Notice. (1) The purpose and scope of 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 his own actions and conduct. The Public Service Commission, under contract with the Department of Labor, is authorized to conduct inspections and to issue citations and proposed penalties for alleged violations.

(2) Posting of Notice, Availability of Act, Regulations, and Applicable Standards.

(a) Each employer shall post and keep posted a notice or notices 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 Public Service Commission. 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 insure that such notices are not altered, defaced, or covered by other material that obscures the poster.

(b) Each employer shall insure that his employees have access to information on their exposure to toxic materials or harmful physical agents. Each employer shall insure 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 any 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.

(c) "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A meter shop, switchroom, pipeyard, garage, 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 Public Service Commission. Where employers are engaged in activities which are physically dispersed, such as 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 paragraph (a) of this section.

(d) Copies of KRS Chapter 338 are available at the Public Service Commission, all regulations filed pursuant thereto are available at the Legislative Research Commission, and all applicable standards will be available at the Public Service Commission. 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.

(e) 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.

Section 4. Authority for Inspection: Objection: Entry not a Waiver: Conduct of Inspection. (1) Authority for Inspection.

(a) Compliance safety and health officers of the Public Service Commission 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 places of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent for employee; and to review records required by KRS Chapter 338 and regulations published pursuant thereto, and other records which are directly related to the purpose of the inspection. Industrial hygienists of the Department of Labor may be authorized by the Chairman of the Public Service Commission to conduct inspections

relating to occupational health hazards.

(b) 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.

(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 Section 9, 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 therefor to the Chairman of the Public Service Commission. The Chairman of the Public Service Commission shall promptly take appropriate action including compulsory process, if necessary.

(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.

(4) Conduct of Inspections.

(a) Subject to the provisions herein, inspections shall take place at such times and in such places of employment as the Chairman of the Public Service Commission 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.

(b) 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.

(c) In taking photographs and samples, compliance safety and health officers shall take reasonable precautions to insure 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.

(d) The conduct of inspections shall be such as to preclude unreasonable disruption of the operations of the employer's establishment.

(e) 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.

(f) Inspections shall be conducted in accordance with the requirements of this section.

Section 5. Trade Secrets. (1) KRS 338.171 states that "all information obtained 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 Chairman of the Public Service Commission, Review Commission, or courts shall issue such orders as may be appropriate to protect the confidentiality of trade secrets."

(2) (a) At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the compliance safety and health officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints or photographs, and environmental samples, shall be labeled "confidential – trade secret" and shall not be disclosed except in accordance with the provisions of KRS 338.171.

(b) Upon the request of an employer, any authorized representative of employees under Section 9 in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is no such representative or employee, the compliance safety and health officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

(c) Whoever, being a compliance safety and health officer or employee of the Public Service Commission or any agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by KRS Chapter 338, or subsection (2)(a) of this section, any information coming to him in the course of his employment of official duties or by reason of any examination or investigation may by, or return report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or related to the trade secrets, processes, operations, style of work, or apparatus, shall be removed from office, or employment and shall be subject to all applicable civil and criminal sanctions.

Section 6. Advance Notice of Inspections. (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 Chairman of the Public Service Commission 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 Chairman of the Public Service Commission, 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 Chairman of the Public Service Commission 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 Section 9(2) as to the 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.

Section 7. Complaints by Employees.

(1) (a) 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 Chairman of the Public Service Commission. 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 Chairman of the Public Service Commission 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 Public Service Commission.

(b) If upon receipt of such notification the Chairman of the Public Service Commission determines that the complaint meets the requirements set forth in paragraph (a) of this subsection, 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.

(c) Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Chairman of the

Public Service Commission in writing of any violation of KRS Chapter 338 which they have reason to believe exists in such workplace. Any such notice shall comply with the requirements of paragraph (a) of this subsection.

(d) 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.

(e) If, after an inspection based on a complaint, the Director of Engineering 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 Chairman of the Public Service Commission and, at the same time, providing the employer with a copy of such statement by certified mail.

(f) 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."

(2) Inspection not Warranted; Informal Review.

(a) If the Chairman of the Public Service Commission 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 subsection (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 Chairman of the Public Service Commission 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 Chairman of the Public Service Commission and, at the same time, provide the complaining party with a copy of such statement by certified mail. Upon request of the complaining party or the employer, the Chairman of the Public Service Commission, 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 Chairman of the Public Service Commission 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 Chairman of the Public Service Commission shall be final and not subject to further review.

(b) If the Chairman of the Public Service Commission determines that an inspection is not warranted because the requirements of subsection (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 subsection (1).

Section 8. 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 338.131 and 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.

Section 9. Employer and Employee Representatives. (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 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 the provisions of Section 5. 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.

Section 10. Proposed Penalties. (1) After, or concurrent with, the issuance of a citation, and within a reasonable time after the termination of the inspection, the Chairman of the Public Service Commission 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 Chairman of the Public Service Commission in writing that he intends to contest the citation or the notification of proposed penalty before the Review Commission.

(2) The Chairman of the Public Service Commission 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 and health.

Section 11. Citations; Notice of De Minimis Violations. (1) Citations. The Chairman of the Public Service Commission shall review the inspection report of the compliance safety and health officer. If, on the basis of the report the Chairman of the Public Service Commission 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 expiration of six (6) months following the occurrence of any alleged violation.

(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.

(3) Citations Issued for Requested Inspections. If a citation or notice of de minimis violation is issued for a violation alleged in a request for inspection under Section 7(1)(a) or a notification of violation under Section 7(1)(c), 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.

(4) Informal Review of Inspection. After an inspection, if the Chairman of the Public Service Commission determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under Section 7(1)(a) or a notification of violation under Section 7(1)(c), the informal review procedures prescribed in Section 7(2) shall be applicable. After considering all views presented, the Chairman of the Public Service Commission shall either affirm his determination, order a reinspection, or

issue a citation if he believes that the inspection disclosed a violation. The Chairman of the Public Service Commission shall furnish the complaining party and the employer with written notification of his determination and the reasons therefor. The determination of the Chairman of the Public Service Commission shall be final and subject to review by the Review Board.

(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.

Section 12. 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 Section 3) 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 Section 3), the citation may be posted at the location from which the employees operate to carry out their activities. The employer shall take steps to insure 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.

Section 13. Informal Conferences. At the request of an affected employer, employee, or representative of employees, the Chairman of the Public Service Commission 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 Chairman or the Public Service Commission. 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 Chairman of the Public Service Commission. 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 (15) working day period for filing a notice of intention to contest as prescribed in Section 14.

Section 14. Contesting Procedure. (1) Any employer to whom a citation or notice of proposed penalty has been issued may under KRS Chapter 338 notify the Chairman of the Public Service Commission 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 Chairman of the Public Service Commission 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: (a) file a written notice with the Chairman of the Public Service Commission alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable; (b) file a written notice to the Chairman of the Public Service Commission 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 Chairman of the Public Service Commission 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 338.153 he may file an appeal to the Revenue Commission.

Section 15. Rules of Practice for Variance Under KRS 338.153. (1) General.

(a) 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 338.153.
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).

(b) 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 subsection (3) of this section. An applicant for relief and any affected employee shall be entitled to be named parties. The Public Service Commission, represented by the Chairman, 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.

(c) Petitions for Amendments to this Regulation. Any person may at any time petition the Chairman of the Public Service Commission in writing to revise, amend, or revoke any provisions of this section. The petition should set forth either the terms or the substance of rule desired, with a concise statement of the reasons therefor and the effects thereof.

(d) Effect of Variances. All variances granted pursuant to this regulation shall have only future effect. In his discretion, the Chairman of the Public Service Commission 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.

(e) Public Notice of a Granted Variance. Every final action granting a variance under this section 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.

(f) Form of Documents; Subscription; Copies.

1. No particular form is prescribed for applications and other papers which may be filed in proceedings under this section. 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. Clear carbon copies, or printed or processed copies are acceptable copies.
2. Each application or other paper which is filed in proceedings under this section shall be subscribed by the person filing the same or by his attorney or other authorized representative.

(2) Applications for Temporary Variances under KRS 338.153(2)(a).

(a) 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 subparagraph 1 of this paragraph with the Chairman of the Public Service Commission, Frankfort, Kentucky 40601.

1. An application filed pursuant to paragraph (a) of this subsection 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 Public Service Commission for a hearing.

2. 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 Chairman of the Public Service Commission may rule ex parte upon the application.

b. Notice of Denial of Application. If an application filed pursuant to subparagraph 2.a. of this paragraph 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.

(b) Applications for Permanent Variances Under KRS 338.153(1).

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 subparagraph 2. of this paragraph, with the Chairman of the Public Service Commission.

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, operation, 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 Chairman of the Public Service Commission 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 Chairman of the Public Service Commission may rule ex parte upon the application.

b. Notice of Denial of Application. If an application filed pursuant to subparagraph 3.a. of this paragraph 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.

(c) Modification, Revocation, and Renewal of Rules or Orders.

1. An affected employer or an affected employee may apply in writing to the Chairman of the Public Service Commission 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: (i) giving a copy thereof to their authorized representative; (ii) 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 (iii) other appropriate means designated by the commission;

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 Chairman of the Public Service Commission may on his own motion proceed to modify or revoke a rule or order issued under KRS 338.153. In such event, the Chairman of the Public Service Commission 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.

c. 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.

(d) Action on Applications.

1. Defective Applications.

a. If an application filed pursuant to this regulation does not conform to the applicable section, the Chairman of the Public Service Commission 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 paragraph shall be without prejudice to the filing of another application.

2. Adequate Applications.

a. If an application has not been denied pursuant to subparagraph 1. of this paragraph, the Chairman of the Public Service Commission 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.

(e) 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 Chairman of the Public Service Commission, 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 subparagraph 1. of this paragraph 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.

(f) Consolidation of Proceedings. The Chairman of the Public Service Commission 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 issue.

(3) Hearings.

(a) Notice of Hearing.

1. Service. Upon request for a hearing as provided in this regulation, or upon his own initiative, the Chairman of the Public Service Commission shall

serve, or cause to be served, a reasonable notice of hearing.

2. Contents. A notice of hearing served under paragraph (a) of this subsection 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 Chairman if the Chairman of the Public Service Commission is not going to conduct the hearing.

3. Referral to Hearing Examiner. A copy of a notice of hearing served pursuant to subparagraph 1. of this paragraph 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.

(b) 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.

(c) Hearing Examiners; Powers and Duties.

1. Powers. The Chairman of the Public Service Commission or a hearing examiner designated by the Chairman 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 Chairman of the Public Service Commission.

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 Chairman of the Public Service Commission a motion to disqualify and remove the hearing examiner, such motion to be supported by affidavits setting forth the alleged grounds for disqualification. The Chairman of the Public Service Commission 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 grounds for exclusion 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 any 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.

(d) Prehearing Conference.

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.

(e) Consent Findings and Rules or Orders.

1. General. At any time before the reception of evidence in any hearing, 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 Chairman of the Public Service Commission; 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.

(f) 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 by 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 question and answers as were noted at the time of taking the deposition and would be valid where 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. 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.

(g) Hearings.

1. Order of Proceeding. Except as may be ordered otherwise by the presiding hearing examiner, 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 such 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 hearing 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 Public Service Commission 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.

(h) 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 examiners 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 paragraph (i) of this subsection. The decision of the hearing examiner shall include (i) a statement of findings and conclusion, 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.

(i) 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.

(j) Transmission of Record. If exceptions are filed, the hearing examiner shall transmit the record of the proceeding to the Chairman of the Public Service Commission for review. The record shall include: the application, any request for hearing thereof, 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.

(k) Decision of the Chairman of the Public Service Commission. If exceptions to a decision of hearing examiner are taken pursuant to paragraph (i) of this subsection, the Chairman of the Public Service Commission 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.

(4) Summary Decisions.

(a) Motion for Summary Decision.

1. Any party may, at least twenty (20) days before the date fixed for any hearing under subsection (3) of this section, 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 hearing examiner may in his discretion, set the matter for argument and call for the submission of briefs.

2. The filing of any documents under subparagraph 1. of this section shall be with the hearing examiner, and copies of any such documents shall be served in accordance with paragraph (c) of subsection (3) of this section.

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 his 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 Chairman of the Public Service Commission 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 Chairman of the Public Service Commission shall so order.

(b) 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 Chairman of the Public Service Commission, 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 paragraph shall include a state of (i) findings and conclusions, and the reasons or bases therefore, on all issues presented; and (ii) the terms and conditions of the rule or order made.

c. A copy of an initial decision and a final decision under this paragraph 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 Subsection (3) of this section.

(5) Effect of Initial Decisions.

(a) Effect of Appeal of a Hearing Examiner's Decision. A hearing examiner's decision under this subsection shall not be operative pending a decision on appeal by the Chairman of the Public Service Commission.

(b) Finality for Purposes of Judicial Review. Only a decision by the Chairman of the Public Service Commission shall be deemed final agency action for purposes of judicial review.

Section 16. Report and Recording of Occupational Injuries and Diseases. (1) Purpose and Scope. This section implements KRS 338.161. This section provides for recordkeeping and reporting by employers covered under the act as necessary or appropriate for enforcement of the act, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics.

(2) Log of Occupational Injuries and Illnesses.

(a) Each employer shall maintain in each establishment a log of all recordable occupational injuries and illnesses for that establishment, except that under the circumstances described in paragraph (b) of this subsection an employer may maintain the log of occupational injuries and illnesses at a place other than the establishment. Each employer shall enter each recordable occupational injury and illness on the log as early as practicable but not later than six (6) working days after receiving information that a recordable case has occurred. For this purpose, Occupational Safety and Health Administration OSHA Form No. 100 or any private equivalent may be used. OSHA Form No. 100 or its equivalent shall be completed in the detail provided in the form and the instruction contained in OSHA Form No. 100. If an equivalent to OSHA Form No. 100 is used, such as a printout from data-processing equipment, the information shall be as readable and comprehensible to a person not familiar with the data-processing equipment as the OSHA Form 100 itself.

(b) Any employer may maintain the log of occupational injuries and illnesses at a place other than the establishment or by means of data-processing equipment, or both, under the following circumstances:

1. There is available at the place where the log is maintained sufficient information to complete the log to a date within six (6) working days after receiving information that a recordable case has occurred, as required by paragraph (a) of this subsection.
2. At each of the employer's establishments, there is available a copy of the log which reflects separately the injury and illness experience of that establishment complete and current to a date within forty-five (45) calendar days.

(3) Period Covered. Logs shall be established on a calendar year basis. The initial log shall include recordable occupational injuries and illnesses occurring on or after January 1, 1973.

(4) Supplementary Record. In addition to the log of occupational injuries and illnesses provided for under subsection (2) each employer shall have available for inspection at each establishment within six (6) working days after receiving information that a recordable case has occurred, a supplementary record for each occupational injury or illness for that establishment. The record shall be completed in the detail prescribed in the instructions accompanying Occupational Safety and Health Administration Form OSHA No. 101. The workmen's compensation form SP-1 is an acceptable alternative record for those employers covered by the Workmen's Compensation Act.

(5) Annual Summary.

(a) Each employer shall compile an annual summary of occupational injuries and illnesses for each establishment. Each annual summary shall be based on the information contained in the log of occupational injuries and illnesses for the particular establishment. Form OSHA No. 102 shall be used for this purpose, and shall be completed in the form and detail as provided in the instructions contained therein.

(b) The summary shall be completed no later than one (1) month after the close of each calendar year.

(c) Each employer, or the officer or employee of the employer who supervises the preparation of the annual summary of occupational injuries and illnesses, shall certify that the annual summary of occupational injuries and illnesses is true and complete. The certification shall be accomplished by affixing the signature of the employer, or the officer or employee of the employer who supervises the preparation of the annual summary of occupational injuries and illnesses, to the lower right hand corner of the annual summary or by appending a separate statement to the annual summary certifying that the annual summary is true and complete.

1. Each employer shall post a copy of the establishment's summary in each establishment in the same manner that notices are required to be posted under Section 3. The summary covering the previous calendar year shall be posted no later than February 1, and shall remain in place until March 1. For employees who do not primarily report or work at a single establishment, or who do not report to any fixed establishment on a regular basis, employers shall satisfy this posting requirement by presenting or mailing a copy of the summary during the month of February of the following year to each such employee who receives pay during that month. For multi-establishment employers where operations have closed down in some establishments during the calendar year, it will not be necessary to post summaries for those establishments.
2. A failure to post a copy of the establishment's annual summary may result in the issuance of citations and assessment of penalties pursuant to KRS 338.991.

(6) Retention of Records. Records provided for in subsections (2), (4) and (5) shall be retained in each establishment for five (5) years following the end of the year to which they relate.

(7) Access to Records. Records provided for in Subsections (2), (4) and (5) shall be available for inspection and copying by compliance safety and health officers during any occupational safety and health inspection provided for under KRS 338.101.

(8) Reporting of Fatality or Multiple Hospitalization Accidents. Within forty-eight (48) hours after the occurrence of an employment accident which is fatal to one (1) or more employees or which results in hospitalization of five (5) or more employees, the employer of any employees so injured or killed shall report the accident either orally or in writing to the Chairman of the Public Service Commission. The reporting may be by telephone or telegraph. The report shall relate the circumstances of the accident, the number of fatalities, and the extent of any injuries. The chairman may require such additional reports, in writing or otherwise, as he deems necessary, concerning the accident.

(9) Falsification, or Failure to Keep Records or Reports.

(a) KRS 338.991(8) provides that "Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this Act shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment, for not more than six (6) months or both."

(b) Failure to maintain records or file reports required by this section, or in the details required by forms and instructions issued under this section, may result in the issuance of citations and assessment of penalties as provided for in KRS 338.991.

(10) Change of Ownership. Where an establishment has changed ownership, the employer shall be responsible for maintaining records and filing reports only for that period of the year during which he owned such establishment. However, in the case of any change in ownership, the employer shall preserve those records, if any, of the prior ownership which are required to be kept under this section. These records shall be retained at each establishment to which they relate, for the period, or remainder thereof, required under Subsection (6).

(11) Definitions.

(a) "Act" means the Kentucky Occupational Safety and Health Act of 1972 (KRS Chapter 338).

(b) "Recordable occupational injuries or illnesses" are any occupational injuries or illnesses which result in:

1. Fatalities, regardless of the time between the injury and death, or the length of the illness; or
2. Lost workday cases, other than fatalities, that result in lost workdays; or
3. Nonfatal cases without lost workdays which result in transfer to another job or termination of employment, or require medical treatment (other than first aid) or involve loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost workday cases.

(c) "Medical treatment" includes treatment administered by a physician or by registered professional personnel under the standard orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or registered professional personnel.

(d) "First Aid" is any one-time treatment, and any followup visit for the purpose of observation, of minor scratches, cuts, burns, splinters, and so forth, which do not ordinarily require medical care. Such one-time treatment, and any followup visits for the purpose of observation, is considered first aid even though provided by a physician or registered professional personnel.

(e) "Lost workdays": The number of days (consecutive or not) after, but not including, the day of injury or illness during which the employee would have worked but could not do so; that is, could not perform all or any part of his normal assignment during all or any part of the workday or shift, because of occupational injury or illness.

(12) Petitions for Recordkeeping Exceptions.

(a) Petitions for recordkeeping exceptions shall be filed in accordance with the provisions of 29 CFR Part 1904.13.

(b) Any employer filing a petition for recordkeeping exceptions in accordance with 29 CFR Part 1904.13 shall notify the Chairman of the Public Service Commission that he is making such application and the results thereof.

(c) Exceptions granted by 29 CFR Part 1904.13 shall be recognized by the Chairman of the Public Service Commission.

(13) Employees not in Fixed Establishments. Employers of employees engaged in physically dispersed operations such as occur in construction, installation, repair or service activities who do not report to any fixed establishment on a regular basis but are subject to common supervision may satisfy the

provision of Subsections (2), (4) and (6) of this section with respect to such employees by:

(a) Maintaining the required records for each operation or group of operations which is subject to common supervision (field superintendent, field supervisor, etc.) in an established central place;

(b) Having the address and telephone number of the central place available at each worksite; and

(c) Having personnel available at the central place during normal business hours to provide information from the records maintained there by telephone and by mail.

(14) Duties of Employer. Upon receipt of an Occupational Injuries and Illnesses Survey Form, OSHA No. 103, the employer shall promptly complete the form in accordance with the instructions contained therein, and return it in accordance with the aforesaid instruction.

Section 17. Public Service Commission Witnesses and Documents in Private. (1) Purpose.

(a) This section prescribes the policies and procedures of the Public Service Commission with respect to testimony of its employees as witnesses in legal proceedings in which the Public Service Commission is involved, and the production of department records pursuant to subpoena.

(b) This regulation does not apply to any legal proceeding in which an employee is to testify while in leave status, as to facts or events that are in no way related to the duties he performs or to the functions of the Public Service Commission.

(2) Subpoenas.

(a) Whenever an employee of the Commission is served with a subpoena or is requested to testify, he shall immediately report the service or request to the Chairman of the Public Service Commission. The Chairman of the Public Service Commission and the legal counsel shall then determine whether and to what extent the employee is required to comply and shall in appropriate cases arrange for legal representation for the employee.

(b) Whenever an employee's compliance with a subpoena would have an undue adverse effect upon the performance of official duties, the Chairman of the Public Service Commission and the legal counsel shall request the issuing body to authorize testimony by deposition, when appropriate, rather than requiring the employee's physical presence at the trial, hearing, or otherwise.

(3) General Consideration. In balancing under subsection (3)(b) the particular needs of any requesting person with those of the commission, the Chairman of the Public Service Commission or his representative shall give consideration to the following policies of the commission as they may be pertinent:

(a) To conserve the time of employees for conducting official business.

(b) To minimize the possibility of involving the commission in controversial issues that are not related to its mission.

(c) To prevent the possibility that the public will misconstrue variances between the personal opinions of employees and commission policy.

(d) To avoid spending the time and money of the Commonwealth of Kentucky for private purposes.

(4) Factual Testimony.

(a) An employee of the commission who has been subpoenaed in a legal proceeding and who is required to comply with the subpoena, shall testify only as to facts within his personal knowledge.

(b) In the event the testimony of an employee of the commission may concern a particular inspection, the legal counsel shall notify the employer inspected as to the time and place such testimony shall be given.

(c) Whenever a demand is made upon an employee for testimony as to any privileged or confidential information contained in files of the commission (i.e., trade secrets), the employee shall respectfully decline to comply with the demand.

(5) Expert or Opinion Testimony. If, while testifying in a legal proceeding, an employee of the commission is asked for expert or opinion testimony, he shall decline to do so on the grounds that he is forbidden to do so by this section which, among other things, is intended to prevent the possibility that the public may misconstrue any possible variances existing between the opinion of the witness and commission policy. If he is then ordered to do so by the body conducting the proceeding to testify, he shall do so.

(6) Disclosure of Records.

(a) Records of the commission are available for public inspection and copying.

(b) If an employee of the commission receives a subpoena or request to produce records in court or before any other body, he shall refer it to the Chairman of the Public Service Commission. If the subpoena or request specifies public records, counsel shall advise that the subpoena or request be honored. The person seeking them shall comply with any appropriate fee schedules.

(c) If an employee of the commission is served with a subpoena calling for records not available for public disclosure, the Chairman of the Public Service Commission shall attempt to have the subpoena withdrawn, quashed, or modified. If this cannot be done, the employee shall appear at the time and place specified in the subpoena, accompanied by a commission attorney and explain to the authority conducting the proceeding that a statute or regulation prohibits him from producing the record.

(d) If an employee who follows the procedure in paragraph (c) of this subsection is ordered to show cause why he should not be cited for contempt of court, he shall be represented by a commission attorney.

Section 18. 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 Chairman of the Public Service Commission.

(2) Within sixty (60) days after receipt of such complaint, the Chairman of the Public Service Commission shall make any necessary investigation, and shall take all appropriate action resulting therefrom.

WILLIAM A. LOGAN, Chairman
ADOPTED: October 22, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: November 13, 1974 at 4:09 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 50:010)

RELATES TO: KRS 217C.010 to 217C.990
PURSUANT TO: KRS 13.082, 194.050, 211.090(1)(c)
NECESSITY AND FUNCTION: The Department for Human Resources is directed by KRS Chapter 217C to regulate the production, transportation, processing, handling, sampling, examination, grading, labeling, standards of identity, sale and such other matters relating to milk and milk products as may be necessary to protect the public health. This regulation defines terms applicable to all milk and milk product regulations adopted by the Department for Human Resources.

Section 1. Definitions for Milk and Milk Products Regulations. As used in all regulations of the Department for Human Resources relating to milk and milk products the following definitions shall apply unless specifically indicated otherwise:

(1) "Adulterated milk and milk products" means any milk or milk product adulterated as provided by KRS 217.025.

(2) "Butter" means the food product usually known as butter, and which is made exclusively from milk or cream, or both, with or without common salt, and with or without additional coloring matter, and containing not less than eighty percent (80%) by weight of milk fat, all tolerances having been allowed for; provided the labeling of butter shall not be deemed misbranded if it does not bear a statement relating to artificial coloring.

(3) "Buttermilk" means a fluid product resulting from the churning of butter from milk or cream. It contains not less than eight and one-fourth percent (8 1/4%) of milk solids-not-fat.

(4) "C-I-P" or "Cleaned-in-place" means the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned-in-place by circulation.

(5) "Culinary steam" means steam used in contact with milk or milk products which is produced according to "Recommended Practices for Producing Culinary Steam for Processing Milk and Milk Products", National Association of Dairy Equipment Manufacturers, 1012 14th Street, N.W., Washington, D.C., 20036.

(6) "Cultured buttermilk" means a fluid product resulting from the souring by lactic acid producing bacteria or similar culture of pasteurized skim milk, lowfat milk or milk.

(7) "Cultured milk and cultured milk products" means cultured milk products including yogurt resulting from the souring by lactic acid producing bacteria or similar culture of pasteurized milk or milk products and conforms to fat requirements for milk, lowfat milk and skim milk.

(8) "Dairy farm" means a place where one or more milking cows or goats are kept, a part or all of the milk produced thereon being delivered, sold, or offered for sale to a plant.

(9) "Dairy plant", "receiving station" or "company" means any place, premises or establishment where milk or dairy products are received, collected, handled for processing or manufacturing or prepared for distribution.

(10) "Department" means the Department for Human Resources.

(11) "Eggnog" means a milk product consisting of a mixture of milk or milk product of at least six percent (6%) milkfat, at least one percent (1%) egg yolk solids, sweetener and flavoring. Emulsifier and not over five tenths percent (.5%) stabilizer may be added.

(12) "Fieldman" means a person employed by a milk company who is qualified and trained in sanitary methods of production and handling of milk and who performs dairy farm quality control work. (A "fieldman" is not considered an agent of the department.)

(13) "Goat milk" means the lacteal secretion, practically free from colostrum, obtained by the complete milking of healthy goats.

(14) "Grade A milk and milk products" means milk and milk products produced, processed, transported and distributed in

accordance with the department's Grade A milk regulations. It includes but is not limited to the following:

(a) Acidified sour cream;
(b) Acidified sour half and half;
(c) Buttermilk;
(d) Chocolate milk;
(e) Chocolate lowfat milk;
(f) Chocolate skim milk;
(g) Concentrated milk;
(h) Cottage cheese, lowfat cottage cheese, cottage cheese dry curd;
(i) Cultured buttermilk;
(j) Cultured milk and cultured milk products;
(k) Cream;
(l) Eggnog;
(m) Half and half;
(n) Heavy cream;
(o) Light cream;
(p) Light whipping cream;
(q) Lowfat milk;
(r) Milk;
(s) Skim milk;
(t) Sour cream;
(u) Sour half and half and any other Grade A milk or milk product as may be designated by the department.

(15) "Grade A dry milk products" means milk products which have been produced for use in Grade A pasteurized milk products and which have been manufactured under the provisions of the "Grade A Condensed and Dry Milk Products — Recommended Sanitation Ordinance and Code for Dry Milk Products used in Grade A Pasteurized Milk Products."

(16) "Handler," "distributor" or "retailer" means any association, organization, person or other group that offers for sale, sells or otherwise handles milk or milk products.

(17) "Inspector" means an employee of the department who is qualified, trained, and authorized to perform dairy farm or plant inspections, or both, to grade raw milk, to evaluate quality control programs of milk, plants and carry out the enforcement procedures of the department's regulations relating to milk and milk products.

(18) "Manufacturing milk and milk products" means milk and milk products produced, processed, transported and distributed in accordance with the department's manufacturing milk regulations. It includes but is not limited to the following:

(a) Butter;
(b) Cheeses, processed cheeses, cheese foods, cheese spreads and related foods;
(c) Evaporated milk;
(d) Frozen desserts;
(e) Sweetened condensed milk and any other manufactured milk or milk product as may be designated by the department.

(19) "Mechanical cleaning" or "mechanically cleaned" means cleaning, solely by circulation or flowing chemical detergent solutions and water rinses onto and over the surface to be cleaned by mechanical means.

(20) "Milk grader" means a person who is qualified for the grading of raw milk in accordance with quality standards and procedures. (For the purpose of grading and sampling milk, a "milk grader" may be considered a duly authorized agent of the department.)

(21) "Milk hauler" means any person who transports milk or raw milk products to or from a milk plant, receiving station or transfer station. (For the purpose of collecting official samples of raw milk, a "milk hauler" may be considered a duly authorized agent of the department.)

(22) "Milk producer" means any person who operates a dairy farm and provides, offers for sale or sells raw milk to a milk plant, receiving station, transfer station or handler.

(23) "Misbranded milk and milk products" means any milk or milk product misbranded as provided by KRS 217.035.

(24) "Official laboratory" means a biological, chemical, or physical laboratory which is under the direct supervision of the department.

(25) "Official methods" means the current edition of the "Official Methods of Analysis of the Association of Official Analytical Chemists", a publication of the Association of Official Analytical Chemists, Box 540, Benjamin Franklin Station, Washington, D.C., 20044.

(26) "Officially designated laboratory" means a designated milk industry laboratory authorized by the department to do official work on producer samples, for tests required by the department's regulations or a commercial laboratory officially designated by the department for the examination of producer samples or finished products.

(27) "Open date" means the date which shall be affixed on a consumer package or container of Grade A pasteurized milk or milk products subsequent to the date of manufacturing, processing or packaging and which represents the period of time that the product will remain unspoiled and acceptable for consumption when transported, handled and stored under approved conditions.

(28) "Pasteurization or pasteurized" means that every particle of such product shall have been heated in properly operated equipment, approved by the department, to one of the temperatures specified in the table of this subsection, and held continuously at or above that temperature for the specified time (or other time/temperature relationship which has been demonstrated to be equivalent thereto in microbial destruction).

(a) Milk and milk products (including cheese whey):

Temperature	Time
145°F*	30 minutes
161°F*	15 seconds
191°F	1 second
204°F	0.05 second
212°F	0.01 second

*If the dairy ingredient has a fat content of 10 percent or more, or if it contains added sweeteners, the specified temperature shall be increased by 5°F.

(b) Cream for buttermaking:

Temperature	Time
165°F*	30 minutes
180°F*	15 seconds

*If plastic or frozen cream is used for buttermaking, the specified temperature shall be increased by 5°F.

(c) Frozen desserts:

Temperature	Time
155°F	30 minutes
175°F	25 seconds

(29) "Permit" means permission given by the department to produce, buy, transport, process, store, distribute or sell any milk or milk products or to collect official samples thereof.

(30) "Person" means any individual, plant, operator, partnership, corporation, company, firm, trustee, or association.

(31) "Reconstituted or recombined milk and milk products" means milk or milk products which results from the recombining of milk constituents with potable water.

(32) "Sanitizing or bactericidal treatment" means the application of an effective sanitizing agent to a clean surface for the destruction of pathogens and other organisms as far as is practicable. The sanitizing agents used shall comply with the Federal Food, Drug and Cosmetic Act and the regulations of the department.

(33) "Standard methods" means the current edition of the "Standard Methods for the Examination of Dairy Products", a publication of the American Public Health Association, 1015 Eighteenth Street, N.W., Washington, D.C., 20036.

(34) "Sterilization or sterilized" means the complete in-container method of heating the container and contents at a minimum of 212°F for sufficient time and vacuum to give complete destruction to all living organisms.

(35) "3-A sanitary standards and accepted practices" means the standards and practices for dairy equipment formulated by the 3-A sanitary standards committees representing the International Association of Milk, Food and Environmental Sanitarians, the U.S. Public Health Service and the Dairy Industry Committee, published by the International Association of Milk, Food and Environmental Sanitarians, 413 Kellogg Avenue, Ames, Iowa, 50010.

(36) "Transfer station" means any place, premises or establishment where milk or milk products are transferred directly from one transport tank to another.

(37) "Ultra-pasteurized" means that such product shall have been thermally processed at or above 280°F for at least two (2) seconds, either before or after packaging, so as to produce a product which has an extended shelf life under refrigerated conditions.

(38) "Unsafe food additives" means any food additive prohibited by KRS 217.045.

L. W. TRUE, Secretary

ADOPTED: November 18, 1974
RECEIVED BY LRC: November 19, 1974 at 4:36 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Secretary, Department for Human Resources, Capitol Annex Building, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
(902 KAR 50:020)

RELATES TO: KRS 217C.010 to 217C.990
PURSUANT TO: KRS 13.082, 194.050, 211.090(1)(c)
SUPERSEDES: MMP-5.

NECESSITY AND FUNCTION: The Department for Human Resources is directed by KRS Chapter 217C to regulate the production, transportation, processing, handling, sampling, examination, grading, sale and such other matters relating to Grade A milk and milk products as may be necessary to protect the public health. This regulation establishes uniform permit requirements and sanitary standards for Grade A milk producers, processors and handlers.

Section 1. Permits Required for Producers, Processors and Handlers of Grade A Milk. No person shall bring into, or receive into this state for sale, or offer for sale, or have in storage any Grade A milk or milk product, who does not possess an appropriate permit from the department; provided, that grocery stores, restaurants, soda fountains, or similar estab-

lishments where milk or milk products are served, or sold at retail, but not processed are exempt from this permit requirement but shall comply with applicable requirements of this regulation. Persons selling milk or milk products under private label shall be considered a distributor and shall obtain a permit as required herein. Only a person who complies with the requirements of this regulation shall be entitled to such a permit. Permits shall not be transferable with respect to persons or locations.

Section 2. Inspection of Dairy Farms and Milk Plants, Receiving Stations, and Transfer Stations. (1) Each dairy farm, milk plant, receiving station and transfer station within this state shall be inspected by the department or local health department having jurisdiction prior to the issuance of a permit. Following the issuance of a permit, each dairy farm and transfer station shall be inspected at least once every six (6) months and each milk plant and receiving station shall be inspected at least once every three (3) months. Should the violation of any requirement set forth in Sections 5 or 6 be found to exist, a second inspection shall be required after the time deemed necessary to remedy the violation, but not before three (3) days. The reinspection shall be used to determine compliance with the requirements of Sections 5 or 6. Any violation of the same requirement of Sections 5 or 6 on such reinspection shall call for permit suspension in accordance with Section 14. One (1) copy of the inspection report shall be handed to the operator, or other responsible person or be posted in a conspicuous place on an inside wall of the establishment. The inspection report shall not be defaced and shall be made available to the department or local health department having jurisdiction upon request. An identical copy of the inspection report shall be filed with the records of the department or local health department having jurisdiction.

(2) Every milk producer, hauler, distributor, or plant operator shall, upon request of the department or local health department having jurisdiction, permit, access of officially designated persons to all parts of this establishment or facilities to determine compliance with the provisions of this regulation. A distributor or plant operator shall furnish the department or local health department having jurisdiction, upon request, for official use only, a true statement of the actual quantities of milk and milk products of each grade purchased and sold, and a list of all sources of such milk and milk products, records of inspections, tests and pasteurization time and temperature records.

(3) No person in an official capacity shall obtain any information under the provisions of this regulation which is entitled to protection as a trade secret and use such information for personal advantage or reveal it to any unauthorized person.

Section 3. Examination and Analysis of Milk and Milk Products. (1) During any consecutive six (6) months, at least four (4) samples of raw milk for pasteurization shall be taken from each producer and four (4) samples of raw milk for pasteurization shall be taken from each milk plant after receipt of the milk by the milk plant and prior to pasteurization. In addition, during any consecutive six (6) months, at least four (4) samples of each milk product shall be taken from every milk plant. Samples of milk and milk products shall be taken while in possession of the producer or distributor at any time prior to final delivery. Samples of milk and milk products from dairy retail stores, food service establishments, grocery stores, and other places where milk and milk products are sold shall be examined periodically as determined by the department or local health department having jurisdiction. Proprietors of such establishments shall furnish the department or local health department having jurisdiction, upon his request, with the names of all distributors from whom milk or milk products are obtained.

(2) Required bacterial counts, somatic cell counts and cooling temperature checks shall be performed on raw milk for pasteurization. In addition, antibiotic tests on each producer's milk or on commingled raw milk shall be conducted at least four (4) times during any consecutive six (6) months. When commingled milk is tested, all producers shall be represented in the sample. All individual sources of milk shall be tested when test results on the commingled milk are positive. Required bacterial counts, coliform determinations, phosphatase and cooling temperature checks shall be performed on pasteurized milk and milk products.

(3) Whenever two (2) of the last four (4) consecutive bacteria counts, confirmatory somatic cell counts, coliform determinations, or cooling temperatures, taken on separate days, exceed the limit of the standard for the milk or milk product, the department or local health department having jurisdiction shall send a written notice thereof to the person concerned. This notice shall be in effect so long as two (2) of the last four (4) consecutive samples exceed the limit of the standard. An additional sample shall be taken within fourteen (14) days of the sending of such notice, but not before the lapse of three days. Immediate suspension of permit in accordance with Section 14 shall be instituted whenever the standard is violated by three (3) of the last five (5) bacteria counts, confirmatory somatic cell counts, coliform determinations, or cooling temperatures.

(4) Whenever a phosphatase test is positive, the cause shall be determined. Where the cause is improper pasteurization, it shall be corrected, and any milk or milk product involved shall not be offered for sale.

(5) Samples shall be analyzed at an official or appropriate officially designated laboratory. All sampling procedures and required laboratory examinations shall be in substantial compliance with the current edition of "Standard Methods for the Examination of Dairy Products" of the American Public Health Association, and the current edition of "Official Methods of Analysis of the Association of Official Agricultural Chemists:" Such procedures and examinations shall be evaluated in accordance with the methods of evaluating milk laboratories recommended by the United States Public Health Service. Examinations and tests shall be conducted to detect adulterants, including pesticides, as the department or local health department having jurisdiction shall require. Assays of milk or milk products for vitamin addition shall be made at the direction of the department in a laboratory acceptable to the department or local health department having jurisdiction.

Section 4. (1) Chemical, Bacteriological and Temperature Standards for Grade A Milk and Milk Products. All Grade A raw milk for pasteurization and all Grade A pasteurized milk and milk products shall be produced, processed, and pasteurized to conform with the following chemical, bacteriological and temperature standards and sanitation requirements of this regulation and where applicable the administrative procedures of the 1965 "Pasteurized Milk Ordinance" recommended by the U. S. Public Health Service. No process or manipulation other than pasteurization, processing methods integral therewith, and appropriate refrigeration shall be applied to milk and milk products for the purpose of removing or deactivating microorganisms. "3-A" Sanitary Standards for equipment are required if available and applicable.

(2) Standards:

(a) Grade A raw milk for pasteurization: Temperature; Cooled to 50°F. or less and maintained thereat until processed. Bacterial Limits; Individual producer milk not to exceed 100,000 per ml. prior to commingling with other producer milk. Not exceeding 300,000 per ml. as commingled milk prior to pasteurization. Antibiotics; No detectible antibiotic residue. Somatic Cells; Not exceeding 1,500,000 per ml.

(b) Grade A pasteurized milk and milk products (except cultured products): Temperature; Cooled to 45°F. or less and maintained thereat. Bacterial limits; Milk and milk products – 20,000 per ml. Coliform Limit; Not exceeding 10 per ml. Phosphatase; Less than lug per ml., by Scharer Rapid Method (or equivalent by other means).

(c) Grade A pasteurized cultured products: Temperature; Same as subsection (b). Coliform Limit; Same as subsection (b). Phosphatase; Same as subsection (b). Bacterial Limits; Exempt.

Section 5. Sanitation Requirements for Grade A Raw Milk for Pasteurization. (1) Abnormal Milk. Cows which show evidence of the secretion of abnormal milk in one (1) or more quarters based upon bacteriological, chemical, or physical examination, shall be milked last or with separate equipment, and the milk shall be discarded. Cows treated with, or cows which have consumed chemical, medicinal or radioactive agents which are capable of being secreted in the milk or which, in the judgment of the department or local health department having jurisdiction, may be deleterious to human health, shall be milked last or with separate equipment, and the milk disposed of as the department or local health department having jurisdiction, may direct.

(2) Milking Barn, Stable or Parlor; Construction. A milking barn, stable or parlor shall be provided on all dairy farms in which the milking herd shall be housed during milking time operations. The areas used for milking purposes shall have floors constructed of concrete or equally impervious material; have walls and ceilings which are smooth, painted or finished in an approved manner, in good repair, ceiling dust tight; have separate stalls or pens for horses, calves and bulls; be provided with natural or artificial light, well distributed for day or night milking; provide sufficient airspace and air circulation to prevent condensation and excessive odors; not be overcrowded; and have dust tight covered boxes or bins, or separate storage facilities for ground, chopped or concentrated feed.

(3) Milking Barn, Stable or Parlor; Cleanliness. The interior shall be kept clean. Floors, walls, windows, pipelines and equipment shall be free of filth and litter and shall be kept clean. Swine and fowl shall be kept out of the milking barn.

(4) Cowyard. The cowyard shall be graded and drained and shall have no standing pools of water or accumulations of organic wastes; provided, that in loafing or cattle-housing areas, cow droppings and soiled bedding shall be removed, or clean bedding added, at sufficiently frequent intervals to prevent the soiling of the cow's udder and flanks. Waste feed shall not be allowed to accumulate. Manure packs shall be properly drained and shall provide a reasonably firm footing. Swine shall be kept out of the cowyard.

(5) Milkhouse or Room; Construction and Facilities:

(a) A milkhouse or room of sufficient size shall be provided, in which the cooling, handling and storing of milk and the washing, sanitizing, and storing of milk containers and utensils shall be conducted.

(b) The milkhouse shall be provided with a smooth floor constructed of concrete or equally impervious material graded to drain and maintained in good repair. Liquid waste shall be disposed of in a sanitary manner; all floor drains shall be accessible and shall be trapped if connected to a sanitary sewer system.

(c) The walls and ceilings shall be constructed of

smooth material, in good repair, well painted, or finished in an equally suitable manner.

(d) The milkhouse shall have adequate natural or artificial light and be well ventilated.

(e) The milkhouse shall be used for no other purpose than milkhouse operations; there shall be no direct opening into any barn, stable or into a room used for domestic purposes; provided, that a direct opening between the milkhouse and milking barn, stable or parlor is permitted when a tight-fitting self-closing solid door(s) hinged to be single or double acting is provided.

(f) Water under pressure shall be piped into the milkhouse.

(g) The milkhouse shall be equipped with a two-compartment wash vat and adequate hot water heating facilities.

(h) When a transportation tank is used for the cooling and storage of milk on the dairy farm, such tank shall be provided with a suitable shelter for the receipt of milk. Such shelter shall be adjacent to, but not a part of, the milkroom and shall comply with the requirements of the milkroom with respect to construction, light, drainage, insect and rodent control and general maintenance.

(6) Milkhouse or Room; Cleanliness. The floors, walls, ceilings, windows, tables, shelves, cabinets, wash vats, non-product contact surfaces of milk containers, utensils and equipment and other milkroom equipment shall be clean. Only articles directly related to milkroom activites shall be permitted in the milkroom. The milkroom shall be free of trash, animals and fowl.

(7) Toilet. Every dairy farm shall be provided with one (1) or more toilets, conveniently located and properly constructed, operated and maintained in a sanitary manner. The waste shall be inaccessible to flies and shall not pollute the soil surface or contaminate any water supply.

(8) Water Supply. Water for milkhouse and milking operations shall be from a supply properly located, protected and operated, and shall be easily accessible, adequate and of a safe, sanitary quality.

(9) Utensils and Equipment; Construction. All multi-use containers, equipment and utensils used in the handling, storage or transportation of milk shall be made of smooth, nonabsorbent, corrosion-resistant, nontoxic materials, and shall be so constructed as to be easily cleaned. All containers, utensils and equipment shall be in good repair. All milk pails used for hand milking and stripping shall be seamless and of the hooded type. Multiple-use woven material shall not be used for straining milk. All single-service articles shall have been manufactured, packaged, transported, stored and handled in a sanitary manner and shall comply with the applicable requirements of Section 6(11). Single-service articles shall not be reused. Farm holding or cooling tanks, welded sanitary piping and transportation tanks shall comply with the applicable requirements of Section 6(10) and (11). All equipment shall meet "3-A Sanitary Standards" if available and applicable.

(10) Utensils and Equipment; Cleaning. The product-contact surfaces of all multi-use containers, equipment and utensils used in the handling, storage or transportation of milk shall be cleaned after each usage.

(11) Utensils and Equipment; Sanitization. The product-contact surfaces of all multi-use containers, equipment and utensils used in the handling, storage or transportation of milk shall be sanitized before each usage.

(12) Utensils and Equipment; Storage. All containers, utensils, and equipment used in the handling, storage or transportation of milk, unless stored in sanitizing solutions, shall be stored to assure complete drainage, and shall be protected from contamination prior to use.

(13) Utensils and Equipment; Handling. After sanitization, all containers, utensils and equipment shall be handled in such manner as to prevent contamination of any product-contact surface.

(14) Milking; Flanks, Udders and Teats. Milking shall be done in the milking barn, stable, or parlor. The flanks, udders, bellies and tails of all milking cows shall be free from visible dirt. All brushing shall be completed prior to milking. The udders and teats of all milking cows shall be cleaned and treated with a sanitizing solution just prior to the time of milking, and shall be relatively dry before milking. Wet hand milking is prohibited.

(15) Milking; Surcingles, Milk Stools and Antikickers. Surcingles, milk stools and antikickers shall be kept clean and stored above the floor.

(16) Milking; Transfer and Protection of Milk. Each pail or container of milk shall be transferred immediately from the milking barn, stable or parlor to the milkhouse. No milk shall be strained, poured, transferred or stored unless it is properly protected from contamination.

(17) Personnel; Hand-Washing Facilities. There shall be provided adequate hand-washing facilities, including running water, soap or detergent, and individual sanitary towels, in the milkhouse and in or convenient to the milking barn, stable or parlor.

(18) Personnel; Cleanliness. Hands shall be washed clean and dried with an individual sanitary towel immediately before milking, before performing any milkhouse function, and immediately after the interruption of any of these activities. Milkers and milk haulers shall wear clean outer garments while milking or handling milk, milk containers, utensils, or equipment.

(19) Cooling. Raw milk for pasteurization shall be cooled to 50°F or less within two (2) hours after milking and prior to commingling with other producer milk and shall be maintained at that temperature or less until delivered.

(20) Vehicles. Vehicles used to transport milk in cans or bulk from the dairy farm to the milk plant or receiving station shall be constructed and operated to protect their contents from sun, freezing, and contamination. Such vehicles shall be kept clean, inside and out and no substance capable of contaminating milk shall be transported with milk.

(21) Insect and Rodent Control. Effective measures shall be taken to prevent the contamination of milk, containers, equipment, and utensils by insects and rodents, and by chemicals used to control such vermin. Milkrooms shall be free of insects and rodents. Surroundings shall be kept neat, clean and free of conditions which might harbor or be conductive to the breeding of insects and rodents.

Section 6. Sanitation Requirements for Grade A Pasteurized Milk and Milk Products. A receiving station shall comply with subsections (1) to (15), inclusive, and (17), (20), and (22), of this Section except that the partitioning requirement of subsection (5) shall not apply. A transfer station shall comply with subsections (1), (4), (6), (7), (8), (9), (10), (11), (12), (14), (15), (20), and (22) of this Section; and as climatic and operating conditions require, the applicable provisions of subsections (2) and (3) of this Section; provided, that in every case, overhead protection shall be required. Facilities for the cleaning and sanitizing of bulk transport tanks shall comply with subsections (1), (4), (6), (7), (8), (9), (10), (11), (12), (14), (15), (20), and (22) of this Section; and as climatic and operating conditions require, the applicable provisions of subsections (2) and (3) of this Section; provided, that in every case, overhead protection shall be required.

(1) Floors; Construction. The floors of all rooms in which milk or milk products are processed, handled, or stored, or in which milk containers, equipment, and utensils are washed, shall be constructed of concrete or other equally impervious and easily cleaned material. They shall be smooth, properly sloped, provided with trapped drains and kept in good repair; provided, that cold-storage rooms used for storing milk and milk products need not be provided with floor drains when the floors are sloped to drain to one or more exits; provided further, that storage rooms for storing dry ingredients or packaging materials need not be provided with drains and the floors may be constructed of tightly joined wood.

(2) Walls and Ceilings; Construction. Walls and ceilings of rooms in which milk or milk products are handled, processed or stored, or in which milk containers, utensils, and equipment are washed, shall have a smooth, washable, light-colored surface in good repair.

(3) Doors and Windows. Effective means shall be provided to prevent the access of flies and rodents. All openings to the outside shall have solid doors or glazed windows which shall be closed during dusty weather.

(4) Lighting and Ventilation. All rooms in which milk and milk products are handled, processed or stored or in which milk containers, equipment and utensils are washed shall be well lighted and well ventilated.

(5) Separate Rooms. There shall be separate rooms for pasteurizing, processing, cooling and packaging; and for cleaning of milk cans and bottles. In addition, plants receiving milk in bulk transport tanks shall provide for cleaning and sanitizing facilities.

(6) Toilet-Sewage Disposal Facilities. Every milk plant shall be provided with toilet facilities. Toilet rooms shall not open directly into any room in which milk or milk products are processed. Toilet rooms shall be completely enclosed and shall have tight-fitting, self-closing doors. Dressing rooms, toilet rooms and fixtures shall be kept in a clean condition, in good repair and shall be well ventilated and well lighted. Sewage and other liquid wastes shall be disposed of in a sanitary manner approved by the department.

(7) Water Supply. Water for milk plant purposes shall be from a supply properly located, protected and operated, and shall be easily accessible, adequate and of a safe, sanitary quality approved by the department.

(8) Hand-Washing Facilities. Convenient hand-washing facilities shall be provided, including hot and cold or warm running water, soap, and individual sanitary towels or other approved hand-drying devices. Hand-washing facilities shall be kept in a clean condition and in good repair.

(9) Milk Plant Cleanliness. All rooms in which milk and milk products are handled, processed, stored, or in which containers, utensils, or equipment are washed or stored, shall be kept clean, neat and free of evidence of insects and rodents. Pesticides shall be safety used. Only equipment directly related to processing operations or to the handling of containers, utensils and equipment, shall be permitted in the pasteurizing, processing, cooling, packaging and bulk milk storage rooms.

(10) Sanitary Piping. All sanitary piping, fittings and connections which are exposed to milk and milk products, or from which liquids may drip, drain, or be drawn into milk or milk products, shall consist of smooth, impervious, corrosion-resistant, nontoxic, easily cleanable material. All piping shall be in good repair. Pasteurized milk and milk products shall be conducted from one piece of equipment to another only through sanitary piping.

(11) Construction and Repair of Containers and Equipment. All multi-use containers and equipment with which milk or milk products come into contact shall be of smooth, impervious, corrosion-resistant, nontoxic material; shall be constructed for ease of cleaning; and shall be kept in good repair. All

single-service containers, closures, gaskets, and other articles with which milk or milk products come in contact shall be nontoxic, and shall have been manufactured, packaged, transported, and handled in a sanitary manner. Articles intended for single-service use shall not be reused. All equipment shall meet "3-A Sanitary Standards" if such standards are available.

(12) Cleaning and Sanitizing of Containers and Equipment. The product-contact surfaces of all multi-use containers, utensils, and equipment used in the transportation, processing, handling, and storage of milk and milk products shall be effectively cleaned and shall be sanitized before each use.

(13) Storage of Cleaned Containers and Equipment. After cleaning, all multi-use milk or milk product containers, utensils, and equipment shall be transported and stored to assure complete drainage, and shall be protected from contamination before use.

(14) Storage of Single-Service Containers, Utensils, and Materials. Single-service caps, cap stock, parchment paper, containers, gaskets, and other single-service articles for use in contact with milk and milk products shall be purchased and stored in sanitary tubes, wrappings, or cartons; shall be kept therein in a clean, dry place until used; and shall be handled in a sanitary manner.

(15) Protection from Contamination. Milk plant operations, equipment and facilities shall be located and conducted to prevent any contamination of milk or milk products, ingredients, equipment, containers, and utensils. All milk or milk products or ingredients which have been spilled, overflowed, or leaked shall be discarded. The processing or handling of products other than milk and milk products in the pasteurization plant shall be performed to preclude the contamination of such milk and milk products.

(16) Pasteurization. Pasteurization shall be performed as defined by the department relating to milk and milk products.

(17) Cooling of Milk. All raw milk and milk products shall be maintained at 50°F. or less until processed. All pasteurized milk and milk products, except those to be cultured, shall be cooled immediately in approved equipment to a temperature of 45°F. or less. All pasteurized milk and milk products shall be stored at a temperature of 45°F. or less and shall be maintained thereat. Every room or tank in which milk or milk products are stored shall be equipped with an accurate thermometer.

(18) Bottling and Packaging. Bottling and packaging of milk and milk products shall be done at the place of pasteurization in approved mechanical equipment.

(19) Capping. Capping or closing of milk and milk product containers shall be done in a sanitary manner by approved mechanical capping or closing equipment. The cap or closure shall protect the pouring lip to at least its largest diameter.

(20) Personnel; Cleanliness. Hands shall be thoroughly washed before commencing plant functions and as often as may be required to remove soil and contamination. No employee shall resume work after visiting the toilet room without thoroughly washing his hands. All persons engaged in the processing, pasteurization, handling, storage, or transportation of milk, milk products, containers, equipment and utensils shall wear clean outer garments. The use of tobacco by any person while engaged in the processing of milk or milk products is prohibited.

(21) Vehicles, All vehicles used for transportation of pasteurized milk and milk products shall be constructed and operated so that the milk and milk products are maintained at 50°F. or less, and are protected from sun, from freezing and from contamination.

(22) Surroundings. Milk plant surroundings shall be kept clean, neat and free from conditions which might attract or harbor flies, other insects and rodents, or which otherwise constitute a nuisance.

Section 7. Animal Health. (1) Tuberculosis. All milk for pasteurization shall be from herds which are located in a modified accredited tuberculosis area as determined by the United States Department of Agriculture; provided, that herds located in an area that fails to maintain such accredited status shall have been accredited by said department as tuberculosis free, or shall have passed an annual tuberculosis test.

(2) Brucellosis. All milk for pasteurization shall be from herds participating in a brucellosis eradication program which meets one of the following conditions:

(a) Located in a certified brucellosis-free area as defined by the United States Department of Agriculture and enrolled in the testing program for such areas; or

(b) Located in a modified certified brucellosis area as defined by the United States Department of Agriculture and enrolled in the testing program for such areas; or

(c) Meets United States Department of Agriculture requirements for an individually certified herd; or

(d) Participates in a milk ring testing program which is conducted on a continuing basis at intervals of not less than every three (3) months or more than every six (6) months with individual blood tests on all animals in herds showing suspicious reactions to the milk ring test; or

(e) Have an individual blood agglutination test annually with an allowable maximum grace period not exceeding two (2) months.

(3) Other Diseases. For diseases other than brucellosis and tuberculosis, the department shall require such physical, chemical or bacteriological test as it deems necessary. The diagnosis of other diseases in dairy cattle shall be based upon the findings of a licensed veterinarian or a veterinarian in the employ of an official agency. Any diseased animal disclosed by such test(s) shall be disposed of as the department or local health department directs.

Section 8. Sale of Grade A Pasteurized Milk and Milk Products to Final Consumer. Only Grade A pasteurized milk and milk products shall be sold to the final consumer, or to restaurants, soda fountains, grocery stores, or similar establishments; provided, that in an emergency, the sale of pasteurized milk and milk products which have not been graded, or the grade of which is unknown, may be authorized by the department or local health department having jurisdiction, in which case, such milk and milk products shall be labeled "ungraded."

Section 9. Serving Containers, Transfer and Cooling for Grade A Milk. (1) Except as permitted in this Section, no milk producer or distributor shall transfer milk or milk products from one container or tank truck to another on the street, in any vehicle, store or in any place except a milk plant, receiving station, transfer station or milkhouse especially provided for that purpose. The dipping or ladling of milk or milk products is prohibited.

(2) No person shall sell or serve any milk or milk product except in the individual, original container received from the distributor or from an approved bulk dispenser; provided, that this requirement shall not apply to milk for mixed drinks requiring less than one-half pint of milk, or to cream, whipped cream, or half-and-half which is consumed on the premises and which may be served from the original container of not more than one-half (1/2) gallon capacity, or from a bulk dispenser approved for such service by the department.

(3) No person shall sell or serve any pasteurized milk or milk product which has not been maintained at a temperature of 45°F. or less. If containers of pasteurized milk or milk products are stored in ice, the storage container shall be properly drained.

Section 10. Sale of Imported Grade A Milk and Milk Products. Milk and milk products imported from points beyond the limits of routine inspection of this state may be sold in this state provided they are produced or pasteurized under regulations which are substantially equivalent to this regulation and that have been awarded an acceptable milk sanitation compliance and enforcement rating by a state milk sanitation rating officer certified by the United States Public Health Service, Food and Drug Administration; and provided further, that such governmental unit accepts Kentucky's Grade A milk and milk products on a reciprocal basis.

Section 11. Future Dairy Farms and Milk Plants. Properly prepared plans for all milkhouses, milking barns, stables, parlors, transfer stations, receiving stations, and milk plants regulated under this regulation which are hereafter constructed, reconstructed, or extensively altered, shall be submitted to the department or local health department having jurisdiction for written approval before work is begun.

Section 12. Personnel Health. No person affected with any disease in a communicable form, or while a carrier of such disease, shall work at any dairy farm or milk plant in any capacity which brings him into contact with the production, handling, storage or transportation of milk, milk products, containers, equipment and utensils; and no dairy farm or milk plant operator shall employ in any such capacity any such person, or any person suspected of having any disease in a communicable form, or of being a carrier of such disease. Any producer or distributor of milk or milk products, upon whose dairy farm, or in whose milk plant any communicable disease occurs, or who suspects that any employee has contracted any disease in a communicable form, or has become a carrier of such disease, shall notify the department immediately.

Section 13. Procedure When Infection Is Suspected. When reasonable cause exists to suspect the possibility of transmission of infection from any person concerned with the handling of milk or milk products the department or local health department having jurisdiction is authorized to require any or all of the following measures: the immediate exclusion of that person from milk handling; the immediate exclusion of the milk supply concerned from distribution and use; and adequate medical and bacteriological examination of the person, associates and their body discharges.

Section 14. Grade A Milk Producer, Processor or Handler Permit Suspension and Reinstatement. (1) Whenever the department or local health department having jurisdiction has reason to believe that a public health hazard exists, or whenever the permit holder has interfered with the department or local health department concerned in the performance of their duties, the permit may be suspended immediately upon notice to the permit holder without a hearing. In such event the permit holder may request a hearing which shall be granted as soon as practicable.

(2) In all other instances of violation of the provisions of this regulation the department or local health department having jurisdiction shall serve upon the holder of the permit a written notice of intent to suspend which shall specify the violation(s) in question and afford the holder a reasonable opportunity to correct same.

(3) Upon written application of any person whose permit has

been suspended, or upon application within forty-eight (48) hours of any person who has been served with a notice of intention to suspend and in the latter case before suspension, the department or local health department, having jurisdiction, shall within a reasonable time proceed to a hearing to ascertain the facts of such violation or interference and upon evidence presented at such hearing shall affirm, modify or rescind the suspension or intention to suspend. Any permit suspended under the provisions of this regulation may be reinstated by submission of proper evidence satisfactory to the department or local health department having jurisdiction that the violations have been corrected.

L. W. TRUE, Secretary

ADOPTED: November 18, 1974
RECEIVED BY LRC: November 19, 1974 at 4:36 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Secretary, Department for Human Resources, Capitol Annex Building, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
(902 KAR 50:030)

RELATES TO: KRS 217C.010 to 217C.990
PURSUANT TO: KRS 13.082, 194.050, 211.090(1)(c)
SUPERSEDES: MMP-3
NECESSITY AND FUNCTION: The Department for Human Resources is directed by KRS Chapter 217C to regulate milk for manufacturing purposes. This regulation sets uniform standards for the production, transportation, handling, sampling, examination, grading and sale of manufacturing milk and milk products and for the inspection of dairy farms and provides for the issuance, revocation and reinstatement of producer permits.

Section 1. Manufacturing Milk Producer Permits and Inspections. (1) Prior to the issuance of any permit to a manufacturing milk producer, the department shall conduct an inspection of the producer's facilities. If the producer is not in substantial compliance with this regulation, he shall not be issued a permit and violations shall be given him in writing and posted in a conspicuous place at the dairy farm. A reinspection will be made by the department after the time deemed necessary to correct the violation(s), but not before the lapse of three (3) days. Provided that, if the inspector determines during the inspection that corrections on the farm will require some capital investment, a reasonable extension of time shall be granted by the department. Upon reinspection, if the farm does not meet the requirements for a permit, it shall not be issued and the producer's authorization to sell milk for human food from the farm shall be withheld by the department until such time as the farm qualifies for a permit. Whenever authorization to sell milk from a farm is withheld by the department, a request for reinspection shall be made by the producer in writing, including a statement that the violation(s) previously noted by the last inspection report have been corrected.

(2) All new producers must be inspected by the department prior to beginning shipment.

(3) Permits shall not be transferable with respect to persons or locations and shall remain valid unless suspended or revoked by the department.

Section 2. Quality Requirements and Enforcement Procedures for Raw Milk. (1) Basis. The classification of raw milk for manufacturing purposes shall be based on organoleptic examination (sight and odor) and quality control tests for sediment content and bacterial estimate, abnormal milk and antibiotics. Examinations and tests to detect pesticides or other adulterants may be conducted by the department as deemed necessary.

(2) Sight and Odor. The flavor and odor of acceptable raw milk shall be fresh and sweet. The milk shall be free from objectionable feed and other off-flavors and off-odors that would adversely affect the finished product, and it shall not show an abnormal condition (including, but not limited to curdled, ropy, bloody or mastitic condition), as indicated by sight or odor.

(3) Frequency of Tests:
- (a) Bacterial Estimate; monthly.
- (b) Sediment content; monthly.
- (c) Antibiotics; quarterly.
- (d) Abnormal Milk; annually with quarterly follow-up on all tests in excess of 1,500,000 somatic cell/ml.
- (e) Adulteration (excessive water) and Pesticides; as deemed necessary by the department.

(4) Methods of Testing. Methods for determining quality test shall be those described in the current edition of Standard Methods, and shall be performed in an official laboratory or an officially designated laboratory.

(5) Quality Standards.

(a) Bacterial Estimate Classification:

Bacterial Estimate Classification	Direct Microscopic Clump Count Standard Plate	Methylene Blue Test Decolorized in	Resazurin Reduction to Munsell Color Standards 5P7/4	Resazurin 1 Hour
No. 1 Satisfactory	Not Over 500,000	Not Less Than 4 1/2 Hours	Not Less Than 2 1/2 Hours	Purple
No. 2 Satisfactory	Not Over 3,000,000	Not Less Than 2 1/2 Hours	Not Less Than 1 1/2 Hours	Lavendar
No. 3 & 4 Unsatisfactory	Over 3,000,000	Less Than 2 1/2 Hours	Less Than 1 1/2 Hours	Pink and decolorized

(b) Sediment Content Classification:

Sediment Content Classification	Milk in Cans (off-the-bottom method, 1 and one-eighth inch diameter disc)*	Milk in Farm Bulk Tanks (mixed sample 0.40 inch diameter disc)*
No. 1 Acceptable	Not to exceed 0.50 mg.	Not to exceed 0.50 mg. equivalent
No. 2 Acceptable	Not to exceed 1.50 mg.	Not to exceed 1.50 mg. equivalent
No. 3 Probational	Not to exceed 2.50 mg.	Not to exceed 2.50 mg. equivalent
No. 4 Reject	Over 2.50 mg.	Over 2.50 mg. equivalent

*Sediment content based on comparison with applicable charts of Sediment Standards prepared by the U. S. Department of Agriculture.

(c) Antibiotic Classification. Negative on individual producer test.

(d) Abnormal Milk. Not in excess of 1,500,000 somatic cell count/ml.

(6) Enforcement Procedures.

(a) Sight and Odor. All bulk tank loads or individual producer milk received shall be examined on an organoleptic basis by the hauler or by milk grader. Milk shall not be received if any off odors or abnormal conditions are found which will adversely affect the finished product. Producer milk which is rejected for sight or odor by a hauler or milk grader shall be identified by coloring if in cans or tagged with a reject tag if in a bulk tank.

(b) Bacterial Estimates. At least once each month at irregular intervals, a representative mixed sample of each producer's milk shall be tested by the company. Producers shall be notified of the results of all tests performed. A producer shall be given a warning notice by the department or a company representative authorized in writing by the department, whenever two (2) of the last four (4) counts exceed bacterial standards specified herein. An additional sample shall be taken within fourteen (14) days of the sending of such notice, but not before the lapse of three (3) days. A producer shall remain under warning notice so long as two (2) of the last four (4) analyses exceed the standards. A producer's permit shall be suspended by the department whenever three (3) of the last four (4) samples exceed the standard. A producer may have his permit reinstated by the department upon written request from the producer whenever the cause of high bacterial count is corrected or is believed to have been corrected as shown by farm inspection and the first shipment of milk meeting the satisfactory bacterial standards. Such producer, upon reinstatement, shall have the status of a new producer. Upon reinstatement, the producer shall have no milk on hand which was produced during the period when his permit was suspended unless otherwise specified by the department.

(c) Sediment:

1. Bulk Tank Producers. If the sediment disc is classified as #1, #2, or #3, the producer's milk may be accepted. If the sediment disc is classified #4, the milk shall be rejected and the producer shall be notifed by the department or a company representative authorized by the department in writing. Provided, that if the shipment of milk is commingled with other milk in a transport tank prior to the sediment test being run, the producer's milk shall be resampled by the hauler or milk grader and retested by the company on the next pick-up. If the retest of this sample is classified #4, the milk from this farm shall not be accepted thereafter until a satisfactory sediment test is obtained. If

shall seek approval of his program by the following method: (1) Submission of his permit request and the grounds for the request in writing to the department;

(2) Submission of the safety program schedule to be followed, specifying the nature, scope, and frequency of the safety inspections;

(3) Submission of any information that might assist the department in making a determination regarding the permit request;

(4) Submission of a statement that, if a permit is granted, any change in the procedures, standards or frequency of the approved safety inspections will be filed with the department sufficiently in advance of such proposed change, in every case not less than sixty (60) days prior to such change. No such change will be permitted until and unless the request has been approved in writing by the department.

Section 2. The requirements of Section 1 shall not pertain to the exemption for vehicles operated in interstate commerce and subject to the safety regulations adopted by the Interstate Commerce Commission (ICC); and such exemption shall be recognized by means of an official cab card issued by the department and identifying a vehicle as being authorized to operate in interstate commerce, a driver daily log book, as required by ICC regulations, and/or the M.C. number painted on the vehicle. The requirements of Section 1, insofar as appropriate for getting information needed to recognize the exemption, shall pertain to operators of vehicles claimed to be exempt because of being subject by regulation to stricter and more frequent safety inspections as provided for in KRS 189.659(2).

O. B. ARNOLD, Commissioner
ADOPTED: October 14, 1974
APPROVED: BILLY PAXTON, Secretary
RECEIVED BY LRC: November 20, 1974 at 4:10 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Bureau of Vehicle Regulation, Department of Transportation, State Office Building, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Vehicle Regulation
(601 KAR 10:080)

RELATES TO: KRS 189.653
PURSUANT TO: KRS 13.082, 174.080, 189.657
SUPERSEDES: PSfty-MVI-9
NECESSITY AND FUNCTION: KRS 189.653(1) provides for the department to issue permits to official inspection stations. This regulation interprets that duty so as to provide for the issuance of permits to qualified applicants with sufficient vehicles of their own to warrant that they be given permits restricted to inspecting their vehicles. This prevents the obvious inconvenience of a person, company, etc. with a fleet of vehicles having to get them inspected at a regular public station.

Section 1. Whenever an applicant for an official inspection station permit is properly equipped, has competent personnel, and is in all other ways qualified to conduct an official station, and said applicant has registered or titled in its name or leases or maintains under a written agreement of one year's duration 15 or more vehicles which are subject to inspection, the department may issue a private (fleet) inspection station permit. Such a permit shall restrict the holder thereof to the inspection of vehicles actually owned, leased, or maintained by the fleet station; and vehicles borrowed or loaned temporarily, when no lease agreement exists, shall not be inspected by a fleet station.

Section 2. All requirements which apply to other official inspection stations, except the display of signs and permits when they relate to the public, shall apply to fleet stations.

O. B. ARNOLD, Commissioner
ADOPTED: October 14, 1974
APPROVED: BILLY PAXTON, Secretary
RECEIVED BY LRC: November 20, 1974 at 4:09 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Bureau of Vehicle Regulation, Department of Transportation, State Office Building, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Vehicle Regulation
(601 KAR 20:010)

RELATES TO: KRS 190.061
PURSUANT TO: KRS 13.082, 174.080, 190.061
SUPERSEDES: DMT-ADL-9-01
NECESSITY AND FUNCTION: KRS 190.061 allows the dealers' board to set by regulation its time of meeting. This regulation implements that function.

Section 1. The Motor Vehicle Dealers Board shall meet at least once per month. It may meet on such other occasions as it deems necessary for the transaction of its business. Meetings shall be called by its chairman or by the commissioner. For all such meetings, each member shall be given at least three (3) days' notice prior to the date set for a meeting. A member may waive this notice requirement. All meetings of the board shall be in the office of the bureau at Frankfort, Kentucky, or such other place as the chairman or commissioner may designate. Such meetings shall start at 10:00 a.m., on such time as prevails at the place of meeting on that date, or at such time as the chairman or commissioner may designate. The board shall not meet a total of over twenty (20) days per year.

O. B. ARNOLD, Commissioner
ADOPTED: October 17, 1974
APPROVED: ROBERT Y. BLAKEMAN, Chairman
Motor Vehicle Dealers Board
APPROVED: BILLY PAXTON, Secretary
RECEIVED BY LRC: November 20, 1974 at 4:13 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Bureau of Vehicle Regulation, Department of Transportation, State Office Building, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Vehicle Regulation
(601 KAR 20:030)

RELATES TO: KRS 190.030
PURSUANT TO: KRS 13.082, 174.080, 190.020, 190.073
SUPERSEDES: DMT-ADL-2-13
NECESSITY AND FUNCTION: KRS 190.030 provides for a speedy disposition of an application for a dealer's license and for the bureau to require information pertinent to a decision. This regulation allows the Bureau to assure that incomplete applications will not remain pending for an inordinate amount of time.

Section 1. Failure to file a full and complete application, all supporting materials in accordance with these rules and regulations, and any pertinent information requested by the bureau within ninety (90) days of the submitting of the initial application may result in the refusal by the bureau to refund any fees paid.

Section 2. If the applicant fails to file within one (1) year from the date of receipt of the initial application a full and complete application along with all supporting materials and fees, in accordance with these rules and regulations, then the bureau may summarily dismiss the application for lack of prosecution.

O. B. ARNOLD, Commissioner
ADOPTED: October 17, 1974
APPROVED: ROBERT Y. BLAKEMAN, Chairman
Motor Vehicle Dealers Board
APPROVED: BILLY PAXTON, Secretary
RECEIVED BY LRC: November 20, 1974 at 4:13 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Bureau of Vehicle Regulation, Department of Transportation, State Office Building, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Vehicle Regulation
(601 KAR 20:040)

RELATES TO: KRS 190.030, 190.037, 190.040
PURSUANT TO: KRS 13.082, 174.080, 190.020, 190.073
SUPERSEDES: DMT-ADL-2-11
NECESSITY AND FUNCTION: KRS 190.030 and 190.040 provide for the granting or denying of licenses under KRS Chapter 190 and for an opportunity for a hearing of review upon denial; and KRS 190.037 allows the bureau to issue temporary permits. This regulation provides for a preliminary investigation of relevant types of applicants and requires issuance of temporary permits to qualified applicants, and it also requires notice that the denial of an application is subject to review.

Section 1. Upon receipt in proper form of an application for any license authorized under KRS Chapter 190, other than a license for a motor vehicle salesman, manufacturer, factory branch or factory representative, the bureau shall initiate an investigation to determine whether the applicant has complied with all statutory and regulatory requirements pertaining to the issuance of such license, and if this investigation reveals such compliance, the bureau shall grant a temporary permit to the applicant to engage in the business for which the license is sought. Upon the granting of a temporary permit, the applicant shall be advised that his application is still subject to final approval or denial. If the investigation reveals that the applicant has not complied with the statutory and regulatory requirements, he shall be notified of the denial of his application, in compliance with KRS 190.040(2), and shall be notified of his right to a hearing before the bureau.

O. B. ARNOLD, Commissioner
ADOPTED: October 17, 1974
APPROVED: ROBERT Y. BLAKEMAN, Chairman
Motor Vehicle Dealers Board
APPROVED: BILLY PAXTON, Secretary
RECEIVED BY LRC: November 20, 1974 at 4:12 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Bureau of Vehicle Regulation, Department of Transportation, State Office Building, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Vehicle Regulation
(601 KAR 20:050)

RELATES TO: KRS 190.030
PURSUANT TO: KRS 13.082, 174.080, 190.020, 190.073
SUPERSEDES: DMT-ADL-13
NECESSITY AND FUNCTION: KRS 190.030(6)(a) allows a motor vehicle dealer to get a supplemental license for each used car lot not immediately adjacent to the office of a branch for one dollar ($1). This regulation interprets that statutory language so as to determine when a supplemental license will be issued and when a regular one will be required.

Section 1. The supplemental license provided for in KRS 190.030(6)(a) shall be issued only for the operation of a used car lot that is actually supplemental to the operation of a principal lot. A used car lot located more 1,000 feet from the principal lot shall not be considered as being supplemental to the principal lot. The distance 1,000 feet as used herein does not mean the straight line distance between the two (2) lots, but does mean the distance a pedestrian would travel normally in walking from the principal lot to the supplemental lot.

O. B. ARNOLD, Commissioner

ADOPTED: October 17, 1974
APPROVED: ROBERT Y. BLAKEMAN, Chairman
Motor Vehicle Dealers Board
APPROVED: BILLY PAXTON, Secretary
RECEIVED BY LRC: November 20, 1974 at 4:11 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Bureau of Vehicle Regulation, Department of Transportation, State Office Building, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Vehicle Regulation
(601 KAR 20:070)

RELATES TO: KRS 190.035
PURSUANT TO: KRS 13.082, 174.080, 190.020, 190.073
SUPERSEDES: DMT-ADL-2-10A, DMT-ADL-3-10, and DMT-8-10
NECESSITY AND FUNCTION: KRS 190.035 requires a dealer to display a sign easily visible from the street identifying his business, allows a dealer to conduct more than one (1) business in a building if he has suitable space and adequate facilities for his dealer business, and requires a dealer to have a lot and building of suitable character and adequate facilities to properly conduct the business of a motor vehicle dealer. This regulation interprets and implements those requirements.

Section 1. A motor vehicle dealer shall display on his premises a sign identifying his business, the letters on which shall be not less than nine (9) inches in height.

Section 2. An applicant for a dealer's license conducting more than one (1) business at his proposed location shall be scrutinized in regard to his fitness and ability properly to conduct the business of a dealer. (1) If an applicant for motor vehicle dealer's license will be conducting more than one (1) business at the proposed location, and if the primary business being conducted will not be that of a motor vehicle dealer, then the applicant must have the following:

(a) A sign in compliance with Section 1 clearly indicating he is a motor vehicle dealer in addition to any other signs he may have.
(b) A display area used for the parking and showing of vehicles for sale that is separate, apart and exclusively used for the display and parking of vehicles for sale.
(c) Sufficient office space to carry on the business of a dealer. There need be no separate walled enclosure for the conduct of the dealer business, but there must be an area which is used to conduct the dealer business which is in addition to the area necessary to the conduct of the primary business.

(2) If an applicant for a motor vehicles dealer's license conducts an automobile salvage or junk business on the same premises, he must have a current license from the Department of Transportation as a junkyard operator and must be in compliance with all state regulations regarding junkyard operation. The applicant must have an area for the display of vehicles for sale and an office area separate and apart from the area where junk cars or parts are stored or situated.
(3) If an applicant for a motor vehicle dealer's license conducts a garage for the repair or rebuilding of wrecked or disabled vehicles, such applicant must have an area for the display of vehicles for sale and an office separate and apart from the area where such repairs are conducted.

Section 3. Not more than one (1) licensed dealer shall operate from a single place of business at one (1) time.

O. B. ARNOLD, Commissioner

ADOPTED: October 17, 1974
APPROVED: ROBERT Y. BLAKEMAN,
Motor Vehicle Dealers Board
APPROVED: BILLY PAXTON, Secretary
RECEIVED BY LRC: November 20, 1974 at 4:07 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Bureau of Vehicle Regulation, Department of Transportation, State Office Building, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Vehicle Regulation
(601 KAR 20:080)

RELATES TO: KRS 190.030
PURSUANT TO: KRS 13.082, 174.080, 190.020, 190.073
SUPERSEDES: DMT-ADL-4-10
NECESSITY AND FUNCTION: KRS 190.030 requires a licensee to specify his place of business and procedures to follow when a change in place of business occurs. This regulation implements those requirements so the bureau's record keeping can be efficient and accurate.

Section 1. A dealer shall immediately notify the bureau of any change in business location, and if the change involves a move within the same municipality, he shall deliver his license to the bureau to be indorsed in accordance with KRS 190.030(7). Upon any other change in business location, the bureau shall issue a new license, and if the current license is surrendered to the bureau prior to the issuance of a new license, no additional fee for the new license shall be required for that license year, but, otherwise, the regular fee shall apply to the new license.

O. B. ARNOLD, Commissioner

ADOPTED: October 17, 1974
APPROVED: ROBERT Y. BLAKEMAN, Chairman
Motor Vehicle Dealers Board
APPROVED: BILLY PAXTON, Secretary
RECEIVED BY LRC: November 20, 1974 at 4:12 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Bureau of Vehicle Regulation, Department of Transportation, State Office Building, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Vehicle Regulation
(601 KAR 20:090)

RELATES TO: KRS 190.030
PURSUANT TO: KRS 13.082, 174.080, 190.020, 190.073
SUPERSEDES: DMT-ADL-6
NECESSITY AND FUNCTION: KRS 190.030 requires each separate entity acting as a dealer to have a license and to make needed reports to the bureau. This regulation implements those requirements, particularly when a sale or transfer occurs, so the bureau can be on notice of who actually holds licenses.

Section 1. Any change of ownership of a motor vehicle dealership or of an automobile franchise held by a licensed dealer or wholesaler shall be reported to the Bureau within ten (10) days of the change.

Section 2. Upon the sale or transfer of a motor vehicle dealership, the new owner shall secure a new dealer's license unless he was a partner in the business prior to its sale or transfer and will conduct said business as an individual proprietorship. If the licensee is a partnership and part or all of the business is sold to another person, a new license is required. If the licensee is a corporation, the sale of the controlling stock in the corporation must be reported to the bureau in accordance with Section 1, but no new license is required to operate.

O. B. ARNOLD, Commissioner

ADOPTED: October 17, 1974
APPROVED: ROBERT Y. BLAKEMAN, Chairman
Motor Vehicle Dealers Board
APPROVED: BILLY PAXTON, Secretary
RECEIVED BY LRC: November 20, 1974 at 4:11 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Bureau of Vehicle Regulation, Department of Transportation, State Office Building, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Vehicle Regulation
(601 KAR 20:110)

RELATES TO: KRS 190.010, 190.030, 190.035
PURSUANT TO: KRS 13.082, 174.080, 190.020, 190.073
SUPERSEDES: DMT-ADL-5-10 and DMT-ADL-15
NECESSITY AND FUNCTION: KRS 190.010, 190.030, and 190.035 define what a motor vehicle salesman is and his relationship to his dealer-employer. KRS 190.030 also provides for salesmen's licenses to indicate for whom they work and to be displayed on request. This regulation interprets

the dealer–salesman relationship and implements statutory requirements to facilitate accurate record keeping by the bureau and to help put the public on notice of with whom they are dealing.

Section 1. A properly licensed motor vehicle salesman employed by a properly licensed dealer may, in that capacity, sell or exchange or attempt to sell or exchange a motor vehicle anywhere in Kentucky, subject to the following limitations: (1) Such activity must be pursuant to the salesman's employment by the licensed dealer whose name appears on his license.

(2) Once a sale or exchange is negotiated by a salesman, he may not offer, transfer or assign it to any other dealer or salesman.

(3) A salesman may not establish a place of business separate from the location for which his employer holds a dealer's license.

(4) A salesman may not hold himself out to be a dealer or conduct himself in any manner which might lead a prospective purchaser to believe he is a dealer.

(5) A salesman may not advertise his sales activity at any specific location other than that for which his employer holds a dealer's license.

Section 2. In case of a change of employment, a salesman shall return his license to the bureau with a notification from the licensed dealer by whom he will be employed, and his license will be amended and returned to him showing the name and address of the new employer and a copy thereof will be sent to the new employer. Before any copy of the license may be secured by any new employer, the salesman's license must be amended to show the name and address of the new employer.

Section 3. A licensed dealer shall display in a conspicuous place in his office a copy of the license of each salesman employed by him. Upon the termination of employment of a salesman, the dealer shall within ten (10) days notify the bureau of such termination and return to the bureau the dealer's copy of the salesman's license.

O. B. ARNOLD, Commissioner

ADOPTED: October 17, 1974
APPROVED: ROBERT Y. BLAKEMAN, Chairman
Motor Vehicle Dealers Board
APPROVED: BILLY PAXTON, Secretary
RECEIVED BY LRC: November 20, 1974 at 4:09 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Bureau of Vehicle Regulation, Department of Transportation, State Office Building, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Vehicle Regulation
(601 KAR 20:130)

RELATES TO: KRS 190.040
PURSUANT TO: KRS 13.082, 174.080, 190.020, 190.073
SUPERSEDES: DMT–ADL–12
NECESSITY AND FUNCTION: KRS 190.040(1)(i) provides that a license can be denied, suspended or revoked for false or misleading advertising. This regulation interprets that proscription against false and misleading advertising to include the use of the name of a make of automobile in the trade name of a used car dealer, a practice which would very likely mislead a consumer into thinking that he could buy a new car from that dealer.

Section 1. No dealer other than a franchised new car dealer may use the name of any make of automobile as a part of his trade name. The adoption of such a trade name or advertising in this manner shall be deemed to constitute false and misleading advertising within the meaning of KRS 190.040(1)(i) and shall be considered grounds for the denial, suspension or revocation of a license.

O. B. ARNOLD, Commissioner

ADOPTED: October 17, 1974
APPROVED: ROBERT Y. BLAKEMAN, Chairman
Motor Vehicle Dealers Board
APPROVED: BILLY PAXTON, Secretary
RECEIVED BY LRC: November 20, 1974 at 4:12 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Bureau of Vehicle Regulation, Department of Transportation, State Office Building, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Highways
(603 KAR 6:024)

RELATES TO: KRS 189.222
PURSUANT TO: KRS 13.082
SUPERSEDES: HIWA–TC–KY 70
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 70 are as follows:

KY 70	AAA	From:	Jct. US 60 at Smithland
		To:	Extending east 1.8 miles
		From:	Jct. US 641 N.E. of Mexico in Crittenden County
		To:	Extending S.W. to Frances
		From:	Jct. US 431 Truck Route in Central City
		To:	West Corporate Limits of Central City
		From:	Jct. US 41 (Madisonville By–pass)
		To:	Extending east to Jct. with KY 85, 1.8 miles S.W. of Anton
	AA	From:	Jct. US 68 at Campbellsville
		To:	Jct. KY 1798 at Acton
		From:	Jct. US 231, 1.0 mile northwest of Aberdeen (Butler County)
		To:	Extending east to KY 79
	A	From:	Jct. KY 109 at Beulah
		To:	Jct. US 41 (Madisonville By–pass)
		From:	Jct. KY 85, east of Madisonville
		To:	West Corporate Limits of Central City
		From:	Jct. US 431 at Browder, south of Drakesboro
		To:	Jct. US 231 in Morgantown
		From:	Jct. KY 79, northeast of Aberdeen
		To:	Jct. KY 259, north of Brownsville
		From:	Taylor County Line via Liberty
		To:	Jct. with US 27 near Eubank
	B	All other portions not herein classified.	

BILLY PAXTON, Secretary

ADOPTED: October 1, 1974
RECEIVED BY LRC: October 24, 1974 at 11:08 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 6:025)

RELATES TO: KRS 189.222
PURSUANT TO: KRS 13.082
SUPERSEDES: HIWA–TC–KY 85
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 85 are as follows:

KY 85	AAA	From:	Jct. KY 70, east of Madisonville
		To:	Extending northeast 1.8 miles to Anton
	AA	From:	Anton
		To:	Jct. KY 81, south of Sacramento
	B	All other portions not herein classified.	

BILLY PAXTON, Secretary

ADOPTED: October 2, 1974
RECEIVED BY LRC: October 24, 1974 at 11:08 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 6:026)

RELATES TO: KRS 189.222
PURSUANT TO: KRS 13.082
SUPERSEDES: HIWA–TC–KY 181
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 181 are as follows:

KY 181	AAA	From:	Jct. US 68 in Elkton
		To:	Jct. US 79 at Tiny Town
	A	From:	Jct. US 68 in Elkton
		To:	Jct. US 62 in Greenville
	B	All other portions not herein classified.	

BILLY PAXTON, Secretary

ADOPTED: October 2, 1974
RECEIVED BY LRC: October 24, 1974 at 11:09 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 6:028)

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 59 is as follows:

KY 59 A From: Jct. KY 10 in Vanceburg
To: Jct. KY 2, 2.7 miles N.W. of Olive Hill

BILLY PAXTON, Secretary

ADOPTED: October 14, 1974
RECEIVED BY LRC: October 28, 1974 at 1:47 p.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 6:029)

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 classfications of highways and fix a different maximum for each classification.

Section 1. The classification for KY 111 is as follows:

KY 111 A From: Jct. KY 32, 2.4 miles south of Flemingsburg
To: Jct. US 60 at Owingsville

BILLY PAXTON, Secretary

ADOPTED: October 14, 1974
RECEIVED BY LRC: October 28, 1974 at 1:46 p.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 6:030)

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 classifications for KY 292 are as follows:

KY 292 AA From: Jct. US 119 at South Williamson
To: Extending north to Jct. with Ky 468

B All other portions not herein classified.

BILLY PAXTON, Secretary

ADOPTED: October 14, 1974
RECEIVED BY LRC: October 28, 1974 at 1:47 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Director, Division of Maintenance, Bureau of Highways, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Registry of Election Finance
(801 KAR 1:005)

RELATES TO: KRS 121.160
PURSUANT TO: KRS 121.120(3) and 13.082
SUPERSEDES: REF-1-1.
NECESSITY AND FUNCTION: KRS 121.120(3) requires the Registry to "adopt such regulations, official forms and perform such duties as are necessary to implement the provisions of KRS 121.015 and KRS 121.100 to 121.200." The Registry shall "develop prescribed forms for the making of the required reports", KRS 121.120(3)a.

Section 1. "Candidate's Appointment of Campaign Treasurer" form is amended as attached.

(801 KAR 1:005)

KENTUCKY REGISTRY OF ELECTION FINANCE
310 West Liberty, Room 714, Louisville, Kentucky 40202
Telephone (502) 584-6381

CANDIDATE'S APPOINTMENT OF CAMPAIGN TREASURER*

Complete and file duplicate copies at the time and with the office where candidate files.**

Name of Candidate _____ Political Party _____
(Mr., Mrs., Ms. or Miss) (Please type or print)
Address of Candidate _____
(Street and Number or Rural Route)
_____, _____, _____ Telephone _____
(City) (County) (Zip Code)
Office sought by Candidate _____
(If District, please indicate)
Office with which Declaration filed** _____
(Secretary of State or County Clerk)
Campaign Treasurer Designated _____
(Mr., Mrs., Ms. or Miss) (Name of Treasurer)
Address of Treasurer _____
(Street and Number or Rural Route)
_____, _____, _____ Telephone _____
(City) (County) (Zip Code)
Primary (Principal) Campaign Depository Bank _____
(Name of Bank)
_____
(Address of Bank)
Secondary Depository Bank(s)(If Applicable) _____
(Attach additional sheets, if necessary) (Name of Bank)
(KRS 121.220) _____
(Address of Bank)
_____
(Name of Bank)
_____
(Address of Bank)

I hereby certify the foregoing is my act and deed this ____ day of _____, _____
(Month) (Year)

_____
(Signature of Candidate)

I hereby accept the above appointment:

_____
(Signature of Campaign Treasurer)

* Candidate may act as own Treasurer. (KRS 121.160)

** To: Secretary of State or County Court Clerk. Attach original to candidate's filing papers and send duplicate copy immediately to the Registry.

Revised 1974 (See Reverse Side)

(801 KAR 1:005) (To be printed on back of form)
KRS 121.160. Campaign Treasurers.

(1) Each candidate shall designate a campaign treasurer at the time and with the office he files as a candidate on a duplicate form prescribed and furnished by the registry and until this requirement is met his qualifications as a candidate shall not be complete and his filing papers shall not be accepted by the office with which he is required to file. The candidate may appoint himself or any registered voter in Kentucky as his campaign treasurer. The office with which the candidate is required to file shall immediately forward to the registry the duplicate copy of the completed form designating the candidate's campaign treasurer and shall attach the original to the candidate's filing papers. The office with which the candidate files shall promptly notify the registry when a candidate withdraws.

(2) The duties of a campaign treasurer shall be to:

(a) Designate a depository bank for all campaign funds;

(b) Keep detailed and exact accounts of contributions in general and by name, address and occupation where the contribution exceeds $100;

(c) Make or authorize all expenditures on behalf of a candidate. Any expenditure in excess of $50 shall disclose the name, address and occupation of every person or firm to whom made, and shall list the date and amount of such expenditure and keep a receipted bill for each;

(d) Maintain all receipted bills and accounts required by this section for a period of four (4) years from the date he files his last report under KRS 121.180(2)(a).

(3) A candidate may remove a campaign treasurer at any time.

(4) In case of the death, resignation or removal of a campaign treasurer the candidate shall within three (3) days after receiving notice thereof by certified or registered mail appoint a successor and shall file his name and address with the registry. The candidate shall be disqualified if he fails to meet this filing requirement.

(5) A person may serve as campaign treasurer for more than one candidate, but all reports must be made separately for each individual candidate.

(6) The candidate may pay a campaign treasurer a salary for his services which shall be considered a campaign expense and must comply with the reporting provisions of KRS 121.015 and 121.100 to 121.200.

KRS 121.220(1) Campaign Depositories.

Each candidate and each committee is required to designate one primary depository and they may also designate secondary depositories.

ROBERT L. SLOSS, Chairman
ADOPTED: November 8, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: November 20, 1974 at 12:45 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Executive Director, Registry of Election Finance, 310 W. Liberty Street, Louisville, Kentucky 40202.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
(803 KAR 1:005)

RELATES TO: KRS 337.275, 337.285
PURSUANT TO: KRS 337.295, 13.082
NECESSITY AND FUNCTION: KRS 337.010(2)(c) defines employe as any person employed by or suffered or permitted to work for an employer. The function of this regulation is to discuss what constitutes an employe-employer relation. This will guide the department in carrying out its responsibilities under the law.

Section 1. The employment relation. (1) In order for the Act to apply there must be an employe-employer relation. This requires an employer and employe and the act or condition of employment.

(2) The courts have made it clear that the employment relation under similar laws, such as the Fair Labor Standards Act, is broader than the traditional common law concept of the master and servant relation. The difference between the employment relation in the Act and the common law employment relation arises from the language that employe includes to suffer or permit to work. The courts have indicated that, while "to permit" requires a more positive action than "to suffer," both terms imply much less positive action than required by the common law. Mere knowledge by an employer of work done for him by another is sufficient to create the employment relation under the Act.

(3) The fact that no compensation is paid and the worker is dependent entirely on tips does not negate his status as an employe, if other indications of employment are present. If the worker is paid, the fact that he is paid by the piece or by the job or on a percentage or commission basis rather than on the basis of work time does not preclude a determination that he is, on the facts, an employe with respect to the work for which such compensation is received.

Section 2. Religious, charitable, and nonprofit organizations, schools, institutions, volunteer workers, members of religious orders. (1) There is no special provision in the Act which precludes an employe-employer relationship between a religious, charitable or nonprofit organization and persons who perform work for such an organization. For example, a church or religious order may operate an establishment to print books, magazines, or other publications and employ a regular staff who do this work as a means of livelihood. In such cases there is an employe-employer relationship for purposes of the Act.

(2) Persons such as nuns, monks, lay brothers, deacons, and other members of religious orders who serve pursuant to their religious obligations in the schools, hospitals, and other institutions operated by their church or religious order shall not be considered to be employes.

(3) In many cases the nature of religious, charitable and similar nonprofit organizations, and schools is such that individuals may volunteer their services in one capacity or another, usually on a part-time basis, not as employes or in contemplation of pay for the services rendered. For example, members of civic organizations may help out in a sheltered workshop; women's organizations may send members or students into hospitals or nursing homes to provide certain personal services for the sick or the elderly; mothers may assist in a school library or cafeteria as a public duty to maintain effective services for their children; or fathers may drive a school bus to carry a football team or band on a trip. Similarly, individuals may volunteer to perform such tasks as driving vehicles or folding bandages for the Red Cross, working with retarded or handicapped children or disadvantaged youth, helping in youth programs as camp counselors, scoutmasters, den mothers, providing child care assistance for needy working mothers, soliciting contributions or participating in benefit programs for such organizations and volunteering other services needed to carry out their charitable, educational, or religious programs. The fact that services are performed under such circumstances is not sufficient to create an employe-employer relationship.

(4) Although the volunteer services (as described in subsection (3) above) are not considered to create an employment relationship, the organizations for which they are performed will generally also have employes performing compensated service whose employment is subject to the standards of the Act. Where such an employment relationship exists, the Act requires payment of not less than the statutory wages for all hours worked in the workweek. However, there are certain circumstances where such an employe may donate services as a volunteer, and the time so spent is not considered to be compensable work. For example, an office employe of a hospital may volunteer to sit with a sick child or elderly person during off-duty hours as an act of charity. The department will not consider that an employe-employer relationship exists with respect to such volunteer time between the establishment and the volunteer or between the volunteer and the person for whose benefit the service is performed. Another example is where an office employe of a church may volunteer to perform non-clerical services in the church preschool during off duty time from his or her office work as an act of charity. Conversely, a preschool employe may volunteer to perform work in some other facets of the church's operations without an employment relationship being formed with respect to such volunteer time. However, this does not mean that a regular office employe of a charitable organization can volunteer services on an uncompensated basis to handle correspondence in connection with a special fund drive or to handle other work arising from exigencies of the operations conducted by the employer.

(5) As part of their overall educational program, public or private schools and institutions of higher learning may permit or require students to engage in activities in connection with dramatics, student publications, glee clubs, bands, choirs, debating teams, radio stations, intramural and interscholastic athletics and other similar endeavors. Activities of students in such programs, conducted primarily for the benefit of the participants as a part of the educational opportunities provided to the students by the school or institution, are not work of the kind contemplated by the Act and do not result in an employe-employer relationship between the student and the school or institution. Also, the fact that a student may receive a minimal payment for participation in such activities would not necessarily create an employment relationship.

(6) The sole fact that a student helps in a school lunchroom or cafeteria for periods of thirty (30) minutes to an hour per day in exchange for his lunch is not considered to be sufficient to make him an employe of the school, regardless of whether he performs such work regularly or only on occasion. Also, the fact that students on occasion do some cleaning up of a classroom, serve the school as junior patrol officers or perform minor clerical work in the school office or library for periods of an hour per day or less without contemplation of compensation or in exchange for a meal or for a cash amount reasonably equivalent to the price of a meal or, when a cash amount is given in addition to a meal, it is only a nominal sum, is not considered sufficient in itself to characterize the students as employes of the school. A similar policy will be followed where the students perform such tasks less frequently but for a full day, with an arrangement to perform their academic work for such days at other times. For example, the students may perform full-day cafeteria service four (4) times per year. In such cases, the time devoted to cafeteria work in the aggregate would be less than if the student worked an hour per day. However, if there are other indicia of employment or the students normally devote more than an hour each day or equivalent to such work, the circumstances of the arrangement will be reviewed carefully.

(7) In the ordinary case, tasks performed as a normal part of a program of treatment, rehabilitation, or vocational training in the following situations will not be considered as work of a kind requiring a hospital patient, school student, or institutional inmate to be considered an employe of the hospital, school, or institution conducting the program, for purposes of the Act:

(a) Tasks performed by patients in tuberculosis, mental, and other hospitals who are required to remain under treatment for extended periods, when performed as a part of a program of activities which have been determined, as a matter of medical judgment, to have therapeutic or rehabilitative value in the treatment of such patients;

(b) Tasks performed by individuals committed to training schools of a correctional nature, which are required as a part of the correctional program of the institution as a part of the institutional discipline and by reason of their value in providing needed therapy, rehabilitation, or training to help prepare the inmate to become self-sustaining in a lawful occupation after release; and

(c) Tasks performed by students in special schools for the mentally handicapped or retarded or for the blind or deaf, as a part of the school program to provide activities of therapeutic value for the handicapped student and to develop such capacities as he may have for doing useful things and, to the extent possible, qualifying for gainful employment.

(8) The department will not assert that patients under treatment in mental hospitals are employes when placed in another establishment, such as a private employer, for the performance of tasks which are a continuation of a program of activities which have been determined, as a matter of medical judgment, to have therapeutic or rehabilitative value in their treatment. A different situation prevails, however, after an employment relationship clearly has developed. This shift may occur shortly after the placement or it may occur later. The department will examine the facts of the relationship to determine if an employe-employer relationship exists.

(9) In a program such as described in subsection (8), it is possible that placements may be made with successive employers for short periods of time. It is not expected in the ordinary course that such successive placements will either be very long with a particular employer or that the total time involved with various employers will last for a long period of time. If situations arise where successive placements as part of therapeutic or rehabilitative treatment continue for more than about six (6) months, all the facts of the situations will be closely examined.

(10) The department will not assert that mentally retarded students' initial participation in a school-work program constitute an employment relationship if certain conditions are met. However, after an employment relationship has developed, the provisions of the Act will be applicable. The conditions under which an employment relationship initially will not be asserted are:

(a) The activities are basically educational, are conducted primarily for the benefit of the participants, and comprise one of the facets of the educational opportunities provided to the students. The student may receive some payment for his work in order to have a more realistic work situation, or as an incentive to the student or to insure that the

employer will treat the student as a worker; and

(b) The time in attendance at the school plus the time in attendance at the experience station (either in the school or with an outside employer) does not substantially exceed the time the student would be required to attend school if following a normal academic schedule. Time in excess of one (1) hour beyond the normal school schedule or attendance at the experience station on days when school is not in session would be considered substantial; and

(c) The student does not displace a regular employe or impair the employment opportunities of others by performing work which would otherwise be performed by regular employes who would be employed by the school or an outside employer.

(11) The shift to an employment relationship may occur shortly after the placement or it may occur later. As a general guide, work for a particular employer, either a private employer or the school, after three (3) months will be assumed by the Department to be part of an employment relationship unless the facts indicate that the training situation has not materially changed.

Section 3. Outside work or homework performed by independent contractor. (1) For investigation purposes, it can be assumed that a homeworker is an employe, even though there may be a buying and selling arrangement between the parties.

(2) If the employer asserts his outside work or homework is performed by independent contractors, the following factors will be considered concerning the employe-employer relationship:

(a) Does the employer have the right to control the manner of the performance of the work or the time in which the work is to be done?

(b) Is the employer paying taxes for social security, unemployment, or workmen's compensation insurance?

(c) Has the homeworker ever collected any benefits, such as unemployment or workmen's compensation, because of employment by the employer?

(d) Does the employer furnish the material, or finance directly or indirectly the purchase of the material which the homeworker uses?

(e) When did the practice of buying and selling between the employer and the homeworker begin, and what are the mechanics of the transaction?

(f) Does the homeworker bill the employer for the work done? Are bills of sale prepared? Are sales taxes paid, or are state or local exemptions obtained because of retail purposes? Are payments made in cash or by check?

(g) How does the homeworker's profit under the buying-selling arrangement compare with his or her wages as a homeworker?

(h) Whom does the homeworker consider to be the employer?

(i) Does the homeworker have a license to do business?

(j) What equipment is used, what is its value, and who furnishes it?

Section 4. Test of the employment relation. (1) The principal test for determining whether an employment relation exists is whether the possible employer controls or has the right to control the work to be done by the possible employe to the extent of prescribing how the work shall be performed. Additional considerations are the method of payment and how free the possible employer is to replace the possible employe with another. A determination of the employer-employe relationship cannot be based on isolated factors or upon a single characteristic, but rather upon the circumstances of the whole activity.

(2) The factors which are considered significant, although no single one is regarded as controlling are:

(a) The extent to which the services in question are an integral part of the employer's business;

(b) The amount of the alleged contractor's investment in facilities and equipment;

(c) The alleged contractor's opportunities for profit and loss; and

(d) The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent enterprise.

(3) Where the facts clearly establish that the possible employe is the subordinate party, the relation is one of employment. To determine the amount of control consider:

(a) Whether there are restrictive provisions in the contract between the possible employer and possible employe which require that the work must be satisfactory to the possible employer and detailing, or giving the possible employes the right to detail how the work is to be performed;

(b) Whether the possible employer has control over the business of the person performing work for him, even though the possible employer does not control the particular circumstances of the work;

(c) Whether the contract is for an indefinite period or for a relatively long period;

(d) Whether the possible employer may discharge employes of the alleged independent contractor;

(e) Whether the possible employer may cancel the contract at his discretion, and on how much notice;

(f) Whether the work done by the alleged independent contractor is the same or similar to that done by admitted employes.

(4) Since the determination of whether an employment relation exists depends upon the circumstances of the whole activity, particular factors to be considered are:

(a) Is the alleged independent contractor listed on the payroll with the appropriate tax deductions, or are the payments to him charged to the labor and salary account or selling expense account instead of to the account to which attorney's fees, auditor's fees, and the like are charged?

(b) Must employes of the alleged independent contractor be approved by the possible employer?

(c) Does the possible employer keep the books and prepare the payroll for the possible employe?

(d) Is the alleged independent contractor assigned to a particular territory without freedom of movement outside thereof?

(e) Does the alleged independent contractor have an independent economic or other interest in his work, other than increasing his own pay?

(f) How do the respective tax returns of the parties list the remuneration paid?

(g) If the possible employer has control over the manner in which the work is to be performed, the absence of any or all of the factors will not indicate an absence of the employe-employer relation. However, where the element of control cannot be firmly established, they will help in determining whether the relation is one of employer and employe or of independent contractor.

(5) The following factors are immaterial to the determination of whether the relation is one of employer-employe or of independent contractors:

(a) The state or local government grants a license to the alleged independent contractor;

(b) The measurement, method, or designation of compensation;

(c) The fact that no compensation is paid and the alleged independent contractor must rely entirely on tips;

(d) The place where the work is performed; and

(e) The absence of a formal employment agreement.

(6) (a) An employment relation may exist between the parties to a transaction which is nominally a sale. Thus, house-to-house canvassers who sell at retail the products of a particular company are employes of the company, although their contracts with the company are in the form of dealer contracts under which the company purports to sell its products to them at fixed wholesale prices and to recommend retail prices at which the products should be sold, where the control exercised by the company over the so-called dealers is not substantially different than that exercised by an employer over his outside salesman.

(b) Likewise, an employe is not converted into an independent contractor by virtue of a fictitious sale of the goods produced by him to an employer, so long as the other indications of the employment relation exist. Homeworkers who sell their products to a manufacturer are his employes where the control exercised by him over the homeworkers through his ability to reject or refuse to buy the product is not essentially different from the control ordinarily exercised by a manufacturer over employes performing work for him at home on a piece rate basis.

(7) The subject matter of the employment relation must be work or its equivalent. The essential elements of work are:

(a) Physical or mental exertion (whether burdensome or not);

(b) Controlled or required by the employer; and

(c) Pursued necessarily and primarily for the benefit of the employer and his business.

(d) Once it is determined that one who is reputedly an independent contractor, lessee, partner, or the like, is in fact an employe, then all the employes of the so-called independent contractor engaged in the work for the principal employer likewise become the employes of the principal employer, who must guarantee compliance with the Act. Thus, the one who is responsible will be charged with seeing to compliance with the Act and must keep the records of the employes.

Section 5. Trainees and student-trainees. (1) The Supreme Court has held that the words "to suffer or permit to work, to define employ, do not make all persons employes who, without any express or implied compensation agreement, may work for their own advantage on the premises of another."

(2) Whether trainees or students are employes of an employer under the Act will depend upon all of the circumstances surrounding their activities on the premises of the employer. If all six (6) of the following criteria apply, the trainees or students are not employes within the meaning of the Act:

(a) The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;

(b) The training is for the benefit of the trainees or students;

(c) The trainees or students do not displace regular employes, but work under their close observation;

(d) The employer that provides the training derives no immediate advantage from the activities of the trainees or students, and on occasion his operations may actually be impeded;

(e) The trainees or students are not necessarily entitled to a job at the conclusion of the training period; and

(f) The employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.

GEORGE R. WAGONER, Deputy Commissioner, for
JAMES R. YOCOM, Commissioner of Labor
ADOPTED: November 13, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: November 20, 1974 at 12:46 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 1:060)

RELATES TO: KRS 337.285
PURSUANT TO: KRS 337.295, 13.082
SUPERSEDES: LAB 7 and LAB 13
NECESSITY AND FUNCTION: This regulation constitutes the official interpretations of the Department of Labor with respect to the meaning and application of the overtime pay requirements contained in KRS 337.285. It is the function of this regulation to make available in one place the interpretations of these provisions which will guide the Department of Labor in the performance of their duties under the law unless and until they are otherwise directed by authoritative decisions of the courts or conclude, upon re-examination of an interpretation, that it is incorrect.

Section 1. Application of overtime provisions generally. Since there is no absolute limitation in KRS 337.285 on the number of hours that an employe may work in any workweek, he may work as many hours a week as he and his employer see fit, so long as the required overtime compensation is paid him for hours worked in excess of forty (40) hours as prescribed in KRS 337.285. This statute does not require, however, that an employe be paid overtime compensation for hours in excess of eight (8) per day, or for work on Saturdays, Sundays, holidays or regular days of rest. If no more than forty (40) hours are actually worked in the workweek, overtime compensation pursuant to KRS 337.285 need not be paid. Nothing in the statute, however, will relieve an employer of any obligation he may have assumed by contract or of any obligation imposed by other state or federal laws to limit overtime hours of work or to pay premium rates for work in excess of a daily standard or for work on Saturdays, Sundays, holidays, or other periods outside of or in excess of the normal or regular workweek or work day.

Section 2. The workweek as the basis for applying KRS 337.285. If in any workweek an employe is covered by KRS 337.285 and is not exempt from its overtime pay requirements, the employer must total all the hours worked by the employe for him in that workweek, and pay overtime compensation for each hour worked in excess of the forty (40) hours.

Section 3. Each workweek stands alone. The statute takes a single workweek as its standard and does not permit averaging of hours over two or more weeks. Thus, if an employe works thirty (30) hours one week and fifty (50) hours the next, he must receive overtime compensation for the overtime hours worked beyond the applicable maximum in the second week, even though the average number of hours worked in the two weeks is forty (40). This is true regardless of whether the employe works on a standard or swing-shift schedule and regardless of whether he is paid on a daily, weekly, biweekly, monthly, or other basis. The rule is also applicable to pieceworkers and employes paid on a commission basis. It is therefore necessary to determine the hours worked and the compensation earned by pieceworkers and commission employes on a weekly basis.

Section 4. Determining the workweek. An employe's workweek is a fixed and regularly recurring period of 168 hours, seven (7) consecutive twenty-four (24) hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of the day. For purposes of computing pay due under this statute, a single workweek may be established for a plant or other establishment as a whole or different workweeks may be established for different employes or groups of employes. Once the beginning time of an employe's workweek is established, it remains fixed regardless of the schedule of hours worked by him. The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade the overtime requirements of the statute. The proper method of computing overtime pay in a period in which a change in the time of commencement of the workweek is made, is explained in Section 12 of this regulation.

Section 5. General standard for overtime pay. The general overtime pay standard in KRS 337.285 requires that overtime must be compensated at a rate not less than one and one-half (1 1/2) times the hourly rate at which the employe is employed. The hourly rate of pay at which the employe is employed may in no event be less than the statutory minimum. If the employe's hourly rate of pay is higher than the statutory minimum, his overtime compensation must be computed at a rate not less than one and one-half (1 1/2) times such higher rate.

Section 6. The overtime compensation is an hourly rate. The overtime compensation under KRS 337.285 is based on the rate per hour. The statute does not require employers to compensate employes on an hourly rate basis; their earnings may be determined on a piece-rate, salary, commission, or other basis, but in such case the overtime compensation due to employes must be computed on the basis of the hourly rate derived therefrom and, therefore, it is necessary to compute the hourly rate of such employes during each workweek. The hourly rate of pay of an employe 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. The following section gives some examples of the proper method of determining the regular hourly rate of pay in particular instances.

Section 7. (1) Hourly rate employe. If the employe is employed solely on the basis of a single hourly rate the overtime work he must be paid, in addition to his straight-time hourly earnings, a sum determined by multiplying one-half (1/2) the hourly rate by the number of hours worked in excess of forty (40) in the workweek. If the employe receives, in addition to his earnings at the hourly rate, an additional production bonus, the overtime must be paid on the total hourly rate received by the employe. This would be computed by adding the additional pay to the regular hourly rate and dividing by the total number of hours worked.

(2) Pieceworker. When an employe is employed on a piece-rate basis, his hourly rate of pay is computed by adding together his total earnings for the workweek from piece rates and all other sources. This sum is then divided by the number of hours worked in the week for which compensation was paid, to yield the pieceworker's hourly rate for that week. For his overtime work the pieceworker is entitled to be paid, in addition to his total weekly earnings at this hourly rate for all hours worked, a sum equivalent to one-half (1/2) this rate of pay multiplied by the number of hours worked in excess of forty (40) in the week.

(3) Day rates and job rates. If the employe is paid a flat sum for a day's work or for doing a particular job, without regard to the number of hours worked in the day or at the job, and if he receives no other form of compensation for services, his hourly rate is determined by totaling all the sums received at such day rates or job rates in the workweek and dividing by the total hours actually worked. He is then entitled to extra half-time pay at this rate for all hours worked in excess of forty (40) in the workweek.

(4) Salaried Employe:

(a) If the employe is employed solely on a weekly salary basis, his hourly rate of pay, on which time and a half must be paid, is computed by dividing the salary by the number of hours which the salary is intended to compensate.

(b) Where the salary covers a period longer than a workweek, such as a month, it must be reduced to its workweek equivalent. A monthly salary is subject to translation to its equivalent weekly wage by multiplying by twelve (12) (the number of months) and dividing by fifty-two (52) (the number of weeks). A semi-monthly salary is translated into its equivalent weekly wage by multiplying by twenty-four (24) and dividing by fifty-two (52). Once the weekly wage is arrived at, the hourly rate of pay will be calculated as indicated in the previous paragraph.

(5) Employes working at two (2) or more rates. Where an employe in a single workweek works at two (2) or more different types of work for which different non-overtime rates of pay have been established, his hourly rate for that week is the weighted average of such rates. That is, his total earnings are computed to include his compensation during the workweek from all such rates, and are then divided by the total number of hours worked at all jobs.

(6) Payments other than cash. Where payments are made to employes in the form of goods or facilities which are regarded as part of wages, the reasonable cost to the employer or the fair value of such goods or of furnishing such facilities must be included in the hourly rate. Where, for example, an employer furnishes lodging to his employes in addition to cash wages, the reasonable cost or the fair value of the lodging must be added to the cash wages before the hourly rate is determined.

(7) Commission payments:

(a) Commissions (whether based on a percentage of total sales or of sales in excess of a specified amount, or on some other formula) are payments for hours worked and must be included in the hourly rate. This is true regardless of whether the commission is the sole source of the employe's compensation or is paid in addition to a guaranteed salary or hourly rate, or on some other basis, and regardless of the method, frequency, or regularity of computing, allocating and paying the commission. It does not matter whether the commission earnings are computed daily, weekly, biweekly, semi-monthly, monthly, or at some other interval. The fact that the commission is paid on a basis other than weekly, and that payment is delayed for a time past the employe's normal payday or pay period, does not excuse the employer from including this payment in the employe's hourly rate.

(b) When the commission is paid on a weekly basis, it is added to the employe's other earnings for that workweek, and the total is divided by the total number of hours worked in the workweek to obtain the

employe's hourly rate for the particular workweek. The employe must then be paid extra compensation at one-half (1/2) of that rate for each hour worked in excess of forty (40) hours in the workweek.

(c) If the calculation and payment of the commission cannot be completed until sometime after the regular payday for the workweek, the employer may disregard the commission in computing the hourly rate until the amount of commission can be ascertained. Until that is done he may pay compensation for overtime at a rate of not less than one and one-half (1 1/2) the hourly rate paid the employe, exclusive of the commission. When the commission can be computed and paid, additional overtime compensation due by reason of the inclusion of the commission in the employe's regular hourly rate must also be paid. To compute this additional overtime compensation, it is necessary, as a general rule, that the commission be apportioned back over the workweeks of the period during which it was earned. The employe must then receive additional overtime compensation for each week during the period in which he worked in excess of the forty (40) hours. The additional compensation for that workweek must be not less than one-half (1/2) of the increase in the hourly rate of pay attributable to the commission for that week multiplied by the number of hours worked in excess of the forty (40) hours in that workweek.

(8) Other methods of determining the regular hourly rate are permitted as long as they provide for each employe employed by an employer to be paid a rate of not less than one and one-half (1 1/2) times the hourly rate at which the employe is employed and does not attempt to evade the provisions of KRS 337.285.

Section 8. Payments excluded from computing hourly rate. As used in KRS 337.285 the "hourly rate at which he is employed" shall be deemed to include all remuneration for employment paid to, or on behalf of, the employe, but shall not be deemed to include: (1) Sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency. Such sums may not, however, be credited toward overtime compensation due under the statute. To qualify for this exclusion the bonus must be actually a gift or in the nature of a gift. If it is measured by hours worked, production, or efficiency, the payment is geared to wages and hours during the bonus period and is no longer to be considered as in the nature of a gift. If the payment is so substantial that it can be assumed that employes consider it a part of the wages for which they work, the bonus cannot be considered to be in the nature of a gift. Obviously, if the bonus is paid pursuant to contract, it is not in the nature of a gift.

(2) Payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employe in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employe which are not made as compensation for his hours of employment. However, since such payments are not made as compensation for the employe's hours worked in any workweek, no part of such payments can be credited toward overtime compensation due under the statute.

(3) Sums paid in recognition of services performed during a given period if either, (i) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employe to expect such payments regularly; or (ii) the payments are made pursuant to a bona fide profit-sharing plan or trust of bona fide thrift or savings plan. Such sums may not, however, be credited toward overtime compensation due under the statute. In order for a bonus to qualify for exclusion as a discretionary bonus the employer must retain discretion both as to the fact of payment and as to the amount until a time quite close to the end of the period for which the bonus is paid. The sum to be paid as a bonus is determined by the employer without prior promise or agreement. The employe has no contract right, express or implied, to any amount. If the employer promises in advance to pay a bonus, he has abandoned his discretion with regard to it.

(4) Contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employes. Such sums may not, however, be credited toward overtime compensation under the statute.

(5) Extra compensation provided by a premium rate paid for certain hours worked by the employe in any day or workweek because such hours are hours worked in excess of eight (8) in a day or in excess of the maximum workweek applicable to such employe's normal working hours. Extra compensation paid for these hours shall be creditable toward overtime compensation under the statute.

(6) Extra compensation provided by a premium rate paid for work by the employe on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than one and one-half (1 1/2) times the rate established in good faith for like work performed in nonovertime hours on other days. Extra compensation paid for these hours shall be creditable toward overtime compensation under the statute.

(7) Extra compensation provided by a premium rate paid to the employe, in pursuance of an applicable employment contract or collective bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday, where such premium rate is not less than one and one-half (1 1/2) times the rate established in good faith by the contract or agreement for like work performed during such workday or workweek. Extra compensation paid for these hours shall be creditable toward overtime compensation under the statute.

Section 9. Requirements of a "Bona Fide Profit-Sharing Plan of Trust." (1) A bona-fide profit-sharing plan or trust is required to meet all of the standards set forth in the following paragraphs:

(a) The profit-sharing plan or trust constitutes a definite program or arrangement in writing, communicated or made available to the employes, which is established and maintained in good faith for the purpose of distributing to the employes a share of profits as additional remuneration over and above the wages or salaries paid to employes which wages or salaries are not dependent upon or influenced by the existence of such profit-sharing plan or trust or the amount of the payments made pursuant thereto.

(b) All contributions or allocations by the employer to the fund or trust to be distributed to the employes are: (i) derived solely from profits of the employer's business as a whole, or an established branch or division of the business which is recognized as such for general business purposes and for which profits are separately and regularly calculated in accordance with accepted accounting practice; and (ii) made periodically, but not more frequently than is customary or consonant with accepted accounting practice to make periodic determinations of profit.

(c) Eligibility to share in profits extends: (i) at least to all employes who are subject to the minimum wage and overtime provisions of the act, or to all such employes in an established part of the employer's business as described in paragraph (b) of this subsection: provided, however, that such eligibility may be determined by factors such as length of service or minimum schedule of hours or days of work which are specified in the plan or trust, and further, that eligibility need not extend to officers of the employer; or (ii) to such classifications of employes as the employer may designate with the approval of the commissioner upon a finding, after notice to interested persons, including employe representatives, and an opportunity to present their views either orally or in writing.

(d) The amounts paid to individual employes are determined in accordance with a definite formula or method of calculation specified in the plan or trust. The formula or method of calculation may be based on any one or more of such factors as straight-time earnings, total earnings, base rate of pay of the employe, straight-time hours or total hours worked by employes, or length of service, or distribution may be made on a per capita basis.

(e) An employe's total share determined in accordance with paragraph (d) of this subsection may not be diminished because of any other remuneration received by him.

(f) Provision is made either for payment to the individual employes of their respective shares of profits within a reasonable period after the determination of the amount of profits to be distributed, or for the irrevocable deposit by the employer of his employe's distributive shares of profits with a trustee for deferred distribution to such employes of their respective shares after a stated period of time or upon the occurrence of appropriate contingencies specified in the plan or trust; provided, however, that the right of an employe to receive his share is not made dependent upon his continuing in the employ of the employer after the period for which the determination of profits has been made.

(2) No plan or trust which contains any one of the following provisions shall be deemed to meet the requirements of a bona fide profit-sharing plan or trust:

(a) if the share of any individual employe is determined in substance on the basis of attendance, quality or quantity of work, rate of production, or efficiency;

(b) if the amount to be paid periodically by the employer into the fund or trust to be distributed to the employes is a fixed sum;

(c) if periodic payments of minimum amounts to the employes are guaranteed by the employer;

(d) if any individual employe's share, by the terms of the plan or trust, is set at a predetermined fixed sum or is so limited as to provide in effect for the payment of a fixed sum, or is limited to or set at a predetermined specified rate per hour or other unit of work or worktime;

(e) if the employer's contributions or allocations to the fund or trust to be distributed to the employes are based on factors other than profits such as hours of work, production, efficiency, sales or savings in cost.

(3) As used in this section a "profit-sharing plan" means any such program or arrangement as qualifies hereunder which provides for the distribution by the employer to his employes of their respective shares of profits; and "profit-sharing trust" means any such program or arrangement as qualifies under this part which provides for the irrevocable deposit by the employer of his employes' distributive shares of profits with a trustee for deferred distribution to such employes of their respective shares.

Section 10. Requirements of a "Bona-Fide Thrift or Savings Plan." (1) A bona-fide thrift or savings plan is required to meet all of the standards set forth in the following paragraphs:

(a) The thrift or savings plan constitutes a definite program or arrangement in writing, adopted by the employer or by contract as a result of collective bargaining and communicated or made available to the employes, which is established and maintained, in good faith, for the purpose of encouraging voluntary thrift or savings by employes by providing an incentive to employes to accumulate regularly and retain cash savings for a reasonable period of time or to save through the regular purchase of public or private securities.

(b) The plan specifically shall set forth the category or categories of employes participating and the basis of their eligibility. Eligibility may not be based on such factors as hours of work, production, or efficiency of the employes; provided, however, that hours of work may be used to determine eligibility of part-time or casual employes.

(c) The amount any employe may save under the plan shall be specified in the plan or determined in accordance with a definite formula specified in the plan, which formula may be based on one or more factors such as the straight-time earnings or total earnings, base rate of pay, or length of service of the employe.

(d) The employer's total contribution in any year may not exceed fifteen percent (15%) of the participating employes' total earnings during that year. In addition, the employer's total contribution in any year may not exceed the total amount saved or invested by the participating employes during that year; provided, however, that a plan permitting a greater contribution may be submitted to the commissioner and approved by him as a bona fide thrift or savings plan.

(e) The employer's contributions shall be apportioned among the individual employes in accordance with a definite formula or method of calculation specified in the plan, which formula or method of calculation is based on the amount saved or the length of time the individual employe retains his savings or investment in the plan; provided, that no employe's share determined in accordance with the plan may be diminished because of any other remuneration received by him.

(2) (a) No employe's participation in the plan shall be on other than a voluntary basis.

(b) No employe's wages or salary shall be dependent upon or influenced by the existence of such thrift or savings plan or the employer's contributions thereto.

(c) The amounts any employe may save under the plan, or the amounts paid by the employer under the plan may not be based upon the employe's hours of work, production or efficiency.

Section 11. Conditions for exclusion of benefit-plan contributions under Section 8(1) of this regulation. (1) In order for an employer's contribution to qualify for exclusion from the regular hourly rate the following conditions must be met:

(a) The contributions must be made pursuant to a specific plan or program adopted by the employer, or by contract as a result of collective bargaining, and communicated to the employes. This may be either a company-financed plan or an employer-employe contributory plan.

(b) The primary purpose of the plan must be to provide systematically for the payment of benefits to employes on account of death, disability, advanced age, retirement, illness, medical expenses, hospitalization, and the like.

(c) In the plan or trust, either: (i) The benefits must be specified or definitely determinable on an actuarial basis; or (ii) There must be both a definite formula for determining the amount to be contributed by the employer and a definite formula for determining the benefits for each of the employes participating in the plan; or (iii) There must be both a formula for determining the amount to be contributed by the employer and a provision for determining the individual benefits by a method which is consistent with the purposes of the plan or trust.

(d) The employer's contributions must be paid irrevocably to a trustee or third person pursuant to an insurance agreement, trust or other funded arrangement. 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 nor in any way divert the funds to his own use or benefit. (It should also be noted that in the case of joint employer-employe contributory plans, where the employe contributions are not paid over to a third person or to a trustee unaffiliated with the employer, violations of the statute may result if the employe contributions cut into the required minimum or overtime wages.) Although an employer's 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 of 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.

(e) The plan must not give an employe the right to assign his benefits under the plan nor the option to receive any part of the employer's contributions in cash instead of the benefits under the plan; provided, however, that if a plan otherwise qualifies as a bona fide benefit plan, it will still be regarded as a bona fide plan even though it provides, as an incidental part thereof, for the payment to an employe in cash of all or a part of the amount standing to his credit: (i) at the time of the severance of the employment relation due to causes other than retirement, disability, or death, or (ii) upon proper termination of the plan, or (iii) during the course of his employment under circumstances specified in the plan and not inconsistent with the general purposes of the plan to provide the benefits.

(2) Where the benefit plan or trust has been approved by the Bureau of Internal Revenue as satisfying the requirements of section 401(a) of the Internal Revenue Code in the absence of evidence to the contrary, the plan or trust will be considered to meet the conditions specified in paragraphs (a), (d), and (e) of subsection (1) of this section.

Section 12. Overlapping when change of workweek is made. (1) As stated in Section 4 of this regulation, the beginning of the workweek may be changed for an employe or for a group of employes if the change is intended to be permanent and is not designed to evade the overtime requirements of the statute. A change in the workweek necessarily results in a situation in which one or more hours or days fall in both the old workweek as previously constituted and the new workweek. Thus, if the workweek in a plant commenced at 7 a.m. on Monday and it is now proposed to begin the workweek at 7 a.m. on Sunday, the hours worked from 7 a.m. Sunday to 7 a.m. Monday will constitute both the last hours of the old workweek and the first hours of the newly established workweek.

(2) When the beginning of the workweek is changed, if the hours which fall within both old and new workweeks as explained in the above subsection are hours in which the employe does no work, his overtime compensation for each workweek is, of course, determinable in precisely the same manner as it would be if no overlap existed. If, on the other hand, some of the employe's working time falls within hours which are included in both workweeks, the Department of Labor, as an enforcement policy, will assume that the overtime requirements of the statute have been satisfied if computation is made as follows:

(a) Assume first that the overlapping hours are to be counted as hours worked only in the old workweek and not in the new; compute straight-time and overtime compensation due for each of the two (2) workweeks on this basis and total their sums.

(b) Assume now that the overlapping hours are to be counted as hours worked only in the new workweek and not in the old, and complete the total computation accordingly.

(c) Pay the employe an amount not less than the greater of the amounts computed by methods in paragraphs (a) and (b).

JAMES R. YOCOM, Commissioner

ADOPTED: November 6, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: November 20, 1974 at 8:44 a.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 1:065)

RELATES TO: KRS 337.275, 337.285
PURSUANT TO: KRS 337.295, 13.082
SUPERSEDES: LAB 12

NECESSITY AND FUNCTION: KRS 337.275 requires that each employe, not specifically exempted, to receive a specified minimum wage. KRS 337.285 provides that employes may not be employed for more than a stated number of hours a week without receiving at least one and one-half (1 and 1/2) times their rate of pay for the overtime hours. The amount of money an employe should receive cannot be determined without

knowing the number of hours worked. The function of this regulation is to discuss the principles involved in determining what constitutes working time for the purpose of applying this to KRS 337.275 and 337.285. By providing these interpretations, it will guide the department in the performance of their duties under the law, unless and until they are otherwise directed by decisions of the courts, or conclude, upon re-examination of an interpretation, that it is incorrect.

Section 1. Definition of employe. By statutory definition the term "employe" is any person employed by or suffered or permitted to work for an employer. The statute, however, contains no definition of work. The following sections are intended to give interpretations as to the meaning of "suffered or permitted to work."

Section 2. Suffered or permitted to work. (1) General. Work not requested but suffered or permitted is work time. For example, an employe may voluntarily continue to work at the end of the shift. He may be a pieceworker, he may desire to finish an assigned task or he may wish to correct errors, paste work tickets, prepare time reports or other records. The reason is immaterial. The employer knows or has reason to believe that he is continuing to work and the time is working time.

(2) Work performed away from premises. The rule is also applicable to work performed away from the premises or the job site, or even at home. If the employer knows or has reason to believe that the work is being performed, he must count the time as hours worked.

(3) Duty of management. In all such cases it is the duty of the management to exercise its control and see that the work is not performed if it does not want it to be performed. It cannot sit back and accept the benefits without compensating for them. The mere promulgation of a rule against such work is not enough. Management has the power to enforce the rule and must make every effort to do so.

Section 3. Waiting time. (1) General. Whether waiting time is time worked under the act depends upon particular circumstances. The determination involves scrutiny and construction of the agreements between particular parties, appraisal of their practical construction of the working agreement by conduct, consideration of the nature of the service, and its relation to the waiting time, and all of the circumstances. Facts may show that the employe was engaged to wait, or they may show that he waited to be engaged. Such questions must be determined in accordance with common sense and the general concept of work or employment.

(2) On duty. A stenographer who reads a book while waiting for dictation, a messenger who works a crossword puzzle while awaiting assignments, fireman who plays checkers while waiting for alarms and a factory worker who talks to his fellow employes while waiting for machinery to be repaired are all working during their periods of inactivity. The rule also applies to employes who work away from the plant. For example, a repair man is working while he waits for his employer's customer to get the premises in readiness. The time is worktime even though the employe is allowed to leave the premises or the job site during such periods of inactivity. The periods during which these occur are unpredictable. They are usually of short duration. In either event the employe is unable to use the time effectively for his own purpose. It belongs to and is controlled by the employer. In all of these cases waiting is an integral part of the job. The employe is engaged to wait.

(3) Off duty. (a) Periods during which an employe is completely relieved from duty and which are long enough to enable him to use the time effectively for his own purposes are not hours worked. He is not completely relieved from duty and cannot use the time effectively for his own purposes unless he is definitely told in advance that he may leave the job and that he will not have to commence work until a definitely specified hour has arrived. Whether the time is long enough to enable him to use the time effectively for his own purposes depends upon all of the facts and circumstances of the case.

(b) A truck driver who has to wait at or near the job site for goods to be leaded is working during the loading period. If the driver reaches his destination and while awaiting the return trip is required to take care of his employer's property, he is also working while waiting. In both cases the employe is engaged to wait. Waiting is an integral part of the job. On the other hand, for example, if the truck driver is sent from Louisville to Paducah, leaving at 9 a.m. and arriving at 2 p.m., and is completely and specifically relieved from all duty until 8 p.m. when he again goes on duty for the return trip, the idle time is not working time. He is waiting to be engaged.

(4) On-call time. An employe who is required to remain on call on the employer's premises or so close thereto that he cannot use the time effectively for his own purposes is working while on call. An employe who is not required to remain on the employer's premises but is merely required to leave word at his home or with company officials where he may be reached is not working while on call.

Section 4. Rest and meal periods. (1) Rest. Rest periods of short duration, running from five (5) minutes to about twenty (20) minutes, are common in industry. They promote the efficiency of the employe and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time.

(2) Meals. Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employe must be completely relieved from duty for the purpose of eating regular meals. Ordinarily, thirty (30) minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employe is not relieved if he is required to perform any duties, whether active or inactive, while eating. It is not necessary that an employe be permitted to leave the premises if he is otherwise completely freed from duties during the meal period.

Section 5. Sleeping time and certain other activities. (1) Under certain conditions an employe is considered to be working even though some of his time is spent is sleeping or in certain other activities.

(2) An employe who is required to be on duty is working even though he is permitted to sleep or engage in other personal activities when not busy. A telephone operator, for emample, who is required to be on duty for specified hours is working even though she is permitted to sleep when not busy answering calls. It makes no difference that she is furnished facilities for sleeping. Her time is given to her employer. She is required to be on duty and the time is worktime.

(3) Residing on employer's premises or working at home. An employe who resides on his employer's premises on a permanent basis or for extended periods of time is not considered as working all the time he is on the premises. Ordinarily, he may engage in normal private pursuits and thus have enough time for eating, sleeping, entertaining, and other periods of complete freedom from all duties when he may leave the premises for purposes of his own. It is, of course, difficult to determine the exact hours worked under these circumstances and any reasonable agreement of the parties which takes into consideration all of the pertinent facts will be accepted. This rule would apply, for example, to the pumper of a stripper well who resides on the premises of his employer and also to a telephone operator who has the switchboard in her own home.

Section 6. Lectures, meetings and training programs. (1) General. Attendance at lectures, meetings, training programs and similar activities need not be counted as working time if the following criteria are met:

(a) Attendance is outside of the employe's regular working hours;
(b) Attendance is in fact voluntary;
(c) The course, lecture, or meeting is not directly related to the employe's job; and
(d) The employe does not perform any productive work during such attendance.

(2) Involuntary attendance. Attendance is not voluntary if it is required by the employer. It is not voluntary if the employe is given to understand or led to believe that his present working conditions or the continuance of his employment would be adversely affected by nonattendance.

(3) Training directly related to employe's job. The training is directly related to the employe's job if it is designed to make the employe handle his job more effectively as distinguished from training him for another job, or to a new or additional skill. Where a training course is instituted for the bona fide purpose of preparing for advancement through upgrading the employe to a higher skill, and is not intended to make the employe more efficient in his present job, the training is not considered directly related to the employe's job even though the course incidentally improves his skill in doing his regular work. If an employe on his own initiative attends an independent school, college or independent trade school after hours, the time is not hours worked for his employer even if the courses are related to his job.

(4) Special situations. There are some special situations where the time spent in attending lectures, training sessions and courses of instruction is not regarded as hours worked. For example, an employer may establish for the benefit of his employes a program of instruction which corresponds to courses offered by independent bona fide institutions of learning. Voluntary attendance by an employe at such courses outside of working hours would not be hours worked even if they are directly related to his job, or paid for by the employer.

(5) Apprenticeship training. Time spent is an organized program of related, supplemental instruction by employes working under bona fide apprenticeship programs may be excluded from working time if the following criteria are met:

(a) The apprentice is employed under a written apprenticeship agreement or program which has been approved by the Supervisor of Apprenticeship and Training, Kentucky Department of Labor; and
(b) Such time does not involve productive work or performance of the apprentice's regular duties. If the above criteria are met, the time spent in such related supplemental training shall not be counted as hours worked unless the written agreement specifically provides that it is hours worked. The mere payment or agreement to pay for time spent in related instruction does not constitute an agreement that such time is hours worked.

Section 7. Travel time. (1) General. The principles which apply in determining whether or not time spent in travel is working time depend upon the kind of travel involved.

(2) Home to work. An employe who travels from home before

his regular workday and returns to his home at the end of the workday is engaged in ordinary home to work travel which is a normal incident of employment. This is true whether he works at a fixed location or at different job sites. Normal travel from home to work is not worktime.

(3) Travel that is worktime. Time spent by an employe in travel as part of his principal activity, such as travel from job site to job site during the workday, must be counted as hours worked. Where an employe is required to report at a meeting place to receive instructions or to perform other work there, the travel from the designated place to the work place is part of the day's work, and must be counted as hours worked.

(4) Travel away from home. Travel that keeps an employe away from home overnight is travel away from home. Travel away from home is worktime when it cuts across the employe's workday. The employe is simply substituting travel for other duties.

Section 8. Recording working time. The law does not require any special method of keeping a record of time worked by employes. In cases where time clocks are used or other methods whereby the employe records the starting and ending time, employes who voluntarily come in before their regular starting time or remain after their closing time, do not have to be paid for such periods provided, of course, that they do not engage in any work. Their early or late recording of their time may be disregarded. Minor differences between the time clock or sign-in record and actual hours worked cannot ordinarily be avoided, but major discrepancies should be discouraged since they raise a doubt as to the accuracy of the records of the hours actually worked.

Section 9. The principles discussed in this regulation are intended to guide the department in the enforcement of the statutes and to assist employes, employers, and other persons who may be concerned with the provisions of the law. Special situations not discussed in this regulation may arise in determining hours worked by employes. In making a determination of these situations, the department will make the determination in accordance with common sense and the general concept of work or employment.

JAMES R. YOCOM, Commissioner
ADOPTED: November 6, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: November 20, 1974 at 8:45 a.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 1:070)

RELATES TO: KRS 337.275, 337.285
PURSUANT TO: KRS 337.295, 13.082
SUPERSEDES: LAB 6
NECESSITY AND FUNCTION: KRS 337.010(2)(c)(ii) exempts any individual employed in a bona fide executive, administrative, supervisory, or professional capacity, or in the capacity of outside salesman, or as an outside collector as such terms are defined by administrative regulations of the commissioner from both the minimum wage and overtime requirements set forth in KRS 337.275 and 337.285. The function of this regulation is to define what constitutes an individual employed in a bona fide executive, administrative, supervisory or professional capacity, or in the capacity of an outside salesman and outside collector.

Section 1. The term "individual employed in a bona fide executive capacity" shall mean any employe:

(1) whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof;

(2) who customarily and regularly directs the work of two (2) or more other employes therein;

(3) who has the authority to hire or fire other employes or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employes will be given particular weight;

(4) who customarily and regularly exercises discretionary powers;

(5) who does not devote more than twenty percent (20%), or, in the case of an employe of a retail or service establishment who does not devote as much as forty percent (40%), of his hours of work in the workweek to activities which are not directly and closely related to the performance of the work described in subsections (1) through (4) of this section; provided, that this subsection shall not apply in the case of an employe who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a twenty percent (20%) interest in the enterprise in which he is employed; and

(6) who is compensated for his services on a salary basis at a rate of not less than $160 per week, exclusive of board, lodging, or other facilities; provided, that an employe who is compensated on a salary basis at a rate of not less than $300 per week, exclusive of board, lodging, or other facilities, and whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two (2) or more other employes therein, shall be deemed to meet all of the requirements of this section.

Section 2. The term "individual employed in a bona fide administrative capacity" shall mean any employe:

(1) whose primary duty consists of either: (i) the performance of office or non-manual work directly related to management policies or general business operations of his employer or his employer's customers; or (ii) the performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein;

(2) who customarily and regularly exercises discretion and independent judgment;

(3) (a) who regularly and directly assists a proprietor, or an employe employed in a bona fide executive or administrative capacity, or

(b) who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge, or

(c) who executes under only general supervision special assignments and tasks; and

(4) who does not devote more than twenty percent (20%), or, in the case of an employe of a retail or service establishment who does not devote as much as forty percent (40%), of his hours worked in the workweek to activities which are not directly and closely related to the performance of the work described in subsections (1) through (2) of this section;

(5) (a) who is compensated for his services on a salary or fee basis at a rate of not less than $160 per week, exclusive of board, lodging, or other facilities, or

(b) who, in the case of academic administrative personnel, is compensated for his services as required by subsection (5)(a) of this section, or on a salary basis which is at least equal to the entrance salary for teachers in the school system, educational establishment, or institution by which he is employed; provided, that an employe who is compensated on a salary or fee basis at a rate of not less than $300 per week, exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance of work described in subsection (1) of this section, which includes work requiring the exercise of discretion and independent judgment, shall be deemed to meet all of the requirements of this section.

Section 3. The term "individual employed in a bona fide professional capacity" shall mean any employe:

(1) whose primary duty consists of the performance of:

(a) work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or

(b) work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employe, or

(c) teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher certified or recognized as such in the school system or educational establishment or institution by which he is employed;

(2) whose work requires the consistent exercise of discretion and judgment in its performance;

(3) whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;

(4) who does not devote more than twenty percent (20%) of his hours worked in the workweek to activities which are not an essential part of and necessarily incident to the work described in subsections (1) through (3) of this section; and

(5) who is compensated for his services on a salary or fee basis at a rate of not less than $185 per week, exclusive of board, lodging, or other facilities; provided, that this subsection shall not apply in the case of an employe who is engaged in the practice of a physician or a lawyer who is the holder of a valid license permitting such practice, nor in the case of an employe who is the holder of the requisite academic degree to practice as a physician and is engaged in an internship or resident program pursuant to the practice, nor in the case of an employe employed and engaged as a teacher as provided in subsection (1)(c) of this section; and provided further, that an employe who is compensated on a salary or fee basis at a rate of not less than $300 per week, exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance either of work described in subsection (1)(a) or (c) of this section, which includes work requiring the consistent exercise of discretion and judgment, or of work requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet

all of the requirements of this section.

Section 4. The term "individual employed in a bona fide supervisory capacity" shall mean any employe:
(1) who customarily and regularly directs the work of two (2) or more other employes where he is employed;
(2) who does not devote more than twenty percent (20%), or, in the case of an employe of a retail or service establishment who does not devote as much as forty percent (40%), of his hours of work in the workweek to activities of the same nature as the employes under his supervision; and
(3) who is compensated for his services on a salary basis at a rate of not less than $160 per week, exclusive of board, lodging, or other facilities; provided, that an employe who is compensated on a salary basis at a rate of not less than $300 per week, exclusive of board, lodging, or other facilities, and whose primary duty consists of customarily and regularly directing the work of two (2) or more other employes, shall be deemed to meet all of the requirements of this section.

Section 5. The term "individual employed in the capacity of outside salesman" shall mean any employe:
(1) who is employed for the purpose of and who is customarily and regularly engaged away from his employer's place or places of business in:
(a) making sales, which shall mean the transfer of title to both tangible and intangible property, or
(b) obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer;
(2) whose hours of work of a nature other than those described in subsection (1) of this section do not exceed twenty percent (20%) of the hours worked in the workweek by nonexempt employes of the employer; provided, that work performed incidental to and in conjunction with the employe's own outside sales or solicitations, including incidental deliveries and collections, shall not be regarded as nonexempt work.

Section 6. The term "individual employed as an outside collector" shall mean any employe:
(1) who is employed for the purpose of and who is customarily and regularly engaged away from his employer's place or places of business in:
(a) collecting money for goods or services previously or presently furnished by his employer, or
(b) collecting money for an account placed in the hands of his employer for collection; and
(2) whose hours of work of a nature other than those described in subsection (1) of this section do not exceed twenty percent (20%) of the hours worked in the workweek by nonexempt employes of the employers; provided, that work performed incidental to and in conjunction with the employe's own outside collections, shall not be regarded as nonexempt work.

Section 7. Salary basis. (1) An employe will be considered to be paid "on a salary basis" within the meaning of this regulation if under his employment agreement he regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of his compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. Subject to the exceptions provided below, the employe must receive his full salary for any week in which he performs any work without regard to the number of days or hours worked. This policy is also subject to the general rule that an employe need not be paid for any workweek in which he performs no work.
(a) An employe will not be considered to be "on a salary basis" if deductions from his predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the business. Accordingly, if the employe is ready, willing and able to work, deductions may not be made for time when work is not available.
(b) Deductions may be made, however, when the employe absents himself from work for a day or more for personal reasons, other than sickness or accident. Thus, if an employe is absent for a day or longer to handle personal affairs, his salaried status will not be affected if deductions are made from his salary for such absences.
(c) Deductins may also be made for absences of a day or more occasioned by sickness or disability, if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by both sickness and disability. Thus, if the employer's particular plan, policy or practice provides compensation for such absences, deductions for absences of a day or longer because of sickness or disability may be made before an employe has qualified under such plan, policy, or practice, and after he has exhausted his leave allowance thereunder. It is not required that the employe be paid any portion of his salary for such day or days for which he receives compensation for leave under such plan, policy or practice. Similarly, if the employer operates under a state sickness and disability insurance law, or a private sickness and disability insurance plan, deductions may be made for absences of a working day or longer if benefits are provided in accordance with the particular law or plan. In the case of an industrial accident, the "salary basis" requirement will be met if the employe is compensated for loss of salary in accordance with the applicable compensation law or the plan adopted by the employer, provided the employer also has some plan, policy or practice of providing compensation for sickness and disability other than that relating to industrial accidents.
(d) Deductions may not be made for absences of an employe caused by jury duty, attendance as a witness, or temporary military leave. The employer may, however, offset any amounts received by an employe as jury or witness fees or military pay for a particular week against the salary due for that particular week without loss of the exemption.
(e) The effect of making a deduction which is not permitted under these interpretations will depend upon the facts in the particular case. Where deductions are generally made when there is no work available, it indicates that there was no intention to pay the employe on a salary basis. In such a case the exemption would not be applicable to him during the entire period when such deductions were being made. On the other hand, where a deduction not permitted by these interpretations is inadvertant, or is made for reasons other than lack of work, the exemption will not be considered to have been lost if the employer reimburses the employe for such deductions and promises to comply in the future.
(2) It should be noted that the salary may consist of a predetermined amount constituting all or part of the employe's compensation. In other words, additional compensation besides the salary is not inconsistent with the salary basis of payment.
(3) Failure to pay the full salary in the initial or terminal week of employment is not considered inconsistent with the salary basis of payment. In such weeks the payment of a proportionate part of the employe's salary for the time actually worked will meet the requirement. However, this should not be construed to mean that an employe is on a salary basis within the meaning of the regulation if he is employed occasionally for a few days and is paid a proportionate part of the weekly salary when so employed.

Section 8. Fee basis. (1) The requirements for exemption as a professional or administrative employe may be met by an employe who is compensated on a fee basis as well as by one who is paid on a salary basis.
(2) Little or no difficulty arises in determining whether a particular employment arrangement involves payment on a fee basis. Such arrangements are characterized by the payment of an agreed sum for a single job regardless of the time required for its completion. These payments in a sense resemble piecework payments with the important distinction that generally speaking a fee payment is made for the kind of job which is unique rather than for a series of jobs which are repeated an indefinite number of times and for which payment on an identical basis is made over and over again. Payments based on the number of hours or days worked and not on the accomplishment of a given single task are not considered payments on a fee basis.
(3) The adequacy of a fee payment, whether it amounts to payment at a rate of not less than $185 per week to a professional employe or at a rate of not less than $160 per week to an administrative employe, can ordinarily be determined only after the time worked on the job has been determined. In determining whether payment is at the rate required in this regulation, the amount paid to the employe will be tested by reference to a standard workweek of forty (40) hours. Thus compliance will be tested in each case of a fee payment by determining whether the payment is at a rate which would amount to at least $185 per week to a professional employe or at a rate of not less than $160 per week to an administrative employe if forty (40) hours were worked.

GEORGE R. WAGONER, Deputy Commissioner, for
JAMES R. YOCOM, Commissioner of Labor
ADOPTED: October 15, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: November 13, 1974 at 4:08 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 1:075)

RELATES TO: KRS 337.275, 337.285
PURSUANT TO: KRS 337.295, 13.082
SUPERSEDES: LAB 11
NECESSITY AND FUNCTION: KRS 337.010 excludes certain types of employes from being subject to the minimum wage and overtime provisions of the act and KRS 337.285 excludes certain employes from its coverage. The function of this regulation is to define these exclusions. These definitions will guide the department 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. Definitions. (1) The term "retail store or

service industry" shall mean an establishment seventy-five percent (75%) of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry.

(2) The term "hotel" means an establishment known to the public as a hotel, which is primarily engaged in providing lodging or lodging and meals for the general public. Included are hotels operated by membership organizations and open to the general public and apartment hotels which provide accommodations for transients. However, an establishment whose income is primarily from providing a permanent place of residence or from providing residential facilities complete with bedrooms and kitchen for prolonged periods would not be considered a hotel.

(3) The term "motel" means an establishment which provides services similar to that of a hotel described in subsection (2) of this section, but which caters mostly to the motoring public, providing it with motor car parking facilities either adjacent to the room or cabin rented or at some other easily accessible place. Included in the term "motel" are those establishments known to the public as motor hotels, motor lodges, motor courts, motor inns, tourist courts, and tourist lodges.

(4) The term "restaurant" means an establishment which is primarily engaged in selling and serving to purchasers at retail prepared food and beverages for consumption. This includes such establishments commonly known as lunch counters, refreshment stands, cafes, cafeterias, coffee shops, diners, dining rooms, lunch rooms, or tea rooms. The term "restaurant" does not include drinking establishments, such as bars or cocktail lounges, whose sale of alcoholic beverages exceed the receipts from sales of prepared foods and non-alcoholic beverages or establishments offering meal service on a boarding or term basis or providing such service only as an incident to the operation of a business of another kind and primarily to meet institutional needs for continuing meal service to persons whose continued presence is required for such operation, such as a boarding house, dining facilities of a boarding school, college or university which serves its students and faculty, lunchroom facilities for private and public day school students, and other institutional food service facilities providing long-term meal service to stable groups of individuals as an incident to institutional operations in a manner wholly dissimilar to the typical transactions between a restaurant and its customers.

(5) "Excise taxes" are taxes levied on the manufacture, sale or consumption of a commodity, and taxes levied on license to pursue certain occupations and corporate privileges.

Section 2. Hotel or motel. The primary function of a hotel or motel, is to provide lodging facilities to the public. In addition, most hotels or motels provide food for their guests and many sell alcoholic beverages. These establishments also may engage in some minor revenue producing activities; such as, the operation of valet services offering cleaning and laundering service for the garments of their guests, news stands, hobby shops, renting out of their public rooms for meetings, lectures, dances, trade exhibits and weddings. The exemption provided for hotels and motels in KRS 337.010(2)(c)(vi) and KRS 337.285 will not be defeated simply because a hotel or a motel engages in all or some of these activities, if it is primarily engaged in providing lodging facilities, food and drink to the public.

Section 3. Exemptions from minimum wage and overtime. (1) Employes of retail stores, service industries, hotels, motels, and restaurant operations whose average annual gross volume of sales made for business done is less than ninety-five thousand dollars ($95,000) for the five (5) preceding years exclusive of excise taxes at the retail level are exempt from both the minimum wage and overtime provisions of the act.

(2) To qualify for this exemption, the establishment must be recognized as retail in the particular industry. Typically a retail or service establishment is one which sells goods or services to the general public. It serves the everyday needs of the community in which it is located. The retail or service establishment performs a function in the business organization which is at the very end of the stream of distribution, disposing in small quantities of the products and skills of such organization and does not take part in the manufacturing process.

(3) (a) To compute the average annual gross volume of sales made for business done, it will be necessary for the business to add all the sales made for business done for the five (5) preceding years, exclusive of excise taxes at the retail level, and divide by five (5). If this average is less than ninety-five thousand dollars ($95,000), the establishment would be exempt.

(b) If the establishment has been in business for less than five (5) years, the gross sales will be totaled for the years the establishment has been in business and divided by the number of years. If this average is less than ninety-five thousand dollars ($95,000), the establishment would be exempt.

(c) If the establishment has been in business for less than one (1) year, the gross sales will be totaled for the number of months the establishment has been in business and divided by the number of months. This amount will then be multiplied by twelve (12). If this amount is less than ninety-five thousand dollars ($95,000), the establishment would be exempt.

(d) Excise taxes at the retail level are not computed in totaling the gross volume of sales. Excise taxes which are leveled at the manufacturer's, wholesaler's or other distributive level will not be excluded in calculating the dollar volume of sales.

Section 4. Exemptions from overtime. (1) Employes of retail stores whose principal duties are connected with the selling, purchasing, and distributing of goods and employes of a restaurant, hotel and motel operation are exempt from the overtime provisions of KRS 337.285.

(2) Employes of a retail store whose principal duties are not connected with the selling, purchasing, and distributing of the goods will not be considered as exempt employes, nor will employes of a service establishment which does not sell goods, but is in the business of selling a service.

GEORGE R. WAGONER, Deputy Commissioner, for
JAMES R. YOCOM, Commissioner of Labor
ADOPTED: November 6, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: November 20, 1974 at 12:47 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.

CABINET FOR PUBLIC PROTECTION AND REGULATION
Public Service Commission
(807 KAR 2:020)

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 278.160(1), 13.082
SUPERSEDES: PSC:Tar-1
NECESSITY AND FUNCTION: KRS 278.160(1) provides that the commission shall prescribe rules under which each utility shall file schedules showing all rates and conditions established by it and collected or enforced.

Section 1. General. All utilities under the jurisdiction of the Public Service Commission shall file with the secretary of the commission two (2) cover letters and four (4) complete copies of a tariff containing schedules of all its rates, charges, tolls and maps or plats of the area in which it offers service and all its rules and regulations and shall keep a copy of said tariff open to public inspection in its offices and places of business, as required by KRS 278.160, in substantially the form and manner hereinafter set out. If a utility furnishes more than one (1) kind of service (water and electricity for example), a separate tariff must be filed for each kind of service. For the purpose of the commission's rules and regulations, the utilities office or place of business shall be deemed a location at which the utility regularly employs and stations one (1) or more employees and is open to the public.

Section 2. Form and Size of Tariffs. (1) All tariffs must be printed from type not smaller than six (6) point or typewritten, mimeographed or produced by similar process, on hard calendared paper of good quality.

(2) The pages of a tariff shall be 8-1/2 by 11 inches in size.

(3) Utilities shall publish tariffs in loose-leaf form using one side of the paper only, with not more than one (1) schedule to the page.

(4) The front cover page of a tariff shall contain the following:

(a) Name of the utility and location of principal office.
(b) Statement of kind of service offered.
(c) General statement of territory served.
(d) Date of issue and date tariff is to become effective.
(e) Signature of the officer of the utility authorized to issue tariffs.
(f) Identifying designation in the upper righthand corner as required by Section 4 of this regulation.

(5) The second and succeeding pages shall contain:

(a) All the rules and regulations of the utility.
(b) Rate schedules showing all rates and charges for the several classes of service.
(c) Signature of the officer of the utility authorized to issue tariffs.
(d) Date of issue and date tariff is to become effective.
(e) Identifying designation in upper righthand corner as required by Section 4 of this regulation.

(6) In that portion of the tariff dealing with rates, the desired information shall be shown under the following captions in the order listed:

(a) Applicable: Show territory covered by tariff.
(b) Availability of Service: Show classes of customers affected, such as domestic, commercial, etc.
(c) Rates: List all rates covered by tariff.
(d) Minimum Charge: State amount of charge and quantity allowed.
(e) Delayed Payment Charge: State if penalty or discount.
(f) Term: If contracts are made for certain periods, give length of term.
(g) Special Rules: If any special rules and regulations are in effect covering this tariff, list same hereunder.

(7) The secretary of the commission will furnish standard forms of tariffs on request.

Section 3. Contents of Schedules. (1) Each rate schedule in addition to a clear statement of all rates thereunder must state the city, town, village or district in which rates are applicable; provided, however, that schedules applicable in a large number of communities must be accompanied by an accurate index by which each community in which the rates are applicable may be readily ascertained, in which case the applicability of a schedule may be indicated by reference to the index sheet. (Example: Applicable within the corporate limits of the City of_____, or see Tariff Sheet No. 2B for applicability.)

(2) Each rate schedule must state that class of service available under the rates stated therein. (Example: Available for domestic lighting, or available for all purposes, etc.)

(3) For a tariff in which a number of schedules are shown available for various uses, each schedule shall be identified by a number or by a group of letters, and if by a group of letters, the designation shall be indicative of the class of service for which the schedule is available. (Example: Schedule No. 1 or Tariff D.U.R. indicating that the schedule states domestic utility rates.)

(4) (a) Each page of the tariff shall bear the P.S.C. Kentucky Number of the tariff, the date issued and effective, the signature of the issuing officer, and in the upper righthand corner, a further designation, such as "Original Sheet No. 1", "Original Sheet No. 2", etc.

(b) In the case of a change in the text of any page as hereinafter provided the further designation shall be "First Revised Sheet No. 1, cancelling Original Sheet No. 1," etc.

(c) Tariffs may be further divided into section, and so designated if required by their size and contents.

(5) All schedules shall state whether a minimum charge is made, and if so, they shall set out all such charges, and further state whether such minimum charge is subject to prompt payment discount or delayed payment penalty.

Section 4. Designation of Tariffs. All tariffs must bear in the upper righthand corner of the front cover page the P.S.C. Kentucky number thereof. Subsequent tariffs filed as provided by Sections 5 through 8 of this regulation, must continue such designation in consecutive numerical order. Any subsequent tariff must also show the P.S.C. Kentucky number of the tariff cancelled, changed or modified by it.

Section 5. Change or Withdrawal of Rate Schedules or Regulations. (1) No tariff, or any provision thereof, may be changed, cancelled or withdrawn except upon such terms and conditions as the commission may impose and in compliance with KRS 278.180 and Sections 5 through 8 of this regulation.

(2) (a) All revisions in tariff sheets shall contain a symbol in the margin indicating the change made. These symbols are as follows:
(C) To signify changed regulation.
(D) To signify discontinued rate, regulation or test.
(I) To signify increase.
(N) To signify new rate and/or new test.
(R) To signify reduction.
(T) To signify a change in text.

(b) In the case of a change in the text of any tariff sheet where the rate remains the same, the effective date shall remain the same as that on the amended sheet. The issued date of the change shall be the date the filing is made with the commission.

(c) All tariff filings which involve the furnishing of equipment or services to the customer by the utility shall be accompanied by a description of the equipment or service involved in the filing and a cost of service study justifying the proposed charges.

(3) New tariffs stating changes in any provision of any effective tariff may be issued and put into effect by either of the two (2) following methods:

(a) By order of the commission upon formal application by the utility, and after hearing, as provided by Section 6 of this regulation.

(b) By issuing and filing on at least twenty (20) days notice to the commission and the public a complete new tariff (or revised sheet of an existing tariff) stating all the provisions and schedules proposed to become effective as provided by Sections 7 and 8 of this regulation.

(4) The provisions or rates stated on any sheet or page of a tariff may be modified or changed by the filing of a revision of such sheet or page in accordance with the provisions of this regulation. Such revisions must be identified as required herein.

Section 6. Adjustment of Rates on Application. Upon the granting of authority for a change in rates, the utility shall file a tariff setting out the rate, classification, charge, or rule and regulation authorized by the commission to become effective the order may direct, and each page of the tariff so filed shall state that it is "Issued by authority of an order of the Public Service Commission in Case No._____, dated_____, 19_____."

Section 7. Notice to the Public. (1) Notice to the public of a change of rates and charges or rules and regulations shall be given by the utility in the following manner:

(a) The tariff or revised sheet stating the proposed rates, rules, and regulations, etc., shall be exhibited at the offices and places of business of the utility in the territory affected for at least twenty (20) days prior to the proposed effective date of such tariff or revised sheet. If after review of said tariff or revision the commission deems it necessary to hold a public hearing in order to determine the reasonableness of the proposed revision, notice of such hearing shall be served on the utility. The tariff or revised sheets shall be exhibited as set out above the twenty (20) days prior to the date of hearing.

(b) If the proposed change will result in an increase of rates or charges to any customer, typewritten notice of the proposed rates or charges shall be mailed by the utility to each customer to be so affected at least twenty (20) days prior to the effective date of the proposed rates or charges, or where a hearing on the proposed increase has been set by the commission, at least twenty (20) days prior to the date of hearing; provided, however, that when more than twenty (20) patrons will be so affected by the proposed change, it will be sufficient within the meaning of this rule if such notice is published once a week for three (3) consecutive weeks prior to the effective date of such proposed rates or charges or when a hearing has been scheduled, for three (3) consecutive weeks prior to the date of hearing, in some newspaper of general circulation in the community or communities in which the customers to be affected reside, and provided further, that the commission, upon request of the utility, may modify the requirements as to notice other than by posting in any case in which it appears proper to do so. Notice provided for in this section shall contain the proposed rates, and when applicable, the date, time and place of hearing.

(2) The agent or representative of the utility in charge of an office or place of business shall give information regarding its tariffs (present and proposed) requested of him by any consumer or prospective consumer or his agent, and shall accord said persons, or their agents, opportunity to examine any of the tariffs of the utility at any reasonable time.

Section 8. Statutory Notice to the Commission. (1) When a new tariff has been so issued and notice thereof given to the commission and the public in all respects as hereinbefore provided, such tariff will become effective on the date stated therein unless the operation thereof be suspended and the rates and regulations therein be deferred by an order of the commission pending a hearing concerning the propriety of the proposed rates and regulations under KRS 278.190.

(2) All information and notice required by these rules shall be furnished to the commission at the time of the filing of any proposed revisions in rates or regulations, and the twenty (20) days statutory notice to the commission will not commence to run and will not be computed until such information and notice is filed.

Section 9. Change of Ownership — Adoption Notice. (1) In case of change of ownership or control of a utility, or when a utility or a part of its business is transferred from the operating control of one company to that of another, or when its name is changed, the company which will thereafter operate the utility business must use the rates, classifications and regulations of the former operating company (unless authorized to change by the commission), and shall issue, file and post an adoption notice, on a form furnished by the commission, adopting, ratifying and making its own all rates, rules, classifications and regulations of the former operating utility, on file with the commission and effective at the time of such change of ownership or control.

(2) Adoption notices must likewise be filed by receivers and trustees assuming possession and operation of utilities. Adoption notices may be filed and made effective without previous notice.

(3) Adoption notices filed with the commission by each utility shall be in consecutive numerical order, beginning with P.S.C. Kentucky Adoption Notice No. 1.

(4) Within ten (10) days after the filing of an adoption notice as aforesaid by a public utility which then had no tariffs on file with the commission, said utility shall issue and file in its own name the tariff of the predecessor utility then in effect and adopted by it, or such other tariff as it proposes to put into effect in lieu thereof, in the form prescribed in Sections 1 through 4 of this regulation with proper identifying designation. (Example: P.S.C. Kentucky No. 1 cancels P.S.C. Kentucky Adoption Notice No. 1.)

(5) Within ten (10) days after the filing of an adoption notice, as required by subsection 2 of this section, by a public utility which then had other tariffs on file with the commission, said utility shall issue and file in its own name rate schedules and regulations (on additional or revised sheets to its existing tariff, or by a complete reissue of its existing tariff, or otherwise), which shall set out the rates and regulations of the predecessor utility then in effect and adopted by it, or such other rates and regulations as it proposes to put into effect in lieu thereof, in accordance with the provisions of these rules with proper identifying designation. (Example: First Revision of Original Sheet No. 2A, P.S.C. Kentucky No. 11, cancels Original Sheet No. 2A, also cancels P.S.C. Kentucky Adoption Notice No. 6; or P.S.C. Ken—

tucky No. 12 cancels P.S.C. Kentucky No. 11, also cancels P.S.C. Kentucky Adoption Notice No. 6.)

(6) When a tariff or revision is issued by a utility in compliance with these rules which states the rates, rules and regulations of the predecessor utility without change in any of the provisions thereof, the same may be filed without notice; but when such tariff or revision states any change in the effect of the rates, rules and regulations of the predecessor utility, such tariff or revision shall be subject to Sections 7 and 8 of this regulation.

Section 10. Posting Tariffs, Regulations and Statutes. (1) Every utility shall provide a suitable table or desk in its office and place of business, on which shall be available to the public at all times the following:

(a) A copy of all effective tariffs and supplements setting out its rates, classifications, charges, rules and regulations, together with forms of contracts and applications applicable to the territory served from that office or place of business.
(b) Copies of the Kentucky Revised Statutes applicable to the utility.
(c) A copy of the regulations governing such utility, adopted by the Public Service Commission.
(d) A suitable placard, in large type, giving information to the public that said tariffs, rules and regulations and statutes are kept there for public inspection.

Section 11. Special Contracts. Every utility shall file true copies of all special contracts entered into governing utility service which set out rates, charges or conditions of service not included in its general tariff. The provisions of this regulation applicable to tariffs containing rates, rules and regulations, and general agreements, shall also apply to the rates and schedules set out in said special contracts, so far as practicable.

Section 12. Deviations from Rules. In special cases for good cause shown upon application to and approval by, the Commission may permit deviations from these rules.

Section 13. Forms. In submitting to the commission information required by these rules the following forms shall be followed where applicable:

(1) Form of cover sheet for tariffs.
(2) Form for filing rules and regulations.
(3) Form for filing rate schedules.
(4) Form of certificate of notice to the public of change in tariff where no increase of charges results.
(5) Form of certificate of notice to the public of change in tariff which results in increased charges.
(6) Form of adoption notice.

Section 13. (1)

FORM OF COVER SHEET FOR TARIFFS

P.S.C. KY. NO._____

CANCELS P.S.C. KY. NO._____

(NAME OF COMPANY)

of

(LOCATION OF COMPANY)

Rates, Rules and Regulations for Furnishing

(SERVICE RENDERED)

at

(LOCATION SERVED)

FILED WITH PUBLIC SERVICE COMMISSION
OF KENTUCKY

Issued_____, 19___Effective_____, 19___

Issued by_____
(Name of Utility)

By_____

_____

Section 13. (2)

FORM FOR FILING RULES & REGULATIONS

(Page 2 of Tariff)

_____

_____

Name of Utility

RULES & REGULATIONS

Date of Issue Effective Date

Issued By

Name Title

Section 13. (3)

FORM FOR FILING RATE SCHEDULES
(Page 3 of Tariff)

For_____
Community, Town or City

P.S.C. NO._____

____(Original) Sheet No._____
(Revised)

Name of Issuing Corporation

Canceling P.S.C. No._____

____(Original) Sheet No._____
(Revised)

CLASSIFICATION OF SERVICE

APPLICABLE: (Show territory covered by tariff.)

AVAILABILITY OF SERVICE: (Show classes of customers affected, such as domestic, commercial, etc.)

RATES: (List all rates covered by tariff.)

MINIMUM CHARGE: (State if penalty or discount.)

DATE OF ISSUE_____
Month Day Year

DATE EFFECTIVE_____
Month Day Year

ISSUED BY_____
Name of Officer Title Address

ISSUED BY AUTHORITY OF K.P.S.C.
ORDER NO._____

Section 13. (4)

FORM OF CERTIFICATE OF NOTICE TO THE PUBLIC
OF CHANGE IN TARIFF WHERE NO
INCREASE OF CHARGES RESULTS

(2 Copies Required)

To the PUBLIC SERVICE COMMISSION OF KENTUCKY, FRANKFORT, KENTUCKY

Pursuant to the Rules Governing Tariffs (effective_____), I hereby certify that I am_____of the (Name of Utility)_____ a public utility furnishing (Kind of Service)_____service within the Commonwealth of Kentucky, which on the ____day of_____, 19__, issued* Tariff P.S.C. Kentucky No._____, canceling Tariff P.S.C. Kentucky No._____, to become effective_____, 19__, and that notice to the public of the issuing of the same is being given in all respects as required by Section 7 of said Regulation, as follows:

On the_____day of_____, 19__, the same was exhibited for public inspection at the offices and places of business of the Company in the territory affected thereby, to wit, at the following places; (Give location of offices where rates are posted)_____and that the same will be kept open to public inspection at said offices and places of busi-

ness in conformity with the requirements of Section 7 of said Regulation.

I further certify that the proposed changes in tariff of said utility will not result in an increase in the rates or charges of any customer.

Given under my hand this_____day of_____, 19__.

Address_____

_____

* If a revised sheet, or additional sheet of a loose-leaf tariff is used to state changes in rates or regulations, the filing should be described as_____Revision of Original Sheet No._____P.S.C. Kentucky No._____, canceling_____Original Sheet No._____; P.S.C. Kentucky No._____, canceling P.S.C. Kentucky Adoption Notice No._____.

Section 13. (5)

FORM OF CERTIFICATE OF NOTICE TO THE PUBLIC
OF CHANGE IN TARIFF WHICH RESULTS
IN INCREASED CHARGES

(2 Copies Required)

To the PUBLIC SERVICE COMMISSION OF KENTUCKY, FRANKFORT, KENTUCKY

Pursuant to the Rules Governing Tariffs (effective_____,) I hereby certify that I am (Title of Officer)_____of the (Name of Utility)_____a public utility furnishing_____service within the Commonwealth of Kentucky, which on_____day of_____, 19__, issued its *Tariff P.S.C. Kentucky No._____ canceling Tariff P.S.C. Kentucky No._____to become effective_____, 19__and that notice to the public of the issuing of the same is being given in all respects as required by Section 7 of said Regulation, as follows:

On the_____day of_____, 19__, the same was exhibited for public inspection at the offices and places of business of the Company in the territory affected thereby, to wit, at the following places: (Give location of offices where rates are posted) _____and that the same will be kept open to public inspection at said office and places of business in conformity with the requirements of Section 7 of said Regulation.

**On the_____day of_____, 19__, typewritten or printed notice of the proposed rates or regulations was mailed to each of the_____customers of the company whose rates or charges will be increased thereby, a copy of said notice being attached thereto.

Given under my hand this_____day of_____, 19__.

Address_____

_____

* If a revised sheet or additional sheet of a loose-leaf tariff is used to state changes in rates or regulations, the filing should be described as Revision of Original Sheet No._____, P.S.C. Kentucky No._____, or Original Sheet No._____P.S.C. Kentucky No._____canceling P.S.C. Kentucky Adoption Notice No._____.
** If Notice is given by publication as provided by Section 7, use the following:

That more than 20 customers will be affected by said change by way of an increase in their rates or charges, and on the_____day of_____, 19__, there was delivered to the_____, a newspaper of general circulation in the community in which the customers affected reside, for publication therein once a week for three consecutive weeks prior to the effective date of said change, a notice of the proposed rates or regulations, a copy of said notice being attached hereto. A certificate of the publication of said notice will be furnished the Public Service Commission upon the completion of the same in accordance with Section 8(2), of said Regulation.

Section 13. (6)

FORM OF ADOPTION NOTICE
P.S.C. Ky. Adoption Notice No._____
ADOPTION NOTICE

The undersigned (Name of Utility)_____ of _____ hereby adopts, ratifies, and makes its own, in every respect as if the same had been originally filed and posted by it, all tariffs and supplements containing rates, rules and regulations for furnishing (Nature of Service)_____service at_____in the Commonwealth of Kentucky, filed with the Public Service Commission of Kentucky by (Name of Predecessor)_____of_____, and in effect on the_____day of_____, 19__, the date on which the public service business of the said (Name of Predecessor)_____was taken over by it.

This notice is issued on the_____day of_____, 19__, in conformity with Section 9 of PSC Tariff Regulations adopted by the Public Service Commission of Kentucky.

_____

By _____
WILLIAM A. LOGAN, Chairman

ADOPTED: October 22, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: November 13, 1974 at 4:12 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 2:025)

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 278.280(2), 13.082
SUPERSEDES: PSC:Gas-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 gas utilities.

Section 1. General. (1) The purpose of this regulation is to provide standard rules governing the service of gas utilities operating under the jurisdiction of the Public Service Commission of Kentucky.

(2) Utilities serving customers under KRS 278.485 or other retail customers, under the jurisdiction of this commission, directly from transmission or gathering lines are exempt from Sections 6, 7, 8, 9, 10, 12, 14, 15, 16, and 17 of this regulation insofar as they apply to these customers.

(3) Each utility shall make all reasonable efforts to prevent interruptions of service and when such interruptions occur shall endeavor to re-establish service with the shortest possible delay consistent with the safety of its consumers and the general public. Planned interruptions shall always be preceded by adequate notice to all affected customers.

(4) (a) Every utility transmitting gas by any pipeline intended to be subjected to pressures in excess of 100 psig shall:

1. Within ninety (90) days from the date of the effective date of this regulation file with the Public Service Commission a report setting forth the respects in which such pipeline and its appurtenances conform or do not conform, as the case may be, to the standards, requirements and safeguards enumerated in these rules. Such statement shall be based upon records of the utility, including records of tests, specifications or other available data, and upon current investigations and surveys, not requiring excavation or interruption of service.
2. In each instance where any gas corporation required by subparagraph 1. to file a report claims that it is not possible or practicable to obtain the necessary data to prepare the same, a report setting forth such claim shall nevertheless be filed within the period required by subparagraph 1., and the basis for such claim shall be set forth in such verified statement.
3. In each instance in which the report required to be filed by this section states that any portion of such pipeline or its appurtenances does not conform to the standards, requirements and safeguards enumerated in these rules or that it is not possible or practicable to obtain the necessary data to prepare such a statement, the report shall state whether or not in the opinion of the person preparing the report, such portion of pipeline and its appurtenances is in safe operating condition.

(b) In each instance where it is stated that such pipeline or its appurtenances or any portion thereof is in safe operating condition, the basis for such statement shall be set forth including the operating conditions under which the opinion is expressed, and such report may be accompanied by an application of the gas corporation to the Public Service Commission for an exemption from the application of the rules herein enumerated.

Section 2. Definitions. (1) Meter. The word "meter" shall be construed to mean any device used for the purpose of measuring the quantity of gas delivered by a utility to a customer.

(2) Transmission Line. "Transmission line" means a pipeline other than a gathering line that:

(a) transports gas from a gathering line or storage facility;
(b) operates at a hoop stress of twenty percent (20%) or more of SMYS; or
(c) transports gas within a storage field.

(3) Distribution Line. "Distribution line" means a pipeline other than a gathering line or transmission line.

(4) Service Line. The term "service line" shall be construed to mean the line from the property line to the place of consumption.

(5) Service Connection. The term "service connection" shall be construed to mean the line from the main to the customer's property line, and shall include all of the pipe fittings and valves necessary to make the connection.

(6) The term "cubic foot of gas" as used in these rules shall have the following meanings:

(a) In cases where gas is supplied and metered to customers at the standard distribution pressure, a cubic foot of gas shall be defined to be the volume of gas which, at the temperature and pressure existing in the meter, occupies one (1) cubic foot.

(b) In cases where gas is supplied to customers through orifice or positive displacement meters at other than standard distribution pressure a cubic foot of gas shall be defined to be that volume of gas which, at 60°F. and at absolute pressure of 14.73 pounds per square inch, (30 inches of mercury), occupies one (1) cubic foot; except that in cases where different bases that are considered by the commission to be fair and reasonable are provided for in gas sales contracts or in rules or practices of a utility, such different bases shall be effective.

(c) The standard cubic foot of gas for testing the gas itself for heating value, shall be that volume of gas which, when saturated with water vapor and at a temperature of 60° F., and under a pressure equivalent to that of thirty (30) inches of mercury (mercury at 32°F., and under standard gravity) occupies one (1) cubic foot.

(7) The term "British thermal unit" shall mean the quantity of heat required to raise the temperature of one (1) pound of water 1°F.

(8) The term "therm" shall mean a unit of heating value equivalent to 100,000 British thermal units.

Section 3. Construction Standards. (1) The following publications and codes are hereby adopted, and filed by reference, as standards of accepted good practice to be followed by all utilities under the jurisdiction of the Public Service Commission of Kentucky except when such codes or publications conflict with the regulations of this commission.

(a) The commission being certified and financed by the Office of Pipeline Safety, Department of Transportation, hereby adopts the "Minimum Federal Safety Standards, Title 49 CFR Part 192", as published in the Federal Register on August 19, 1970, (35 F.R. 13247) and subsequent amendments as Minimum Gas Safety Standards for the Public Service Commission of Kentucky. The said Federal Minimum Standards shall apply except where the rules adopted by this commission are more stringent than and not inconsistent with the federal standards. Nothing contained in these standards, however, shall prevent the commission from adopting, after due notice and hearing, additional or more stringent standards for intrastate gas facilities now under the commission's jurisdiction, provided that such standards are not inconsistent with the federal standards.

(b) National Fire Protection Association Standard No. 54, "National Fuel Gas Code" 1974 edition as published by the National Fire Protection Association, 470 Atlantic Avenue, Boston, Mass. 02210.

(c) National Fire Protection Association Standard No. 59, "LP Gases At Utility Gas Plants" 1974 edition as published by the National Fire Protection Association, 470 Atlantic Avenue, Boston, Massachusetts 02210.

(d) "Standard Methods of Gas Testing", Circular No. 48, National Bureau of Standards, 1916.

(e) "Testing Large Capacity Rotary Gas Meters", Research Paper No. 1741, National Bureau of Standards Journal of Research, September 1946.

(f) "Standard Method Test for Calorific Value of Gaseous Fuels by the Water-flow Calorimeter", American Society for Testing Materials, Standard D 900-55, 1964 edition as published by the American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania.

(2) Reports and Records of Proposed Construction:

(a) At least thirty (30) days prior to the construction or major reconstruction of any gas pipeline intended to be subjected to pressure in excess of 100 psig, or twenty percent (20%) of minimum yield strength, whichever is lower, a report shall be filed with the Public Service Commission setting forth the specifications for such pipeline and the maximum allowable operating pressure.

(b) Every gas utility shall, on the 15th day of each month, submit a report to the Public Service Commission setting forth the progress of such construction or major reconstruction as of the end of the preceeding month.

(c) Before any gas pipeline or main is placed in operation intended to be subjected to pressures in excess of 100 psig, or twenty percent (20%) of minimum yield strength, whichever is lower, a report shall be filed with the Public Service Commission certifying the maximum pressure to which the line is intended to be subject and also certifying that the pipeline has been constructed and tested in accordance with the requirements of the rules herein prescribed, and a further report shall be filed within sixty (60) days thereafter including the results of all tests made pursuant thereto. No gas pipeline or main shall be operated at pressures in excess of the pressure for which it was certified to the Public Service Commission.

(d) The responsibility for the maintenance of necessary records to establish that compliance with these rules and regulations has been accomplished rests with the utility. Such records shall be available for inspection at all times by the commission or the commission's staff.

(3) The Minimum Federal Safety Standards, Title 49 CFR Part 192, as published in the Federal Register on August 19, 1970, (35 F.R. 13247) and subsequent amendments being the presently effective code the commission hereby adopts the following modifications and changes thereto:

(a) To 192.163 add: (The following is numbered in accordance with Title 49 CFR Part 192.)

"(f) Air Piping System:

"(1) All air piping within gas compressing stations shall be constructed in accordance with Section 2 of the USAS B31.1 Code for Pressure Piping.

"(2) The starting air pressure, storage volume, and size of connecting piping shall be adequate to rotate the engine at the cranking speed and for the number of revolutions necessary to purge the fuel gas from the power cylinder and muffler. The recommendations of the engine manufacturer may be used as a guide in determining these factors. Consideration should be given to the number of engines installed and to the possibility of having to start several of these engines within a short period time.

"(3) A check valve shall be installed in the starting air line near each engine to prevent backflow from the engine into the air piping system. A check valve shall also be placed in the main air line on the immediate outlet side of the air tank or tanks. It is recommended that equipment for cooling the air and removing the moisture and entrained oil be installed between the starting air compressor and the air storage tanks.

"(4) Suitable provision shall be made to prevent starting air from entering the power cylinders of an engine and activating moving parts while work is in progress on the engine or on equipment driven by the engines. Acceptable means of accomplishing this are installation of a blind flange, removal of a portion of the air supply piping or locking closed a stop valve and locking open a vent downstream from it.

"(g) Air Receivers. Air receivers or air storage bottles, for use in compressor stations, shall be constructed and equipped in accordance with Section VIII, Unfired Pressure Vessels, of the ASME Boiler and Pressure Vessel Code.

"(h) Lubricating Oil Piping. All lubricating oil piping with gas compressing stations shall be constructed in accordance with USA Standard Code for Pressure Piping, Petroleum Refinery Piping, USAS B31.3.

"(i) Water and Steam Piping. All water and steam piping within gas compressing stations shall be constructed in accordance with USA Standard Code for Pressure Piping, Power Piping, USAS B31.1.0.

"(j) Hydraulic Piping. All hydraulic power piping within gas compressing stations shall be constructed in accordance with USA Standard Code for Pressure Piping, Petroleum Refinery Piping, USAS B31.3."

(b) To 192.167 add: "(c) All emergency valves and controls shall be identified by signs. All important gas pressure piping shall be identified by signs or color codes as to their function."

(c) To 192.171 add: "(f) All fuel gas lines within a compressor station, serving the various buildings and residential areas, shall be provided with master shutoff valves located outside of any building or residential area."

(d) To 192.183 add: "(d) Vault or pit openings shall be located so as to minimize the hazards of tools or other objects falling upon the regulator, piping or other equipment. The control piping and the operating parts of the equipment installed shall not be located under a vault or pit opening where workmen can step on them when entering or leaving the vault or pit, unless such parts are suitably protected.

"(e) Whenever a vault or pit opening is to be located above equipment which could be damaged by a falling cover, a circular cover should be installed or other suitable precautions taken."

(e) To 192.243(d) delete (3), renumbering 4 to 5, and add:

"(3) In class 3 locations, 100 percent if practicable but not less than 90 percent.

"(4) In class 4 locations and within 500 feet of buildings intended for human occupancy, 100 percent."

(f) To 192.279 add: "Copper pipe shall be joined by using either a compression type coupling or a brazed or soldered lap joint. The fillet material used for brazing shall be a copper-phosphorous alloy or silver base alloy. Butt welds are not permissible for joining copper pipe or tubing. Connections using a copper or cast bronze service line tee or extension fitting sweat-brazed to the copper main are recommended for service line connections to copper mains."

(g) To 192.305 add: "The inspector shall have authority to order the removal and replacement of any sectio

that fails to meet the standards of this code."

(h) To 192.307 add: "Plastic pipe and tubing shall be adequately supported during storage and thermoplastic pipe, tubing and fittings shall be protected from long term exposure to direct sunlight."

(i) To 192.321 add to (a): "...and shall conform to the applicable provisions of 192.327 except that plastic pipelines and mains shall be installed with a minimum cover of 24 inches at all stress levels."

(j) To 192.357(b) delete and add: "(b) The use of standard weight close (all thread) nipples is prohibited."

(k) To 192.361 add: "(g) Joining of Service Lines. All underground steel service lines shall be jointed by threaded and coupled joints, compression type fillings, or by qualified welding or brazing methods, procedures and operators.

"(h) When coated steel pipe is to be installed as a service line in a bore, care shall be exercised to prevent damage to the coating during installation. For all installations to be made by boring, driving, or similar methods or in a rocky type soil, the following practices or their equivalents are recommended.

"(1) The coated pipe should not be used as the bore pipe or drive pipe and left in the ground as part of the service line. It is preferable to make such installations by first making an average bore, removing the pipe used for boring and then inserting the coated pipe.

"(2) Coated steel pipe preferably should not be inserted through a bore in exceptionally rocky soil when there is a likelihood of damage to the coating resulting from the insertion.

"(3) The recommendations in 1 and 2 do not apply where coated pipe is installed under conditions where the coating is not likely to be damaged, such as in sandy soil."

(l) To 192.467(f) add: "A study must be made in collaboration with the electric company on the common problems of corrosion and electrolysis taking the following factors into consideration:

"(1) The possibility of the pipeline carrying either unbalanced line currents or fault currents.

"(2) The possibility of lightning or fault currents inducing voltages sufficient to puncture pipe coatings or pipe.

"(3) Cathodic protection of the pipeline, including location of ground beds, especially if the electric line is carried on steel towers.

"(4) Bonding connections between the pipeline and either the steel tower footings or the buried ground facilities or the ground-wire of the overhead electric system."

(m) To 192.5 delete entirely and add: "192.5 Class Locations: (a) Class location is determined by applying the criteria set forth in this section. Two population density indexes, determined at the time of initial construction, are used to classify locations for design and testing purposes.

"(1) The one-mile density index, which applies to any specific mile of pipeline; and (2) the ten-mile density index, which applies to any specific ten-mile length of pipeline

"To determine the one-mile density indexes for a proposed pipeline, lay out a zone one-half mile wide along the route of the pipeline with the pipeline on the center line of this zone. Divide the zone into lengths, each containing one mile of pipeline. Count the number of buildings intended for human occupancy in each of these lengths. These numbers are the one-mile indexes for the pipeline.

"To determine the ten-mile density indexes for any given ten-mile length of pipeline, proceed as follows: Add the one-mile density indexes for the ten-mile section. In case a one-mile index equals or exceeds 20, it is to be included in the sum as 20. Divide the sum thus obtained by 10. The quotient is the ten-mile density index for the section.

"For the purposes of this section, each separate dwelling unit in a multiple dwelling unit building is counted as a separate building intended for human occupancy."

"(b) Class 1 Locations: Class 1 locations include waste lands, deserts, rugged mountains, grazing land, farm land, and combinations of these; provided however, that:

"(1) The ten-mile density index for any section of line does not exceed 5.

"(2) The one-mile density index for any one mile of line does not exceed 10."

"(c) Class 2 Locations: Class 2 locations include areas where the degree of development is intermediate between Class 1 locations and Class 3 locations. Fringe areas around cities and towns, and farm or industrial areas where the one-mile density index exceeds 10 or the ten-mile density index exceeds 5 fall within this location class."

"(d) Class 3 Locations: Class 3 locations include areas legally subdivided for residential or commercial purposes where a Class 4 classification is not called for and any area where the pipeline lines within 100 yards of a building or well-defined outside area that is occupied by 20 or more persons during normal use, such as a playground, recreation area, outdoor theater, or other place of public assembly."

"(e) Class 4 Locations: Class 4 locations include each city and incorporated village and the adjacent areas in which there is a substantially equivalent population density or in which a significant increase in population density can reasonably be expected.

"(f) The boundaries of the class locations determined in accordance with paragraphs (a) through (e) of this section may be adjusted as follows:

"(1) A Class 4 location ends 440 yards from the nearest building within a class four location.

"(2) When a cluster of buildings intended for human occupancy requires a Class 3 location, the Class 3 location ends 440 yards from the nearest building in the cluster.

"(3) When a cluster of buildings intended for human occupancy requires a Class 2 location, the Class 2 location ends 440 yards from the nearest building in the cluster."

(n) To 192.503 delete (c) and add: "(c) Except as provided in 192.505(a), if air is used as the test medium, the following maximum hoop stress limitations apply:

Maximum Hoop Stress Permissible During Test

	Percent of Specified Minimum Yield			
Location Class	1	2	3	4
Test Medium Air	75	75	50	40

"

(o) To 192.505 delete entirely and add: "192.505 Strength test requirements for steel pipeline to operate at a hoop stress of 30 percent or more of SMYS:

"(a) Except for service lines, each segment of a steel pipeline that is to operate at a hoop stress of 30 percent or more of SMYS must be strength tested in accordance with this section to substantiate the proposed maximum allowable operating pressure. In Class 1 locations, pipelines shall be tested to 1.25 times the maximum operating pressure and in Class 2 locations pipelines shall be tested to 1.50 times the maximum operating pressure. The test medium may be either air or water except that if there is a building intended for human occupancy within 300 feet of the pipeline water must be used as the test media while the hoop stress exceeds 50 percent of SMYS unless the buildings are evacuated during the test. Pipelines and mains in Class 3 and 4 locations shall be tested hydrostatically to a pressure not less than 1.50 times the maximum operating pressure.

"(b) In a Class 1 or Class 2 location, each compressor station, regulator station, and measuring station, must be tested to at least Class 3 location test requirements.

"(c) Test pressure shall be maintained until the pressure has stabilized as far as possible in all portions of the test sections giving due consideration to changes in ambient temperatures. In no event shall the duration of the test be less than 24 hours following such stabilization except that, in the case of a length of pipeline, main or piping which has not been backfilled prior to the test where, throughout its entire length, its entire circumference can be readily examined visually for the detection of leakage, the duration of the test shall be not less than 4 hours following such stabilization.

"(d) Where water is utilized as the test medium, adequate provisions shall be made for disposal of the water and steps shall be taken to guard against contamination.

"(e) Requirements for hydrostatic testing of mains and pipelines in Class locations 3 and 4 do not apply if at the time the pipeline or main is first ready for test the ground temperature at pipe depth is 32°F or less, or might fall to that temperature before the hydrostatic test could be completed. In such cases an air test to 1.50 times the maximum operating pressure shall be made. Precautions shall be taken to protect the public.

"(f) Other provisions of these rules notwithstanding, pipelines and mains crossing highways and railroads may be tested in each case in the same manner and to the same pressure as the pipelines on each side of the crossing.

"(g) If a component other than pipe is the only item being replaced or added to a pipeline, a strength test after installation is not required, if the manufacturer of the component certifies that:

"(1) The component was tested to at least the pressure required for the pipeline to which it is being added; or

"(2) The component was manufactured under a quality control system that ensures that each item manufactured is at least equal in strength to a prototype and

that the prototype was tested to at least the pressure required for the pipeline to which it is being added.

"(h) For fabricated units and short sections of pipe, for which a post installation test is impractical, a pre-installation strength test must be conducted by maintaining the pressure at or above the test pressure for at least 4 hours."

(p) To 192.507 delete entirely and add: "192.507 Except for service lines and plastic pipelines, each segment of a pipeline that is to be operated at a hoop stress less than 30 percent of SMYS and above 100 psig must be tested in accordance with the following table except that air may be used as the test medium within the maximum limits set in 192.503(c).

Test Requirements for Pipelines and Mains to Operate at Hoop Stresses of 30% or less of the Specified Minimum Yield Strength of the Pipe and above 100 psig

1 Location Class	2 Permissible Test Fluid	3 Prescribed Test Pressure Minimum	4 Maximum
1	Water	1.25 x m.o.p.	None
	Air	1.25 x m.o.p.	1.25 x d.p.
2	Water	1.50 x m.o.p.	None
	Air	1.50 x m.o.p.	1.25 x d.p.
3	Water	1.50 x m.o.p.	None
4	Water	1.50 x m.o.p.	None

m.o.p. — maximum operation pressure
d.p. — design pressure

"(a) The pipeline operator must use a test procedure that will insure discovery of all potentially hazardous leaks in the segment being tested.

"(b) If during the test, the segment is to be stressed to 20 percent or more of SMYS and air is the test medium:

"(1) A leak test must be made at a pressure between 100 psig and the pressure required to produce a hoop stress of 20 percent of SMYS; or

"(2) The line must be walked to check for leaks while the hoop stress is held at approximately 20 percent of SMYS.

"(c) The pressure must be maintained at or above the test pressure for at least 1 hour."

(q) To 192.509 add: "(c) If substantial protective coatings are used that would seal a split pipe seam the leak test pressure shall be 100 psi."

(r) To 192.511(c) change fourth line to read as follows: "...must be tested to the maximum operating pressure or 100 psig, whichever is greater, except..."

(s) To 192.55 add: "(f) New or used pipe of unknown specification and all used pipe the strength of which is impaired by corrosion or other deterioration, shall be retested hydrostatically either length by length in a mill type test or in the field after installation before being placed in service, and the test pressure used shall establish the maximum allowable operating pressure subject to the following limitations:

"(1) P for furnace butt welded pipe shall not exceed 60 percent of the mill test pressure.

"(2) P shall not exceed 85 percent of the mill test pressure for all other pipes; provided however, that pipe, mill tested to a pressure less than 85 percent of the pressure required to produce a stress equal to the specified minimum yield, may be retested with a mill type hydrostatic test or tested in place after installation. In the event the pipe is retested to a pressure in excess of the mill test pressure, then P shall not exceed 85 percent of the retest pressure rather than the initial test pressure. It is mandatory to use a liquid as the test medium in all tests in place after installation where the test pressure exceeds the mill test pressure."

(t) To 192.619(2)(ii) change Factor Table to read as follows:

Class Location	Factor Segment Installed before (Nov. 12, 1970)	Segment Installed after (Nov. 11, 1970)
1	1.25	1.25
2	1.50	1.50
3	1.50	1.50
4	1.50	1.50

(u) To 192.723 delete (b) — (1) and add: "(1) At least once a year a gas detector survey shall be conducted in business districts, involving tests of the atmosphere in gas, electric, telephone, sewer and water system manholes, and where access is not denied at inside basement walls of public and commercial buildings located adjacent to gas mains and service lines, at cracks in pavement and sidewalks and at other locations providing an opportunity for finding gas leaks."

(v) To 192.747 delete and add: "192.747 Valve Maintenance: Distribution Systems:
"Valves, the use of which may be necessary for the safe operation of a gas distribution system, shall be checked and serviced, including lubrication where necessary, at sufficiently frequent intervals (at least once each year) to assure their satisfactory operation. Inspection shall include checking of alignment to permit use of a key or wrench and cleaning from the valve box or vault any debris which would interfere with or delay the operation of the valve. A similar inspection shall be made of distribution curb valve boxes one year after installation where the alignment may be subject to movement and at meter change intervals thereafter."

(w) To 192.749(a) change 4th line to read: "...content of 100 cubic feet or more, must be..."

(x) To 192.751 add: "(d) When a pipeline or main can be kept full of gas during a welding or cutting operation, the following procedures are recommended:

"(1) Keep a slight flow of gas moving toward the point where cutting or welding is being done.

"(2) The gas pressure at the site of the work shall be controlled by suitable means.

"(3) Close all slots or open ends immediately after they are cut with tape, and/or tightly fitted canvas or other suitable material.

"(4) Do not permit two openings to remain uncovered at the same time. This is doubly important if the two openings are at different elevations.

"(e) No welding or acetylene cutting may be done on a pipeline, main or auxiliary apparatus that contains air if it is connected to a source of gas, unless a suitable means has been provided to prevent the leakage of gas into the pipeline or main.

"(f) In situations where welding or cutting must be done on facilities which are filled with air and connected to a source of gas and precautions recommended above cannot be taken, one or more of the following precautions, depending upon circumstances at the job, are required.

"(1) Purging of the pipe or equipment upon which welding or cutting is to be done, with combustible gas or inert gas.

"(2) Testing of the atmosphere in the vicinity of the zone to be heated before the work is started and at intervals as the work progresses, with a combustible gas indicator or by other suitable means.

"(3) Careful verification before the work starts that the valves that isolate the work from a source of gas do not leak.

"(g) When the main is to be separated a bonding conductor must be installed across the point of separation and maintained while the pipeline is separated. If overhead electric transmission lines parallel the pipeline right-of-way the current carrying capacity of the bonding conductor should be at least one-half of the capacity of the overhead line conductors."

(4) Venting of customer's service regulators. Each gas utilities' customers service regulator installed indoors shall be vented to the outside atmosphere and shall have a vent pipe sized no smaller than the manufacturer's vent connection built into the regulator.

(5) Exterior shut-off valves. Exterior shut-off valves shall be installed on all lines entering and leaving regulator stations for use in an emergency to stop the flow of gas, such valves to be installed at an accessible point and location where such valves can be operated in case of an emergency but in any event at least forty (40) feet from the regulator station if operation is below sixty (60) psig. if operating above sixty (60) psig. the valve shall be placed at least 100 feet from the station; if operated above 100 psig. the valve location shall be at least 200 feet from the station. A check valve may be used as the exterior shut-off valve on the downstream line in lieu of other valve it forty (40) feet from regulator. No connection shall be made between the inlet and the outlet shut-off valves, except the connections to the regulating station. A regulator station may contain metering equipment or other similar apparatus. The shut-off valve may be a sectionalizing valve. For the purpose of this rule the maximum pressure possible on the regulator station shall be controlling. Such valve shall be operated, tested and checked at least once a year to insure proper operating condition.

(6) Proximity to Buildings. Gas pipelines operated at 100 psig. or greater shall not be installed within 500 feet of any building intended for human occupancy unless line construction within 300 feet of the vicinity of the building complies with Class 4 construction.

Section 4. Waste. All practices in the production, distribution, consumption, or use of natural gas which are wasteful, such as flambeau lights and the like, are hereby expressly prohibited.

Section 5. Measuring Production and Shipment into and out of the State. (1) All gas produced and purchased by a utility in Kentucky shall be measured and the quantity thereof recorded.

(2) All gas piped out of or brought into the State of Kentucky by a utility shall be measured and quantity thereof recorded.

Section 6. Odorization. (1) Any gas distributed to customers through gas mains or gas services, used for domestic purposes or in compressor plants or transmitted through Class 3 or Class 4 locations shall have a distinctive odor of sufficient intensity so that the presence of the gas may be detected down to a concentration in air of one percent (1%) by volume (approximately twenty percent (20%) of the lower explosive limit) to normal or average olfactory senses of a person coming from fresh ungasified air into a closed room, or by appropriate instruments. Whenever necessary to maintain this level of intensity, a suitable odorant shall be added in accordance with the specification in this rule.

(2) Odorants in the concentrations used shall be: harmless to humans, noncorrosive to steel, iron, brass, copper and leather and not soluble in water to an extent greater than 2.5 parts by weight of odorant to 100 parts by weight of water.

(3) Odorizing equipment shall be designed to maintain a reasonable uniform level of odor in the gas.

(4) Each utility shall make periodic checks to determine that proper level of odorization is maintained and keep records of same.

Section 7. Purity of Gas. (1) All gas supplied to customers shall contain no more than: a trace of hydrogen sulphide; thirty (30) grains of total sulphur per 100 cubic feet, or five (5) grains of ammonia per 100 cubic feet. No gas shall contain impurities which may cause excessive corrosion of mains or piping or form corrosive or harmful fumes when burned in a properly designed and adjusted burner.

(2) When necessary, tests for the present of hydrogen sulphide shall be made at least once each day, except Sundays and holidays, with the standard lead acetate paper method. Results shown by these test papers shall be properly recorded and filed, as specified by the commission.

(3) Manufactured and mixed gas shall be tested at least once each month for the presence of total sulphur and ammonia, except that any gas containing no coal gas need not be tested for ammonia. Approved methods of testing shall be used. Records of all tests shall be preserved as specified by the commission.

Section 8. Heating Value of Gas. (1) Each utility shall establish and maintain a standard heating value for its gas. The heating value standard adopted shall comply with the following conditions:

(a) It shall be consistent with good service.

(b) It shall be that value which the utility, from its experience, determines is the most practicable and economical to manufacture and/or supply to its customers.

(2) Each utility shall file with the commission as a part of its schedule of rates or rules and regulations, the average total heating value of the gas, together with the indicated maximum expected fluctuation above and below the average total heating value which may be expected of a gas supplied by it in each district, division or community served.

(3) The utility shall be prepared to justify to the commission the standards adopted. The BTU standard adopted shall be expressed as part of the schedule of rates on file with the commission and shall not be changed without approval of the commission.

(4) The utility shall maintain the heating value of the gas with as little variation as is practicable, but such variation shall not be more than five percent (5%) above, or five percent (5%) below the standard adopted.

(5) The standard adopted shall be the monthly average total heating value of the gas, as delivered to customers at any point within one mile of the manufacturing plant or center of distribution, and shall be obtained in the following manner: To obtain the monthly average, the results of all tests of heating value made on any day during the calendar month shall be averaged and the average of all such daily averages shall be used in computing the monthly average. Each utility selling more than three hundred million (300,000,000) cu. ft. of gas annually shall make tests of heating value to conform at least to the minimum requirements of the following schedule:

Annual Sales of Gas — M Cubic Ft.	Minimum No. of Tests Per Week Day	Minimum Interval Between Consecutive Tests in Hours
300,000 to 500,000	2	4
500,000 to 1,000,000	4	2
1,000,000 upward	6	2

(6) Definition of Total Heating Value. The total heating value of a gas is the number of British thermal units produced by the combustion at constant pressure, of the amount of gas which would occupy a volume of one (1) cubic foot at a temperature of sixty (60) degrees Fahrenheit, if saturated with water vapor and under a pressure equivalent to that of thirty (30) inches of mercury at thirty-two (32) degrees Fahrenheit and under standard gravity, with air of the same temperature and pressure as the gas, when the products of combustion are cooled to the initial temperature of gas and air, and when the water formed by combustion is condensed to the liquid stage.

(7) Compressed Gas. Gas which has been compressed to more than five (5) pounds per square inch shall be tested for heating value after compression.

(8) Testing Equipment. Each utility selling more than three hundred million cu. ft. of gas annually shall provide and maintain an approved standard calorimeter and all necessary accessories therefor for testing the heating value of gas. Such equipment shall be subject to approval and calibration by the commission. Utilities served directly from transmission lines shall be exempt from this rule if there is a provision for measuring the heating value of the gas on the transmission line and if such calorimeters are available to the commission for testing and certification.

(9) Whenever the standard heating value of the gas supplied is changed sufficiently to necessitate readjustment of appliances, it shall be incumbent upon the utility to properly adjust the customer's appliances to the new heating value as adopted under this rule.

(10) Where any unusual conditions exist any utility may apply to the commission to be relieved in part of the requirements of this rule.

(11) Any change in the heating value greater than subsection (4) of this section shall not be made without the approval of the commission and without adequate notice to the affected customers. In such event, the utility shall make any necessary adjustments to the customer's appliances without charge and shall conduct the adjustment program with a minimum of inconvenience to the customers.

Section 9. Extension of Service. (1) Normal Extensions. An extension of one hundred (100) feet or less shall be made by a utility to an existing distribution main without charge for a prospective customer who shall apply for and contract to use service for one (1) year or more and provides guarantee for such service.

(2) Other Extensions.

(a) When an extension of the utility's main to serve an applicant or group of applicants amounts to more than one hundred (100) feet per customer, the utility may if not inconsistent with its filed tariff require the total cost of the excessive footage over one hundred (100) feet per customer to be deposited with the utility by the applicant or the applicants, based on the average estimated cost per foot of the total extension.

(b) Each customer receiving service under such extension will be reimbursed under the following plan: each year for a period of not less than ten (10) years which, for the purpose of this rule, shall be the refund period, the utility shall refund to the customer or customers who paid for the excessive footage, the cost of the one hundred (100) feet of the extension in place for each additional customer connected during the year whose service line is directly connected to the extension installed, and not to extensions or laterals therefrom, but in no case shall the total amount refunded exceed the amount paid the utility. After the end of the refund period no refund will be required to be made.

(3) An applicant desiring an extension to a proposed real estate subdivision may be required to pay the entire cost of the extension. Each year for a period of not less than ten (10) years the utility shall refund to the applicant who paid for the extension a sum equivalent to the cost of one hundred (100) feet of the extension installed for each additional customer connected during the year but in no case shall the total amount refunded exceed the amount paid to the utility. After the end of the refund period from the completion of the extension no refund will be required to be made.

(4) Nothing contained herein shall be construed to prohibit the utility from making extensions under different arrangements provided such arrangements have been approved by the commission.

(5) Nothing contained herein shall be construed as to prohibit a utility from making at its expense greater extensions than herein prescribed, should its judgment so dictate, provided like free extensions are made to other customers under similar conditions.

(6) Upon complaint to and investigation by the commission a utility may be required to construct extensions greater than one hundred (100) feet upon a finding by the commission that such extension is reasonable.

Section 10. Service Connections. (1) Ownership of service.

(a) Utility's Responsibility. In urban areas with well defined streets the utility shall furnish and install at its own expense for the purpose of connecting its distribution system to the customer's premises that portion of the service pipe from its main to the property line or to and including the curb stop and curb box if used. The curb stop may be installed at a convenient place between the property line and the curb. In cases where meters are located outdoors, the curb box and curb stop may be omitted if the meter installation is provided with a stopcock and the connection to the distribution main is made with a service tee that incorporates a positive shutoff device that can be operated with ordinary, readily available tools and the service tee is not located under pavement.

(b) Customers Responsibility. The customer shall furnish and lay the necessary pipe to make the connection from the curb stop to the place of consumption and shall keep the service line in good repair and in accordance with such reasonable requirements of the utility as may be incorporated in its rules and regulations.

(c) Inspection. In the installation of a service line the customer shall not install any tees or branch connections and must leave the trench open and pipe

uncovered until it is examined by an inspector of the utility and shown to be free from any irregularity or defect. The utility shall test the customer's piping for gas leaks, each time the gas is turned on by the utility, by observing that no gas passes through the meter when all appliances are turned off. The utility shall refuse to serve until all gas leaks so disclosed have been properly repaired.

(2) Location of Service. The customer's service line shall extend to that point on the curb line easiest of access to the utility from its distribution system. When a reasonable doubt exists as to the proper location of the service line, the utility shall be consulted and its approval of the location secured.

(3) All services shall be equipped with a stopcock near the meter. If the service is not equipped with an outside shut-off, the inside shut-off shall be of a type which can be sealed in the off position.

Section 11. Method of Measuring Service. (1) All gas sold by a utility and all gas consumed by a utility in the State of Kentucky shall be metered through approved type meters except in cases of emergency or when otherwise authorized by the commission. Each meter shall bear an identifying number. When gas is sold at high pressures or large volumes, the contract or rate schedule shall specify the standards used to calculate the gas volume. Prepayment meters shall not be used except where there is no other satisfactory method of collecting payment for the service rendered.

(2) All gas delivered as compensation for leases, rights of way, or for other reasons, not charged for at the utility's regular schedule of charges, shall be metered and a record kept thereof. All meters and regulators installed for the purpose of measuring gas and for the purpose of regulating the pressure of gas shall be under the control of the utility and subject to the rules of the utility and the rules of the commission.

(3) The utility shall make no charge for furnishing and installing any meter or meter accessories necessary to measure the gas furnished, except by mutual agreement in special cases or except where duplicate or check meters are requested by the customer.

(4) Each gas utility shall adopt a standard method of meter and service line installation insofar as practicable. Such methods shall be set out with a written description and/or with drawings to the extent necessary for a clear understanding of the requirements, all of which shall be filed with the commission. Copies of these standard methods shall be made available to prospective customers and contractors or others engaged in the business of installing pipe for gas utilization. All meters shall be set in place by the utility.

(5) Each customer shall be metered separately except in cases of multi-occupants under the same roof with a common entrance or within an enclosure where it is unreasonable or uneconomical to measure each unit separately.

(6) The utility may render temporary service to a customer and may require the customer to bear all of the cost of installing and removing the service in excess of any salvage realized. In this respect, a temporary service shall be considered to be service that is not required or used for more than one (1) year.

Section 12. Location of Meters. (1) Meters shall be easily accessible for reading, testing and making necessary adjustments and repairs, and where indoor type meters are necessary they shall be installed in a clean, dry, safe, convenient place. Unless absolutely unavoidable, meters shall not be installed in any location where the visits of the meter reader or tester will cause annoyance to the customer or a severe inconvenience to the utility. Existing meters which are located in places not permitted by this rule shall be relocated by the customer or owner to an approved location.

(2) Proper provision shall be made by the customer for the installation of the utility's meter. At least six (6) inches clear space shall be available, if possible on all sides of the meter and not less than thirty (30) inches in front of it.

(3) When a number of meters are placed in the same location, each meter shall be tagged or marked to indicate the customer metered by it and such identification shall be preserved and maintained by the owner of the premises served.

(4) When the distance between the utility's main and the nearest point of consumption is more than one hundred fifty (150) feet, the meter shall be located as near to the utility's main as may be practicable. This shall apply whether or not all or part of the service line shall have been constructed by either the customer or utility.

(5) When customers are served from high pressure lines, the meters, regulator or regulators and safety devices shall be located as near to the utility's main as practicable.

Section 13. Accuracy Requirements for Meters. (1) All tests to determine the accuracy of registration of any gas meters shall be made by a qualified meter man and with suitable facilities.

(a) Positive displacement meters:

1. Before being installed for the use of any customer, every positive displacement gas meter, whether new, repaired or removed from service for any cause shall be in good order and shall be adjusted to be correct to within one-half of one percent, plus or minus, when passing gas at approximately twenty percent (20%) and one hundred percent (100%) of the rated capacity of the meter as given by the manufacturer at .5" H20 differential. A pilot test to determine that the meter will register at one-half of one percent (1/2 of 1%) of the rated capacity shall be made before placing meters in service.

2. Meters removed from service for any reason shall be tested for accuracy as soon as practical after removal. An "as found" test shall be made at a flow-rate of approximately twenty percent (20%) and one hundred percent (100%) of the rated capacity at .5" H20 differential and results of said tests algebraically averaged to determine the accuracy. If the error is less than two percent (2%) this shall be reported as the "as found" test. If the error is more than two percent (2%) two (2) additional tests shall be made at twenty percent (20%) and one hundred percent (100%) and the average of the three tests shall be reported as the "as found" test. The three (3) test procedures shall apply to any customer request test, complaint test, or bill adjustment made on the basis of the meter.

(b) Large capacity meters:

1. All meters other than positive displacement meters, regardless of type, shall be tested at approved intervals by the utility meter man using flow provers or other approved methods either in the shop or on location of use at the option of the utility with the approval of the commission of facilities and methods used.

a. The accuracy of these meters shall be maintained as near one hundred percent (100%) as possible.

b. Test ranges and procedures shall be as prescribed in adopted standards or approved by the commission.

2. All meter installation shall be inspected for proper design and construction and all instruments, regulators and valves used in conjunction with the installation shall be tested for desired operation and accuracy before being placed in service. This inspection shall be made by a competent meter man employed by the utility or by a competent person employed by the manufacturer of the meter installation. Test data as to conditions found, corrected if in error, and conditions as left shall be made available for inspection by the commission. Subsequent test results shall be a portion of regular meter test reports to the commission by the utility.

Section 14. Pressure Gauges. (1) Each utility shall keep continually in use on its distribution system or systems one (1) or more accurate recording pressure gauges at each point of supply to the system or systems. These gauges must be located at such point or points and in such a manner as to give continuous record of the gas pressure and character of service being furnished.

(2) In addition to the recording pressure gauges required in subsection (1) of this section, all utilities distributing gas shall provide themselves with one (1) or more portable recording pressure gauges with which pressure surveys shall be made in sufficient number to indicate the service furnished and to satisfy the commission of the utility's compliance with pressure requirements.

(3) All recording pressure gauge charts shall be preserved and filed in a systematic manner and each chart shall show the date and location when the record was made. All charts must be kept on file by the utility for a period of at least two (2) years.

Section 15. Standard Pressure. (1) All utilities supplying gas for light, heat, power or other purposes shall, subject to the approval of the commission, adopt and maintain a standard pressure as measured at the customer's meter outlet. In adopting such standard pressure the utility may divide its distribution system into districts and establish a separate standard pressure for each such district, or the utility may establish a single standard pressure for its distribution system as a whole.

(2) The standard pressure to be adopted as herein provided shall be a part of the utility's schedule of rates and general rules and regulations.

(3) No change shall be made by a utility in the standard pressure or pressure adopted except in case of emergency.

Section 16. Allowable Variations of Standard Service Pressure. (1) The variations of standard pressure as established under the preceding rule shall not exceed the following under normal operating conditions:

Established Standard Service Pressure	Minimum Pressure Allowable	Maximum Pressure Allowable
4 oz.	2 oz.	6 oz.
6 oz.	3 oz.	9 oz.
8 oz.	4 oz.	12 oz.

(2) A utility supplying gas shall not be deemed to have violated subsection (1) of this section, if it can be shown that variations from said pressures are due to:

(a) Use of gas by the customer in violation of contract or the rules of the utility.

(b) Infrequent fluctuations of short duration due to unavoidable conditions of operation.

(3) Allowable variations in standard pressure other than those covered by subsection (1) of this section will be established by the commission when application is made and good cause shown therefor.

(4) The gas pressures required above shall be maintained at the outlet of the meter in such a manner to provide safe and efficient utilization of gas in properly adjusted appliances supplied through adequately sized customer's facilities.

Section 17. Continuity of Service. (1) The utility shall keep a complete record of all interruptions on its entire system or on major divisions thereof. The record shall show the cause of interruption, date, time, duration, remedy, and steps taken to prevent recurrence. The commission shall be notified of major interruptions as soon as they come to the attention of the utility and a complete report made after restoration of service.

(2) An interruption of service, as the term is used here, shall also mean the interval of time during which the pressure drops below fifty percent (50%) of such adopted standard pressure on the entire system, or on one (1) or more entire major division or divisions for which an average standard pressure has been adopted.

Section 18. Meter Testing Facilities and Equipment. (1) Meter Shop:

(a) Each utility, unless specifically excused by the commission, shall maintain a meter shop for the purpose of inspecting, testing, and repairing meters. The shop shall be open for inspection by authorized representatives of the commission at all reasonable times, and the facilities and equipment, as well as the methods of measurements and testing employed, shall be subject to the approval of the commission.

(b) The meter shop shall consist of a repair room or shop proper and a proving room. The proving room shall be designed so that the meters and meter testing apparatus are protected from excessive changes in temperature and other disturbing factors. The proving room or the entire meter shop shall be air conditioned if necessary to achieve satisfactory temperature control.

(c) The proving room shall be well lighted and preferably not on an outside wall of the building. Temperature changes in the room shall be no greater than five (5) degrees F over a twenty-four (24) hour period. Temperatures at any one point in the room shall not vary from a simultaneous temperature at any other point in the room by more than one (1) degree F.

(2) Working Standards:

(a) Each utility, unless specifically excused by the commission, shall own and make proper provision to operate at least one (1) approved belltype meter prover, preferably of ten (10) cubic feet capacity, but in no case of less than five (5) cubic feet capacity. The prover shall be equipped with suitable thermometers and other necessary accessories, and such equipment shall be maintained in proper condition and adjustment so that it shall be capable of determining the accuracy of any service meter, practical of test by it, to within one-half of one percent (1/2 of 1%) plus or minus.

(b) The prover shall be accurate to within three tenths (.3) of one percent (1%) at each point used in testing meters.

(c) The prover shall not be located near any radiator, heater, stem pipe, or hot or cold air duct. Direct sunlight shall not be allowed to fall on the prover or the meters under test.

(d) During conditions of satisfactory operation the temperature of the air in the prover shall be within one (1) degree F of the ambient temperature, and the temperature of the oil in the prover shall not differ from the temperature of the ambient air by more than one (1) degree F.

(e) The meters to be tested shall be stored in such manner that the temperature of the meters is substantially the same as the temperature of the prover. In order to achieve this the meters shall be placed in the environment of the prover for a minimum of about five (5) hours, and preferably overnight.

(3) All testing instruments and other equipment shall at all times be accompanied by a certificate giving the date when it was last tested and adjusted and must be signed by a proper authority or a tag referring to such certificate may be attached when practicable. These certificates, when superseded, shall be kept on file in the office of the utility.

(4) Sixty (60) days after the effective date of this regulation, each utility shall advise the commission in writing as to the kind and amount of testing equipment available.

Section 19. Periodic Tests. (1) Periodic tests (of all meters) shall be made according to the following schedule:

(a) All positive-displacement meters, with a rated capacity up to and including 500 feet per hour, shall be tested at least once every ten (10) years.

(b) All positive-displacement meters, with a rated capacity above 500 cubic feet per hour, up to and including 1,500 cubic feet per hour, shall be tested at least once every five (5) years.

(c) All positive-displacement meters above 1,500 cubic feet per hour shall be tested at least once every year.

(d) All orifice meters shall have their recording gauges tested at least once every six (6) months and the constant of the orifice plate tested every five (5) years.

(2) All meters in service on and after the effective date of this regulation for which there is on file in the utility's office no record of test within the time equal to the period of test for that class and rating of meter as specified in subsection (1) of this section, shall be tested as soon thereafter as circumstances will permit and the meters with the greatest time elapsed since the last test shall be tested first. In no case shall the time of test of said meters, subsequent to the effective date of this regulation exceed one-half (1/2) of the required period of tests for meters of that class and rating as specified in subsection (1) of this section. Whenever the number of meters of any type which register in error beyond the limits specified in these rules is deemed to be excessive, then this type shall be tested with such additional frequency as the commission may direct.

Section 20. Deviations from Rules. In special cases for good cause shown upon application to and approval by, the commission may permit deviations from these rules.

WILLIAM A. LOGAN, Chairman

ADOPTED: October 22, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: November 20, 1974 at 8:46 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary, Public Service Commission, Capital Plaza Tower, Frankfort, Kentucky 40601.

CABINET FOR PUBLIC PROTECTION AND REGULATION
Public Service Commission
(807 KAR 2:030)

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 278.485(3), 13.082
SUPERSEDES: PSC:Gas, Sp-1
NECESSITY AND FUNCTION: KRS 278.485(1) provides that gas service shall be furnished at rates and charges as determined by the commission. KRS 278.485(3) requires that the installation and standards of safety for the installation of service lines may be prescribed by the commission. This proposed regulation establishes the rules which apply to service from natural gas gathering pipeline systems.

Section 1. Construction Standards. Instances not covered by this regulation must meet, where applicable, the requirements of the "USA Standard Code for Pressure Piping, Gas Transmission and Distribution Piping Systems (USAS B31.8)" 1968 edition as published by the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, N. Y. 10017; herein filed by reference.

Section 2. Definitions. (1) "Gathering line" means any pipeline gathering gas from a producing gas well; excluding pipelines on the discharge side of compressor stations.

(2) "Service line" means any pipeline beginning at the point of connection to the gathering line and ending at the point or points of consumption.

(3) "Gas company" means the owner of any producing gas well and/or gathering line.

Section 3. Requirements for Service. (1) Persons desiring gas service under KRS 278.485 shall file applications at the local gas company office, which shall contain the following information:

(a) Name and address of the applicant.
(b) Purpose for which gas is requested.
(c) Name and address of contractor installing service line and other facilities required to be furnished by applicant.
(d) Name and address of gas company from which service is requested.

(2) Gas company shall furnish applicant with construction drawing showing installation and material meeting the company's specifications as approved by the commission for service installation.

(3) After receipt of the application, the gas company shall furnish the commission in Frankfort the name and address of the applicant and forward a copy of the application to the commission's representative in that area.

(4) Applicant's gas service line shall be inspected and approved by the commission representative before service is commenced. No service line will be inspected for which an application has not been received.

(5) The commission will notify the applicant by mail if the service line does not meet the requirements of its rules and regulations. If the defects are not corrected within the time permitted, the commission will notify the gas company and the application shall be discontinued by the company until such defects are corrected.

(6) The gas company shall furnish, install and maintain the meter which shall remain its property.

(7) The service tap including saddle and first service shutoff valve shall be installed by the gas company and shall remain its property.

(8) All other equipment and material required for such service shall be furnished, installed and maintained by applicant at his expense and shall remain applicant's property.

(9) If leaks or other hazardous conditions are detected in the service line, the gas company shall have the right to discontinue service until such leaks or other hazardous condi-

tions are repaired or remedied by consumer.

Section 4. Connections to High Pressure Gathering Lines. (1) Connections shall be two (2) inches or less in diameter but smaller than the diameter of the gathering line.
(2) Connections shall be on the upper one-half (1/2) of the pipe surface, preferably at an angle of forty-five degrees (45°).
(3) Connections shall be at right angles to the center line of the gathering line.
(4) A service shut-off shall immediately follow the connection to the gathering line.
(5) A drip tank shall be installed preceding the regulating equipment, but may be omitted upon approval of the commission's representative.

Section 5. Control and Limiting of Gas Pressure. (1) When maximum pressures may exceed sixty (60) p.s.i. a service regulator and a secondary regulator located upstream from the service regulator shall be installed. The regulators shall be spring type, and the secondary regulator shall in no case be set to maintain a pressure higher than sixty (60) p.s.i. A spring type relief valve shall be installed between the secondary regulator and the service regulator to limit the pressure on the inlet of the service regulator to sixty (60) p.s.i. or less in case the secondary regulator fails to function properly.
(2) Every service line shall be equipped with an adequate spring type relief valve on the outlet side of the meter installation.
(3) Regulators shall not be by-passed.
(4) Each relief valve shall be vented into the outside air.
(5) Vents shall be covered to prevent water and insects from entering.
(6) All metering and regulating equipment shall be as near to the gathering line as practicable, in accordance with safe and accepted operating practices.
(7) Each service shall have an insulating joint which shall follow the regulating units.
(8) Regulating equipment shall be properly protected by the applicant.

Section 6. Service Lines and Metering Facilities. (1) The customer shall furnish and install the service line from tap to point of consumption. The customer shall also secure all rights-of-way, railroad, highway and other crossing permits. The customer's service line shall be laid on undistributed or well compacted soil in a separate trench avoiding all structures and hazardous locations. Where service line passes through cultivated land, the trench shall be of sufficient depth to permit a backfill cover of twenty-four (24) inches above the service line. In other locations, the trench depth shall be eighteen (18) inches where practicable. No structure shall be erected over the service line.
(2) No branch tee or other connection shall be permitted on the line to serve any user other than the applicant except with the prior written consent of the gas company and the applicant, in which event the service to each user shall have an automatic shut-off valve with manual reset located on the riser in a horizontal position. Such shut-off valve shall have an operating pressure of eight (8) ounces with a shut-off pressure setting of not less than two (2) ounces.
(3) Service lines shall be constructed so as to avoid subsurface structures but in no case shall service lines be constructed within a distance of less than thirty-six (36) inches from any subsurface structure or parallel thereto closer than thirty-six (36) inches.
(4) Service lines shall be purged for at least fifteen (15) minutes after testing to remove any air accumulations.
(5) Metering pressure shall not exceed eight (8) ounces.
(6) Service lines shall be constructed of new black steel pipe from the gas meter to the outlet side of the stopcock located on the riser entering into the building and shall be of a size not less than one and one-fourth (1-1/4) inches.
(7) Service lines shall enter buildings above the ground level with shut-off valve located on the riser.
(8) Each service shall have an automatic cut-off valve with manual reset to shut off gas if gas pressure fails. The valve may be part of the final stage regulator when only one (1) customer is served from the service line.

Section 7. Payment of Bills or Other Default. (1) The customer shall pay the installation charge and thereafter pay the gas company for all gas delivered at rates determined therefor by the commission. The gas company shall render statements to the customer at regular monthly or bi-monthly intervals for gas delivered, which said statements shall be rendered not later than ten (10) days following each billing period. No gas company shall discontinue service to any customer for nonpayment of bills (including delayed payment 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, but the cutoff shall not be effected before fifteen (15) days after the mailing date of the original bill. Service shall not be re-established until the customer has paid the gas company all amounts due for gas delivered plus a turn-on charge of five dollars ($5), and placed himself in full compliance with the regulations of the commission pertaining to such service. In the event the customer fails or refuses to pay such unpaid bill(s) and turn-on charge and/or place himself in compliance with the regulations of the commission within thirty (30) days from the date the gas is turned off, the gas company may disconnect customer's service line from its gathering line and service shall not be re-established until the customer has complied with the regulations of the commission pertaining to initial service.
(2) The gas company shall have the right, if it so elects, to require a cash deposit or other guaranty from the customer to secure payments of bills.

Section 8. General Provisions. The gas company shall at all times have access to the premises where the connection is made and the meter is located with the right to shut off the gas and remove its property from said premises upon reasonable notice for any of the following reasons: for repairs or because of leakage; for non-payment of any bills; for failure to make a cash deposit, if such be required; for any violation of this regulation; moving of the customer from the premises; for fraudulent tampering with the meter, regulators or connections; for shortage of gas or reasons of safety; for larceny of gas; for any action by a customer to secure through his meter gas for purposes other than those requested, or for any other party without the written consent of the gas company; for false representation with respect to the ownership of property to which service is furnished.

Section 9. Rates and Charges. (1) Each gas company may make and collect an initial charge of fifty dollars ($50) for each service tap, including saddle and first shut-off valve which, under this regulation, are required to be furnished and installed by the gas company. No part of this charge shall be refunded by the gas company.
(2) The monthly charges for gas service, except as hereinafter expressly provided, shall be as follows:

For the First	2 MCF	$ .80 per MCF
For the Next	28 MCF	.60 per MCF
For the Next	570 MCF	.50 per MCF
All Over	600 MCF	.40 per MCF
The minimum bill shall be		1.60 per month

(3) The only exception to the charges outlined above shall be that when any gas producing area is served by one company, such company may elect to apply its own tariffs which have been filed and approved by the commission, plus the fifty-dollar ($50) charge for the service tap, including saddle and first service shut-off valve.
(4) The provisions contained herein shall apply only to connections and services made pursuant to the provisions of KRS 278.485 as amended by the 1956 Kentucky General Assembly and subsequent to the effective date of this regulation.

Section 10. Deviation from Rules. In special cases for good cause shown upon application to and approval by, the commission may permit deviations from these rules.

WILLIAM A. LOGAN, Chairman
ADOPTED: October 22, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: November 13, 1974 at 4:10 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary, Public Service Commission, Capital Plaza Tower, Frankfort, Kentucky 40601.

CABINET FOR PUBLIC PROTECTION AND REGULATION
Public Service Commission
(807 KAR 2:040)

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 278.280(2), 13.082
SUPERSEDES: PSC:W-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 water utilities.

Section 1. General. The purpose of this regulation is to provide standard rules and regulations governing the service of water utilities operating under the jurisdiction of the Public Service Commission of Kentucky.

Section 2. Definitions. (1) Meter. The word "meter" shall be construed to mean any device used for the purpose of measuring the quantity of water delivered by a utility to a customer.
(2) Transmission Main. The transmission main is used for conveying water to the distribution system, reservoirs, tanks or stand pipes, and has generally no service connections with customers.
(3) Distribution Main. The distribution main is one from which service connections with customers are taken at frequent intervals.
(4) Service Line. The term "service line" shall be construed to mean the line from the property line to the place of consumption.
(5) Service Connection. The term "service connection" shall be construed to mean the line from the main to the customer's property line, and shall include all of the pipe fittings and valves necessary to make the connection.
(6) Department for Natural Resources. The term "Department for Natural Resources" means the Kentucky Department for Natural Resources and Environmental Protection, Bureau of Environmental Quality, Division of Sanitary Engineering.

Section 3. Information Available to Customers. (1) Characteristics of Water. A description in writing of the treated water as to chemical constituents and bacteriological standards.

(2) Rates. A schedule of rates for water service applicable to the service to be rendered to the customer.

(3) Reading Meters. Information about method of reading meters.

(4) Bill Analysis. A statement of the past readings of a customer's meter for a period of two years.

Section 4. Quality of Water. (1) General. Any utility furnishing water service for human consumption or for domestic uses shall provide water that is wholesome, potable, free from objectionable odors and taste, and not harmful or dangerous to public health.

(2) Compliance with Department for Natural Resources. Any utility furnishing water service for human consumption or domestic use shall conform to all legal requirements of the Department for Natural Resources for construction and operation of its water system as pertains to sanitation and potability of the water.

(3) Water Supply. In absence of comparable requirements of the Department for Natural Resources, water supplied by any utility shall be:

(a) Adequately protected by artificial treatment to include continuous disinfection throughout the distribution system.

(b) Free from objectionable color, turbidity, taste, and odor.

(c) From a source reasonably adequate to provide a continuous supply of water.

(d) Of such quality at all times as to meet the "Public Health Service Drinking Water Standards", Revised 1962 edition, Publication No. 956, U.S. Government Printing Office, Washington, D.C. 20402; herein filed by reference.

(4) Operation of Supply System.

(a) The water supply system, including wells, reservoirs, pumping equipment, treatment works, mains, and service pipes shall be free from sanitary defects.

(b) No physical connection between the distribution system of a public potable water supply and that of any other water supply shall be permitted, unless such other water supply maintains a safe sanitary quality in accordance with this regulation and the inter-connections of the supplies are approved by the commission.

(c) The growth of algae in the water at the source of supply, in reservoirs or other basins, and in the water mains, shall be controlled by proper treatment.

(d) Utilities obtaining water supplies from driven or drilled wells must maintain the tightness of well casings and provide protection at the surface of the ground to prevent the infiltration of water other than that from the strata tapped by such wells and 300 feet from any source of pollution.

(5) Testing of Water.

(a) Test. Each utility shall have representative samples of water supplied by it examined by the state or local Department for Natural Resources or by a competent chemist and bacteriologist skilled in the sanitary examination of water, under methods approved by the State department for Natural Resources, at intervals sufficient to insure a safe water supply.

(b) Report to the Commission. In the event that the above prescribed tests show that the water furnished by the utility is contaminated or otherwise unsafe for human consumption, the utility shall forward a report of such test to the commission or other state agency having correctional jurisdiction without delay, and shall take immediate steps to correct the condition.

Section 5. Continuity of Service. (1) Emergency Interruptions. Each utility shall make all reasonable efforts to prevent interruptions of service and when such interruptions occur shall endeavor to re-establish service with the shortest possible delay consistent with the safety of its consumers and the general public. Where an emergency interruption of service affects the service to any public fire protection device, the utility shall immediately notify the fire chief or other public official responsible for the fire protection.

(2) Scheduled Interruptions. Whenever any utility finds it necessary to schedule an interruption of its service, it shall notify all customers to be affected by the interruption, stating the time and anticipated duration of the interruption. Whenever possible, scheduled interruptions shall be made at such hours as will provide least inconvenience to the customers. Where public fire protection is provided by the mains affected by the interruptions, the utility shall notify the fire chief or other officials responsible for fire protection, of the interruption, stating the time and anticipated duration. The fire chief or other official responsible for fire protection shall be notified immediately upon restoration of service.

(3) Standby Equipment. When the system pressure is maintained by mechanical means, emergency standby pumping equipment shall be provided to maintain a reasonable pressure in the main in the event of failure of the primary pumping facilities.

(4) Storage. Each utility shall provide water storage to insure a minimum of one (1) days supply of its average daily water usage or such minimum amount deemed adequate by the commission.

(5) Record of Interruptions. Each utility shall keep a complete record of all interruptions on its entire system or on major divisions thereof. This record shall show the cause of interruption, date, time, duration, remedy and steps taken to prevent recurrence.

Section 6. Pressures. (1) Standard Pressure. Each utility shall, subject to the approval of the commission, adopt and maintain a standard pressure in its distribution system at locations to be designated as the point or points of "standard pressure". The selection of such points shall be confined to locations fairly representative of average conditions. In selecting points for fixed standard pressure a utility may divide its distribution system into districts, when division is necessary, due to differences of elevation or loss of pressure because of friction, or due to both of said causes; and may adopt a standard pressure for each such division, or it may establish a single standard pressure for its distribution system as a whole. In no case shall the constant difference between the highest and lowest pressures in a district for which a standard has been adopted exceed fifty percent (50%) of such standard. In the interpretation of this rule it shall be understood that in districts of widely varying elevations or low customer density a utility may undertake to furnish a service which does not comply with the foregoing specifications if the customer is fully advised of the conditions under which average service may be expected. It shall be understood that nothing shall prevent the commission from requiring improvements when, upon investigation, it appears right and proper that such betterments should be made. In no event, however, shall the pressure at the customer's service pipe under normal conditions fall below thirty (30) p.s.i.g. nor shall the static pressure exceed 150 p.s.i.g.

(2) Pressure Gauges. Each utility shall provide itself with one (1) or more recording pressure gauges for the purpose of making pressure surveys as required by these rules. These gauges shall be suitable to record the pressure experienced on the utility's system and shall be able to record a continuous 24-hour test. One of these recording pressure gauges shall be maintained in continuous service at some representative point on the utility's mains.

(3) Pressure Surveys. At least once annually, each utility shall make a survey of pressures in its distribution system of sufficient magnitude to indicate the quality of service being rendered at representative points in its system. The pressure charts for these surveys shall show the date and time of beginning and end of the test and the location at which the test was made. Records of these pressure surveys shall be maintained at the utility's principal office in the state and shall be made available to the commission upon request.

Section 7. Water Supply Measurement. (1) Measuring Devices. Each utility shall install a suitable measuring device at each source of supply in order that a record may be maintained of the quantity of water produced by each source.

(2) Records. At least once each month, the quantity produced from each source of supply shall be determined. Twelve (12) month totals by sources shall be recorded and transmitted to the commission in the utility's annual report to the commission.

Section 8. Standards of Construction. The design and construction of the utility's water plant shall conform to good standard engineering practice. The plans and specifications for water supplies shall be prepared by an engineer registered in the State of Kentucky, with the submitted plans bearing the engineer's seal. The plant shall be designed and operated so as to provide adequate and safe service to its consumers and shall conform to the requirements of the Department for Natural Resources with reference to sanitation and potability of water.

Section 9. Distribution Mains. (1) Depth of Mains. Water mains shall be placed a minimum of twenty-four inches (24") below ground level and shall be protected sufficiently to prevent freezing during the coldest weather normally experienced in the community in which laid, and to prevent damage by traffic.

(2) Dead Ends. Insofar as practicable, the utility shall design its distribution system so as to avoid dead ends in its mains. Where dead ends are necessary, the utility shall provide hydrants or valves for the purpose of flushing the mains. Mains with dead ends shall be flushed as often as necessary to maintain the quality of the water; but in any event they shall be flushed at least once each year.

(3) Segmentation of System. Valves or stopcocks shall be provided at reasonable intervals in the mains so that repairs may be effected with interruptions to the service of as few customers as is practicable.

(4) Disinfection of Water Mains. All new mains shall be thoroughly disinfected before being connected to the system. The method of disinfecting shall be in compliance with the Department for Natural Resources.

(5) Grid Systems. Wherever feasible the distribution system shall be laid out in a grid so that in case of breaks or repairs the interruptions of service to the customers will be at a minimum.

Section 10. Service Lines. (1) Size of Service Line. The size, design and material and installation of the service line

shall conform to such reasonable requirements of the utility as may be incorporated in its rules and regulations, provided, however, that the minimum size of the line shall not be less than three-fourths inch (3/4") nominal size except under unusual circumstances which shall be clearly defined.

(2) Depth of Service Line. All service lines shall be laid at a depth sufficient to prevent freezing during the coldest weather normally experienced except where services are not intended for use during freezing weather and are actually drained during such periods.

(3) Inspection of Service Line. In the installation of a service line, the customer shall leave the trench open and pipe uncovered until it is inspected by the utility and shown to be free from any tee, branch connection, irregularity or defect.

Section 11. Construction Requirements. (1) The system shall be adequate to deliver all reasonable water requirements of its customers and meet the requirements of Section 6(1) of this regulation except under emergency conditions.

(2) Distribution System.

(a) Minimum Pipe Sizes. The distribution system shall be of adequate size and so designed in conjunction with related facilities to maintain the minimum pressures required by Section 6(1) of this regulation. The maximum length of any individual small pipe line shall be as follows:

	Circulating	Non-Circulating
1 inch nominal size	150 feet	100 feet
1 1/2 inch nominal size	300 feet	200 feet
2 inch nominal size	500 feet	250 feet

In the case of rural water lines, where hydraulic studies indicate they can comply with Section 6(1) of this regulation and can provide adequate flow of water to serve the peak requirements of customers, the above maximum extension lengths may be extended with approval of the commission.

(b) Fire Protection. Specifications, location, installation, and the responsibility for the maintenance of fire hydrants, public and private fire protection facilities, connecting mains, and their ownership may be subject to negotiation between the utility and the applicant. Fire hydrants and public and private fire protection facilities shall be installed as required by the utility and when owned by the utility shall be subject to such conditions as the commission may impose, based upon the compensation received for this service.

(3) Transmission Systems. The transmission pipe lines from sources of supply shall be designed to deliver in combination with related storage facilities and to the limits of the capacity of those sources of supply the maximum requirements of that portion of the system which is dependent upon such transmission pipe lines.

(4) Water Supply Requirements. The quantity of water delivered to the utility's distribution system from all source facilities shall be sufficient to supply adequately, dependably and safely the total reasonable requirements of its customers under maximum consumption, and shall be determined so as to maintain the specified pressures as required by Section 6(1) of this regulation.

(5) Materials. Metallic and non-metallic materials may be used separately and in combination to construct component parts of a water system including, but not limited to, conduits, pipes, couplings, caulking materials, protective linings and coatings, services, valves, hydrants, pumps, tanks and reservoirs, provided:

(a) The material shall have a reasonable useful service life.

(b) The material shall be capable of withstanding with ample safety factors the internal and external forces to which it may be subjected in service.

(c) The material shall not cause the deterioration of the potability of the water supply.

(d) Materials and equipment shall be so selected as to mitigate corrosion, electrolysis and deterioration.

Section 12. Extension of Service. (1) Normal Extension. An extension of fifty (50) feet or less shall be made by a utility to its existing distribution main without charge for a prospective customer who shall apply for and contract to use service for one (1) year or more and provides a guarantee for such service.

(2) Other Extensions.

(a) When an extension of the utility's main to serve an applicant or group of applicants amounts to more than fifty (50) feet per applicant, the utility may if not inconsistent with its filed tariff require the total cost of the excessive footage over fifty (50) feet per customer to be deposited with the utility by the applicant or the applicants, based on the average estimated cost per foot of the total extension.

(b) Each customer receiving service under such extension will be reimbursed under the following plan: Each year for a period of not less than ten (10) years, which for the purpose of this rule shall be the refund period, the utility shall refund to the customer or customers who paid for the excessive footage the cost of fifty (50) feet of the extension in place for each additional customer connected during the year whose service line is directly connected to the extension installed and not to extensions or laterals therefrom; but in no case shall the total amount refunded exceed the amount paid the utility. After the end of the refund period, no refund will be required to be made.

(3) An applicant desiring an extension to a proposed real estate subdivision may be required to pay the entire cost of the extension. Each year for a period of not less than ten (10) years the utility shall refund to the applicant who paid for the extension a sum equivalent the cost of fifty (50) feet of the extension installed for each additional customer connected during the year but in no case shall the total amount refunded exceed the amount paid to the utility. After the end of the refund period from the completion of the extension, no refund will be required to be made.

(4) Nothing contained herein shall be construed to prohibit the utility from making extensions under different arrangements provided such arrangements have been approved by the commission.

(5) Nothing contained herein shall be construed as to prohibit a utility from making at its expense greater extensions than herein prescribed, should its judgment so dictate, provided like free extensions are made to other customers under similar conditions.

(6) Upon complaint to and investigation by the commission a utility may be required to construct extensions greater than fifty (50) feet upon a finding by the commission that such extension is reasonable.

(7) Municipal Systems.

(a) Subsections (1) to (6) of this section shall not apply to municipally owned water utilities.

(b) Each municipally owned water utility serving customers outside the corporate limits, and within five (5) miles thereof, shall, upon application or request to extend its mains in such area, supply the service in accordance with subsection (c) herein, unless the commission determines that such request is unreasonable, infeasible or will adversely affect the adequacy or quality of service to existing customers of the municipality both inside and outside the corporate limits or will otherwise impair the service or the financial structure of such municipally owned water utility.

(c) Each municipally owned water utility shall provide facilities to furnish water under subsection (b) hereof in accordance with such rules and regulations as it may file with and be approved by the commission.

Section 13. Service Connections. (1) Ownership of Service.

(a) Utility's Responsiblity. In urban areas with well-defined streets the utility shall furnish and install at its own expense for the purpose of connecting its distribution system to the customer's premises that portion of the service line from its main to and including the curb box, if curb box is used, otherwise to the curb stop. The curb stop may be installed at a convenient place between the property line and the curb. All services shall include a curb stop.

(b) Customer's Responsibility. The customer shall furnish and lay the necessary pipe to make the connection from the curb stop to the place of consumption and shall keep the service line in good repair and in accordance with such reasonable requirements of the utility as may be incorporated in its rules and regulations.

(2) Location of Service. The customer's service line shall extend to that point on the curb line easiest of access to the utility from its distribution system. When a reasonable doubt exists as to the proper location of the service line, the utility shall be consulted and its approval of the location secured.

Section 14. Measurement of Service. (1) Metering. All water sold by a utility shall be upon the basis of metered volume sales except that the utility may at its option provide flat rate or estimated service for the following:

(a) Temporary service where the water used can be readily estimated.

(b) Public and private fire protection service.

(c) Water used for street sprinkling and sewer flushing, when provided for in a contract between the utility and a municipality or other local governmental authority.

(2) Registration of Meter. All meters used for metered sales shall have registration devices indicating the volume of water measured in either cubic feet or U.S. gallons. Where a constant or multiplier is necessary to convert the meter reading to cubic feet or gallons, the constant shall be indicated upon the face of the meter.

(3) Charge for Service Line and Meter Installation.

(a) No utility shall charge for the installation or the use of its portion of the service line or of any devices for metering service to a customer, except for temporary service where the utility may charge its actual cost of installation and removal of service lines and metering devices.

(b) A water district, organized under KRS Chapter 74, may, subject to the approval of the commission, make a charge or "tapping fee" for installing service to its customers. Said "tapping fee" shall include a

service tap, meter, meter vault, and installation thereof.

(4) Standard Method of Meter and Service Line Installation. Each utility shall adopt a standard method of installing meters and service lines and shall file with the commission a written description and/or drawings in sufficient detail that the requirements are clearly understandable. Copies of these standard methods shall be made available to prospective customers and contractors or others engaged in the business of placing pipe for water utilization. All meters shall be set in place by the utility.

Section 15. Meter Test Facilities and Equipment. (1) Test Facilities. Each utility furnishing metered water service shall provide the necessary standard facilities, instruments and other equipment for testing its meters in compliance with this regulation.

(2) Shop Equipment. The utility's meter test shop shall, insofar as practicable, simulate the actual service conditions of temperature, inlet pressure, and outlet pressure. It shall be provided with the necessary fittings, including a quick acting valve for controlling the starting and stopping of the test and a device for regulating the flow of water through the meter under test within the requirements of this regulation. The overall accuracy of the test equipment and test procedures shall be sufficient to enable test of service meters within the requirements of this regulation. In any event the inherent overall accuracy of the equipment shall permit tests with an overall error not to exceed three-tenths of one percent (.3 of 1%).

(3) Test Measurement Standards.

(a) Basic Standard. Measuring devices for testing meters shall consist of a calibrated tank for volumetric measurement or a tank mounted upon scales for weight measurement. If a volumetric standard is used, it shall be certificated as to its accuracy by the Public Service Commission, within the preceding twenty-four (24) months. If a weight standard is used, the scales shall be tested and calibrated at least once a year and certified as to accuracy by the Public Service Commission.

(b) Size of Basic Standards. When meters are tested by weight method, it is required that utilities whose measure of quantity is the cubic foot use test equipment capable of holding not less than two (2) cubic feet of water. Utilities whose measure of quantity is the U.S. gallon shall use equipment holding not less than twenty (20) U.S. gallons.

(c) Standard Meter. By special permission of the commission, a standard meter may be provided and used by any utility for the purpose of testing meters in place. This standard meter shall be tested and calibrated periodically to insure its accuracy within the limits required by this regulation. In any event, such test shall be made at least once each week while the standard meter is in use and a record of such tests shall be kept by the utility.

Section 16. Accuracy Requirements of Water Meters. (1) General. All meters used for measuring the quantity of water delivered to a customer shall be in good mechanical condition and shall be adequate in size and design for the type of service which they measure.

(2) New or Repaired Meters. All new meters, and all meters removed from service for repairs or test in accordance with this regulation, shall be tested as specified herein prior to being placed in service.

(a) Test Flows. The test flow and normal test flow limits, for the various types of cold water meters, are as follows:

DISPLACEMENT TYPE

Nominal Meter Size Inches	Minimum Test Flow Gallons per Minute	Normal Test Flow Gallons per Minute
5/8	1/4	1 to 20
3/4	1/2	2 to 30
1	3/4	3 to 50
1 1/2	1 1/2	5 to 100
2	2	8 to 160
3	4	16 to 300
4	7	28 to 500
6	12	48 to 1000

CURRENT TYPE

Nominal Meter Size Inches	Minimum Test Flow Gallons per Minute	Normal Test Flow Gallons per Minute
1 1/2	7	12 to 100
2	10	16 to 160
3	15	24 to 350

CURRENT TYPE

Nominal Meter Size Inches	Minimum Test Flow Gallons per Minute	Normal Test Flow Gallons per Minute
4	20	40 to 600
6	30	80 to 1400
8	50	144 to 2500
10	75	224 to 3800
12	100	320 to 5800
16	150	400 to 11500

COMPOUND TYPE

Nominal Meter Size Inches	Minimum Test Flow Gallons per Minute	Normal Test Flow Gallons per Minute
1 1/2	1/2	2 to 100
2	1/2	2 to 160
3	1	4 to 320
4	1 1/2	6 to 500
6	3	10 to 1000
8	4	16 to 1600
10	8	32 to 2300
12	14	32 to 3100

FIRE SERVICE TYPE

Nominal Meter Size Inches	Minimum Test Flow Gallons per Minute	Normal Test Flow Gallons per Minute
3	2	8 to 400
4	2	8 to 700
6	4	16 to 1600
8	7	28 to 2800
10	12	48 to 4400
12	12	48 to 6400

PROPELLER-DRIVEN CURRENT TYPE

Meter Size Inches	Normal Range of Flow Gallons per Minute
2	15 to 80
3	30 to 200
4	45 to 400
5	75 to 600
6	90 to 900
8	100 to 1200
10	125 to 1500

PROPELLER-DRIVEN CURRENT TYPE

Meter Size Inches	Normal Range of Flow Gallons per Minute
12	150 to 2000
14	250 to 2500
16	275 to 3500
18	400 to 4500
20	475 to 5500
24	700 to 8000
30	1200 to 12000
36	1500 to 16000

(b) Determination of Accuracy. Meters shall be tested at the minimum test flow and at least two (2) test flows in the normal test flow limits, one (1) of which shall be not less than seventy-five percent (75%) of the rated maximum capacity of the meter and the other shall be at approximately twenty-five percent (25%) of the rated maximum capacity. No new meter shall be placed in service if it registers less than ninety-five percent (95%) of the water passed through it at the minimum test flow or over registers or under registers more than one and one-half percent (1-1/2%) in the normal test flow limits as set out in paragraph (a) above. No repaired or reconditioned meter shall be placed in service if it registers less than eighty percent (80%) of the water passed through it at the minimum test flow or over-registers or under-registers more than one and one-half percent (1-1/2%) in the normal test flow limits as set out in paragraph (a) above.

(3) As Found Tests. All meters tested in accordance with the rules for periodic, request or complaint tests, shall be tested in the condition as found in the customer's service prior to any alteration or adjustment in order to determine the average meter error. This test shall consist of two (2) rates of flow in the normal test flow range for that type of meter as set out in subsection 2(a) above and the average meter error shall be the algebraic average of the errors of the two tests. (For example, a meter testing one percent (1%) fast at one rate of flow and three percent (3%) slow at the other would have an average meter error of one percent (1%) slow.)

(4) Determination of Meter Error for Bill Adjustment Purposes. When upon periodic, request or complaint test, a meter is found to be in error in excess of the limits allowed by the commission's regulations, three (3) additional tests shall be made; one (1) at seventy-five percent (75%) of rated maximum capacity; one (1) at fifty percent (50%) of rated maximum capacity; one at twenty-five percent (25%) of the rated maximum capacity. The average meter error shall be the algebraic average of the errors of the three (3) tests.

Section 17. Periodic Tests. (1) Each utility shall test periodically all water meters so that no meter will remain in service without test for a period longer than specified in the following table:

Size of Meter Inches	Interval Between Tests Years
5/8	5
3/4	5
1	5
1 1/4	4
1 1/2	4
2	4
3	2
4 and larger	1

(2) "Periodic test periods" for testing meters in the systems of utilities supplying water of high turbidity, or of peculiar characteristics, will be determined by the commission from time to time.

(3) Meters of the current and compound type shall be cleaned at least once each year. When filtered or exceptionally clear water is delivered, the interval between cleaning may, upon application to the commission and upon receipt of authority therefor, be made longer.

(4) Whenever the number of meters of any type which register in error beyond the limits specified in this regulation is found by the commission to be excessive, then this type shall be tested with such additional frequency as the commission may direct.

WILLIAM A. LOGAN, Chairman

ADOPTED: October 22, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: November 13, 1974 at 4:10 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary, Public Service Commission, Capital Plaza Tower, Frankfort, Kentucky 40601.

CABINET FOR PUBLIC PROTECTION AND REGULATION
Public Service Commission
(807 KAR 3:010)

RELATES TO: KRS Chapters 338 and 278
PURSUANT TO: KRS 338.041(3), 278.280(2), 13.082
SUPERSEDES: PSC:OSH-1
NECESSITY AND FUNCTION: To establish regulations for the enforcement of occupational safety and health standards and to establish procedures to be followed by employers and employees subject to such regulations and standards. The following regulations apply to all utilities as defined in KRS 278.010 and their employees and work areas.

Section 1. Definitions. As used in these regulations:

(1) "Employer" shall mean any entity for whom a person is employed except those employers excluded in KRS 278.010.

(2) "Employee" shall mean any person employed except those employees excluded in KRS 278.010.

(3) The term "occupational safety and health standard" means a standard which requires conditions, or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment. "Standard" has the same meaning as, and includes, the words "regulation" and "rule."

(4) "Occupational safety and health hazard" means any practice or condition in a place of employment which may be deemed detrimental to the safety and health of employees.

(5) "Occupational injury or illness" means any abnormal condition or disorder of an employee caused by exposure to factors associated with this employment.

(6) "Board" means the Kentucky Occupational Safety and Health Standards Board established under KRS Chapter 338.

(7) "Review Commission" means the Kentucky Occupational Safety and Health Review Commission established under KRS Chapter 338.

(8) The term "national consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(9) The term "established federal standard" means any operative occupational safety and health standard established by any agency of the United States government.

(10) "Working days" means Monday through Friday but shall not include Saturdays, Sundays, or federal or state holidays. In computing fifteen (15) working days, the day of receipt of any notice shall not be included, and the last day of the fifteen (15) working days shall be included.

(11) "Compliance Safety and Health Officer" means a person authorized by the Chairman of the Public Service Commission to conduct inspections.

(12) The Chairman of the Public Service Commission means the Public Service Commission or any person designated by order of the commission to perform the functions set out herein.

(13) "Legal proceeding" includes any proceeding before a court of law, administrative board or commission, hearing officer, or other body conducting a legal or administrative proceeding.

(14) "Legal Counsel" means the Legal Counsel, Kentucky Public Service Commission.

Section 2. Scope of Regulations. 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 3. Posting of Notice. (1) The purpose and scope of 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 his own actions and conduct. The Public Service Commission, under contract with the Department of Labor, is authorized to conduct inspections and to issue citations and proposed penalties for alleged violations.

(2) Posting of Notice, Availability of Act, Regulations, and Applicable Standards.

(a) Each employer shall post and keep posted a notice or notices 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 Public Service Commission. 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 insure that such notices are not altered, defaced, or covered by other material that obscures the poster.

(b) Each employer shall insure that his employees have access to information on their exposure to toxic materials or harmful physical agents. Each employer shall insure 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 any 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.

(c) "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A meter shop, switchroom, pipeyard, garage, 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 Public Service Commission. Where employers are engaged in activities which are physically dispersed, such as 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 paragraph (a) of this section.

(d) Copies of KRS Chapter 338 are available at the Public Service Commission, all regulations filed pursuant thereto are available at the Legislative Research Commission, and all applicable standards will be available at the Public Service Commission. 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.

(e) 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.

Section 4. Authority for Inspection: Objection: Entry not a Waiver: Conduct of Inspection. (1) Authority for Inspection.

(a) Compliance safety and health officers of the Public Service Commission 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 places of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent for employee; and to review records required by KRS Chapter 338 and regulations published pursuant thereto, and other records which are directly related to the purpose of the inspection. Industrial hygienists of the Department of Labor may be authorized by the Chairman of the Public Service Commission to conduct inspections

relating to occupational health hazards.

(b) 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.

(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 Section 9, 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 therefor to the Chairman of the Public Service Commission. The Chairman of the Public Service Commission shall promptly take appropriate action including compulsory process, if necessary.

(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.

(4) Conduct of Inspections.

(a) Subject to the provisions herein, inspections shall take place at such times and in such places of employment as the Chairman of the Public Service Commission 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.

(b) 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.

(c) In taking photographs and samples, compliance safety and health officers shall take reasonable precautions to insure 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.

(d) The conduct of inspections shall be such as to preclude unreasonable disruption of the operations of the employer's establishment.

(e) 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.

(f) Inspections shall be conducted in accordance with the requirements of this section.

Section 5. Trade Secrets. (1) KRS 338.171 states that "all information obtained 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 Chairman of the Public Service Commission, Review Commission, or courts shall issue such orders as may be appropriate to protect the confidentiality of trade secrets."

(2) (a) At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the compliance safety and health officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints or photographs, and environmental samples, shall be labeled "confidential - trade secret" and shall not be disclosed except in accordance with the provisions of KRS 338.171.

(b) Upon the request of an employer, any authorized representative of employees under Section 9 in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is no such representative or employee, the compliance safety and health officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

(c) Whoever, being a compliance safety and health officer or employee of the Public Service Commission or any agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by KRS Chapter 338, or subsection (2)(a) of this section, any information coming to him in the course of his employment of official duties or by reason of any examination or investigation may by, or return report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or related to the trade secrets, processes, operations, style of work, or apparatus, shall be removed from office, or employment and shall be subject to all applicable civil and criminal sanctions.

Section 6. Advance Notice of Inspections. (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 Chairman of the Public Service Commission 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 Chairman of the Public Service Commission, 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 Chairman of the Public Service Commission 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 Section 9(2) as to the 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.

Section 7. Complaints by Employees.

(1) (a) 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 Chairman of the Public Service Commission. 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 Chairman of the Public Service Commission 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 Public Service Commission.

(b) If upon receipt of such notification the Chairman of the Public Service Commission determines that the complaint meets the requirements set forth in paragraph (a) of this subsection, 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.

(c) Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Chairman of the

Public Service Commission in writing of any violation of KRS Chapter 338 which they have reason to believe exists in such workplace. Any such notice shall comply with the requirements of paragraph (a) of this subsection.

(d) 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.

(e) If, after an inspection based on a complaint, the Director of Engineering 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 Chairman of the Public Service Commission and, at the same time, providing the employer with a copy of such statement by certified mail.

(f) 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."

(2) Inspection not Warranted; Informal Review.

(a) If the Chairman of the Public Service Commission 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 subsection (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 Chairman of the Public Service Commission 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 Chairman of the Public Service Commission and, at the same time, provide the complaining party with a copy of such statement by certified mail. Upon request of the complaining party or the employer, the Chairman of the Public Service Commission, 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 Chairman of the Public Service Commission 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 Chairman of the Public Service Commission shall be final and not subject to further review.

(b) If the Chairman of the Public Service Commission determines that an inspection is not warranted because the requirements of subsection (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 subsection (1).

Section 8. 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 338.131 and 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.

Section 9. Employer and Employee Representatives. (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 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 the provisions of Section 5. 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.

Section 10. Proposed Penalties. (1) After, or concurrent with, the issuance of a citation, and within a reasonable time after the termination of the inspection, the Chairman of the Public Service Commission 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 Chairman of the Public Service Commission in writing that he intends to contest the citation or the notification of proposed penalty before the Review Commission.

(2) The Chairman of the Public Service Commission 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 and health.

Section 11. Citations; Notice of De Minimis Violations. (1) Citations. The Chairman of the Public Service Commission shall review the inspection report of the compliance safety and health officer. If, on the basis of the report the Chairman of the Public Service Commission 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 expiration of six (6) months following the occurrence of any alleged violation.

(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.

(3) Citations Issued for Requested Inspections. If a citation or notice of de minimis violation is issued for a violation alleged in a request for inspection under Section 7(1)(a) or a notification of violation under Section 7(1)(c), 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.

(4) Informal Review of Inspection. After an inspection, if the Chairman of the Public Service Commission determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under Section 7(1)(a) or a notification of violation under Section 7(1)(c), the informal review procedures prescribed in Section 7(2) shall be applicable. After considering all views presented, the Chairman of the Public Service Commission shall either affirm his determination, order a reinspection, or

issue a citation if he believes that the inspection disclosed a violation. The Chairman of the Public Service Commission shall furnish the complaining party and the employer with written notification of his determination and the reasons therefor. The determination of the Chairman of the Public Service Commission shall be final and subject to review by the Review Board.

(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.

Section 12. 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 Section 3) 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 Section 3), the citation may be posted at the location from which the employees operate to carry out their activities. The employer shall take steps to insure 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.

Section 13. Informal Conferences. At the request of an affected employer, employee, or representative of employees, the Chairman of the Public Service Commission 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 Chairman or the Public Service Commission. 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 Chairman of the Public Service Commission. 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 (15) working day period for filing a notice of intention to contest as prescribed in Section 14.

Section 14. Contesting Procedure. (1) Any employer to whom a citation or notice of proposed penalty has been issued may under KRS Chapter 338 notify the Chairman of the Public Service Commission 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 Chairman of the Public Service Commission 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: (a) file a written notice with the Chairman of the Public Service Commission alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable; (b) file a written notice to the Chairman of the Public Service Commission 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 Chairman of the Public Service Commission 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 338.153 he may file an appeal to the Revenue Commission.

Section 15. Rules of Practice for Variance Under KRS 338.153. (1) General.

(a) 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 338.153.
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).

(b) 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 subsection (3) of this section. An applicant for relief and any affected employee shall be entitled to be named parties. The Public Service Commission, represented by the Chairman, 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.

(c) Petitions for Amendments to this Regulation. Any person may at any time petition the Chairman of the Public Service Commission in writing to revise, amend, or revoke any provisions of this section. The petition should set forth either the terms or the substance of rule desired, with a concise statement of the reasons therefor and the effects thereof.

(d) Effect of Variances. All variances granted pursuant to this regulation shall have only future effect. In his discretion, the Chairman of the Public Service Commission 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.

(e) Public Notice of a Granted Variance. Every final action granting a variance under this section 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.

(f) Form of Documents; Subscription; Copies.

1. No particular form is prescribed for applications and other papers which may be filed in proceedings under this section. 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. Clear carbon copies, or printed or processed copies are acceptable copies.
2. Each application or other paper which is filed in proceedings under this section shall be subscribed by the person filing the same or by his attorney or other authorized representative.

(2) Applications for Temporary Variances under KRS 338.153(2)(a).

(a) 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 subparagraph 1 of this paragraph with the Chairman of the Public Service Commission, Frankfort, Kentucky 40601.

1. An application filed pursuant to paragraph (a) of this subsection 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 Public Service Commission for a hearing.

2. 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 Chairman of the Public Service Commission may rule ex parte upon the application.

b. Notice of Denial of Application. If an application filed pursuant to subparagraph 2.a. of this paragraph 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.

(b) Applications for Permanent Variances Under KRS 338.153(1).

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 subparagraph 2. of this paragraph, with the Chairman of the Public Service Commission.

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, operation, 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 Chairman of the Public Service Commission 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 Chairman of the Public Service Commission may rule ex parte upon the application.

b. Notice of Denial of Application. If an application filed pursuant to subparagraph 3.a. of this paragraph 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.

(c) Modification, Revocation, and Renewal of Rules or Orders.

1. An affected employer or an affected employee may apply in writing to the Chairman of the Public Service Commission 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: (i) giving a copy thereof to their authorized representative; (ii) 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 (iii) other appropriate means designated by the commission;

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 Chairman of the Public Service Commission may on his own motion proceed to modify or revoke a rule or order issued under KRS 338.153. In such event, the Chairman of the Public Service Commission 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.

c. 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.

(d) Action on Applications.

1. Defective Applications.

a. If an application filed pursuant to this regulation does not conform to the applicable section, the Chairman of the Public Service Commission 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 paragraph shall be without prejudice to the filing of another application.

2. Adequate Applications.

a. If an application has not been denied pursuant to subparagraph 1. of this paragraph, the Chairman of the Public Service Commission 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.

(e) 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 Chairman of the Public Service Commission, 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 subparagraph 1. of this paragraph 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.

(f) Consolidation of Proceedings. The Chairman of the Public Service Commission 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 issue.

(3) Hearings.

(a) Notice of Hearing.

1. Service. Upon request for a hearing as provided in this regulation, or upon his own initiative, the Chairman of the Public Service Commission shall

serve, or cause to be served, a reasonable notice of hearing.

2. Contents. A notice of hearing served under paragraph (a) of this subsection 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 Chairman if the Chairman of the Public Service Commission is not going to conduct the hearing.

3. Referral to Hearing Examiner. A copy of a notice of hearing served pursuant to subparagraph 1. of this paragraph 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.

(b) 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.

(c) Hearing Examiners; Powers and Duties.

1. Powers. The Chairman of the Public Service Commission or a hearing examiner designated by the Chairman 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 Chairman of the Public Service Commission.

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 Chairman of the Public Service Commission a motion to disqualify and remove the hearing examiner, such motion to be supported by affidavits setting forth the alleged grounds for disqualification. The Chairman of the Public Service Commission 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 grounds for exclusion 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 any 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.

(d) Prehearing Conference.

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.

(e) Consent Findings and Rules or Orders.

1. General. At any time before the reception of evidence in any hearing, 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 Chairman of the Public Service Commission; 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.

(f) 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 by 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 question and answers as were noted at the time of taking the deposition and would be valid where 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. 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.

(g) Hearings.

1. Order of Proceeding. Except as may be ordered otherwise by the presiding hearing examiner, 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 such 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 hearing 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 Public Service Commission 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.

(h) 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 examiners 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 paragraph (i) of this subsection. The decision of the hearing examiner shall include (i) a statement of findings and conclusion, 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.

(i) 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.

(j) Transmission of Record. If exceptions are filed, the hearing examiner shall transmit the record of the proceeding to the Chairman of the Public Service Commission for review. The record shall include: the application, any request for hearing thereof, 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.

(k) Decision of the Chairman of the Public Service Commission. If exceptions to a decision of hearing examiner are taken pursuant to paragraph (i) of this subsection, the Chairman of the Public Service Commission 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.

(4) Summary Decisions.

(a) Motion for Summary Decision.

1. Any party may, at least twenty (20) days before the date fixed for any hearing under subsection (3) of this section, 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 hearing examiner may in his discretion, set the matter for argument and call for the submission of briefs.

2. The filing of any documents under subparagraph 1. of this section shall be with the hearing examiner, and copies of any such documents shall be served in accordance with paragraph (c) of subsection (3) of this section.

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 his 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 Chairman of the Public Service Commission 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 Chairman of the Public Service Commission shall so order.

(b) 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 Chairman of the Public Service Commission, 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 paragraph shall include a state of (i) findings and conclusions, and the reasons or bases therefore, on all issues presented; and (ii) the terms and conditions of the rule or order made.

c. A copy of an initial decision and a final decision under this paragraph 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 Subsection (3) of this section.

(5) Effect of Initial Decisions.

(a) Effect of Appeal of a Hearing Examiner's Decision. A hearing examiner's decision under this subsection shall not be operative pending a decision on appeal by the Chairman of the Public Service Commission.

(b) Finality for Purposes of Judicial Review. Only a decision by the Chairman of the Public Service Commission shall be deemed final agency action for purposes of judicial review.

Section 16. Report and Recording of Occupational Injuries and Diseases. (1) Purpose and Scope. This section implements KRS 338.161. This section provides for recordkeeping and reporting by employers covered under the act as necessary or appropriate for enforcement of the act, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics.

(2) Log of Occupational Injuries and Illnesses.

(a) Each employer shall maintain in each establishment a log of all recordable occupational injuries and illnesses for that establishment, except that under the circumstances described in paragraph (b) of this subsection an employer may maintain the log of occupational injuries and illnesses at a place other than the establishment. Each employer shall enter each recordable occupational injury and illness on the log as early as practicable but not later than six (6) working days after receiving information that a recordable case has occurred. For this purpose, Occupational Safety and Health Administration OSHA Form No. 100 or any private equivalent may be used. OSHA Form No. 100 or its equivalent shall be completed in the detail provided in the form and the instruction contained in OSHA Form No. 100. If an equivalent to OSHA Form No. 100 is used, such as a printout from data-processing equipment, the information shall be as readable and comprehensible to a person not familiar with the data-processing equipment as the OSHA Form 100 itself.

(b) Any employer may maintain the log of occupational injuries and illnesses at a place other than the establishment or by means of data-processing equipment, or both, under the following circumstances:

1. There is available at the place where the log is maintained sufficient information to complete the log to a date within six (6) working days after receiving information that a recordable case has occurred, as required by paragraph (a) of this subsection.
2. At each of the employer's establishments, there is available a copy of the log which reflects separately the injury and illness experience of that establishment complete and current to a date within forty-five (45) calendar days.

(3) Period Covered. Logs shall be established on a calendar year basis. The initial log shall include recordable occupational injuries and illnesses occurring on or after January 1, 1973.

(4) Supplementary Record. In addition to the log of occupational injuries and illnesses provided for under subsection (2) each employer shall have available for inspection at each establishment within six (6) working days after receiving information that a recordable case has occurred, a supplementary record for each occupational injury or illness for that establishment. The record shall be completed in the detail prescribed in the instructions accompanying Occupational Safety and Health Administration Form OSHA No. 101. The workmen's compensation form SP-1 is an acceptable alternative record for those employers covered by the Workmen's Compensation Act.

(5) Annual Summary.

(a) Each employer shall compile an annual summary of occupational injuries and illnesses for each establishment. Each annual summary shall be based on the information contained in the log of occupational injuries and illnesses for the particular establishment. Form OSHA No. 102 shall be used for this purpose, and shall be completed in the form and detail as provided in the instructions contained therein.

(b) The summary shall be completed no later than one (1) month after the close of each calendar year.

(c) Each employer, or the officer or employee of the employer who supervises the preparation of the annual summary of occupational injuries and illnesses, shall certify that the annual summary of occupational injuries and illnesses is true and complete. The certification shall be accomplished by affixing the signature of the employer, or the officer or employee of the employer who supervises the preparation of the annual summary of occupational injuries and illnesses, to the lower right hand corner of the annual summary or by appending a separate statement to the annual summary certifying that the annual summary is true and complete.

1. Each employer shall post a copy of the establishment's summary in each establishment in the same manner that notices are required to be posted under Section 3. The summary covering the previous calendar year shall be posted no later than February 1, and shall remain in place until March 1. For employees who do not primarily report or work at a single establishment, or who do not report to any fixed establishment on a regular basis, employers shall satisfy this posting requirement by presenting or mailing a copy of the summary during the month of February of the following year to each such employee who receives pay during that month. for multi-establishment employers where operations have closed down in some establishments during the calendar year, it will not be necessary to post summaries for those establishments.
2. A failure to post a copy of the establishment's annual summary may result in the issuance of citations and assessment of penalties pursuant to KRS 338.991.

(6) Retention of Records. Records provided for in subsections (2), (4) and (5) shall be retained in each establishment for five (5) years following the end of the year to which they relate.

(7) Access to Records. Records provided for in Subsections (2), (4) and (5) shall be available for inspection and copying by compliance safety and health officers during any occupational safety and health inspection provided for under KRS 338.101.

(8) Reporting of Fatality or Multiple Hospitalization Accidents. Within forty-eight (48) hours after the occurrence of an employment accident which is fatal to one (1) or more employees or which results in hospitalization of five (5) or more employees, the employer of any employees so injured or killed shall report the accident either orally or in writing to the Chairman of the Public Service Commission. The reporting may be by telephone or telegraph. The report shall relate the circumstances of the accident, the number of fatalities, and the extent of any injuries. The chairman may require such additional reports, in writing or otherwise, as he deems necessary, concerning the accident.

(9) Falsification, or Failure to Keep Records or Reports.

(a) KRS 338.991(8) provides that "Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this Act shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment, for not more than six (6) months or both."

(b) Failure to maintain records or file reports required by this section, or in the details required by forms and instructions issued under this section, may result in the issuance of citations and assessment of penalties as provided for in KRS 338.991.

(10) Change of Ownership. Where an establishment has changed ownership, the employer shall be responsible for maintaining records and filing reports only for that period of the year during which he owned such establishment. However, in the case of any change in ownership, the employer shall preserve those records, if any, of the prior ownership which are required to be kept under this section. These records shall be retained at each establishment to which they relate, for the period, or remainder thereof, required under Subsection (6).

(11) Definitions.

(a) "Act" means the Kentucky Occupational Safety and Health Act of 1972 (KRS Chapter 338).

(b) "Recordable occupational injuries or illnesses" are any occupational injuries or illnesses which result in:

1. Fatalities, regardless of the time between the injury and death, or the length of the illness; or
2. Lost workday cases, other than fatalities, that result in lost workdays; or
3. Nonfatal cases without lost workdays which result in transfer to another job or termination of employment, or require medical treatment (other than first aid) or involve loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost workday cases.

(c) "Medical treatment" includes treatment administered by a physician or by registered professional personnel under the standard orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or registered professional personnel.

(d) "First Aid" is any one-time treatment, and any followup visit for the purpose of observation, of minor scratches, cuts, burns, splinters, and so forth, which do not ordinarily require medical care. Such one-time treatment, and any followup visits for the purpose of observation, is considered first aid even though provided by a physician or registered professional personnel.

(e) "Lost workdays": The number of days (consecutive or not) after, but not including, the day of injury or illness during which the employee would have worked but could not do so; that is, could not perform all or any part of his normal assignment during all or any part of the workday or shift, because of occupational injury or illness.

(12) Petitions for Recordkeeping Exceptions.

(a) Petitions for recordkeeping exceptions shall be filed in accordance with the provisions of 29 CFR Part 1904.13.

(b) Any employer filing a petition for recordkeeping exceptions in accordance with 29 CFR Part 1904.13 shall notify the Chairman of the Public Service Commission that he is making such application and the results thereof.

(c) Exceptions granted by 29 CFR Part 1904.13 shall be recognized by the Chairman of the Public Service Commission.

(13) Employees not in Fixed Establishments. Employers of employees engaged in physically dispersed operations such as occur in construction, installation, repair or service activities who do not report to any fixed establishment on a regular basis but are subject to common supervision may satisfy the

provision of Subsections (2), (4) and (6) of this section with respect to such employees by:

(a) Maintaining the required records for each operation or group of operations which is subject to common supervision (field superintendent, field supervisor, etc.) in an established central place;

(b) Having the address and telephone number of the central place available at each worksite; and

(c) Having personnel available at the central place during normal business hours to provide information from the records maintained there by telephone and by mail.

(14) Duties of Employer. Upon receipt of an Occupational Injuries and Illnesses Survey Form, OSHA No. 103, the employer shall promptly complete the form in accordance with the instructions contained therein, and return it in accordance with the aforesaid instruction.

Section 17. Public Service Commission Witnesses and Documents in Private. (1) Purpose.

(a) This section prescribes the policies and procedures of the Public Service Commission with respect to testimony of its employees as witnesses in legal proceedings in which the Public Service Commission is involved, and the production of department records pursuant to subpoena.

(b) This regulation does not apply to any legal proceeding in which an employee is to testify while in leave status, as to facts or events that are in no way related to the duties he performs or to the functions of the Public Service Commission.

(2) Subpoenas.

(a) Whenever an employee of the Commission is served with a subpoena or is requested to testify, he shall immediately report the service or request to the Chairman of the Public Service Commission. The Chairman of the Public Service Commission and the legal counsel shall then determine whether and to what extent the employee is required to comply and shall in appropriate cases arrange for legal representation for the employee.

(b) Whenever an employee's compliance with a subpoena would have an undue adverse effect upon the performance of official duties, the Chairman of the Public Service Commission and the legal counsel shall request the issuing body to authorize testimony by deposition, when appropriate, rather than requiring the employee's physical presence at the trial, hearing, or otherwise.

(3) General Consideration. In balancing under subsection (3)(b) the particular needs of any requesting person with those of the commission, the Chairman of the Public Service Commission or his representative shall give consideration to the following policies of the commission as they may be pertinent:

(a) To conserve the time of employees for conducting official business.

(b) To minimize the possibility of involving the commission in controversial issues that are not related to its mission.

(c) To prevent the possibility that the public will misconstrue variances between the personal opinions of employees and commission policy.

(d) To avoid spending the time and money of the Commonwealth of Kentucky for private purposes.

(4) Factual Testimony.

(a) An employee of the commission who has been subpoenaed in a legal proceeding and who is required to comply with the subpoena, shall testify only as to facts within his personal knowledge.

(b) In the event the testimony of an employee of the commission may concern a particular inspection, the legal counsel shall notify the employer inspected as to the time and place such testimony shall be given.

(c) Whenever a demand is made upon an employee for testimony as to any privileged or confidential information contained in files of the commission (i.e., trade secrets), the employee shall respectfully decline to comply with the demand.

(5) Expert or Opinion Testimony. If, while testifying in a legal proceeding, an employee of the commission is asked for expert or opinion testimony, he shall decline to do so on the grounds that he is forbidden to do so by this section which, among other things, is intended to prevent the possibility that the public may misconstrue any possible variances existing between the opinion of the witness and commission policy. If he is then ordered to do so by the body conducting the proceeding to testify, he shall do so.

(6) Disclosure of Records.

(a) Records of the commission are available for public inspection and copying.

(b) If an employee of the commission receives a subpoena or request to produce records in court or before any other body, he shall refer it to the Chairman of the Public Service Commission. If the subpoena or request specifies public records, counsel shall advise that the subpoena or request be honored. The person seeking them shall comply with any appropriate fee schedules.

(c) If an employee of the commission is served with a subpoena calling for records not available for public disclosure, the Chairman of the Public Service Commission shall attempt to have the subpoena withdrawn, quashed, or modified. If this cannot be done, the employee shall appear at the time and place specified in the subpoena, accompanied by a commission attorney and explain to the authority conducting the proceeding that a statute or regulation prohibits him from producing the record.

(d) If an employee who follows the procedure in paragraph (c) of this subsection is ordered to show cause why he should not be cited for contempt of court, he shall be represented by a commission attorney.

Section 18. 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 Chairman of the Public Service Commission.

(2) Within sixty (60) days after receipt of such complaint, the Chairman of the Public Service Commission shall make any necessary investigation, and shall take all appropriate action resulting therefrom.

WILLIAM A. LOGAN, Chairman
ADOPTED: October 22, 1974
APPROVED: ELIJAH M. HOGGE, Secretary
RECEIVED BY LRC: November 13, 1974 at 4:09 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 50:010)

RELATES TO: KRS 217C.010 to 217C.990
PURSUANT TO: KRS 13.082, 194.050, 211.090(1)(c)
NECESSITY AND FUNCTION: The Department for Human Resources is directed by KRS Chapter 217C to regulate the production, transportation, processing, handling, sampling, examination, grading, labeling, standards of identity, sale and such other matters relating to milk and milk products as may be necessary to protect the public health. This regulation defines terms applicable to all milk and milk product regulations adopted by the Department for Human Resources.

Section 1. Definitions for Milk and Milk Products Regulations. As used in all regulations of the Department for Human Resources relating to milk and milk products the following definitions shall apply unless specifically indicated otherwise:

(1) "Adulterated milk and milk products" means any milk or milk product adulterated as provided by KRS 217.025.

(2) "Butter" means the food product usually known as butter, and which is made exclusively from milk or cream, or both, with or without common salt, and with or without additional coloring matter, and containing not less than eighty percent (80%) by weight of milk fat, all tolerances having been allowed for; provided the labeling of butter shall not be deemed misbranded if it does not bear a statement relating to artificial coloring.

(3) "Buttermilk" means a fluid product resulting from the churning of butter from milk or cream. It contains not less than eight and one-fourth percent (8 1/4%) of milk solids-not-fat.

(4) "C-I-P" or "Cleaned-in-place" means the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned-in-place by circulation.

(5) "Culinary steam" means steam used in contact with milk or milk products which is produced according to "Recommended Practices for Producing Culinary Steam for Processing Milk and Milk Products", National Association of Dairy Equipment Manufacturers, 1012 14th Street, N.W., Washington, D.C., 20036.

(6) "Cultured buttermilk" means a fluid product resulting from the souring by lactic acid producing bacteria or similar culture of pasteurized skim milk, lowfat milk or milk.

(7) "Cultured milk and cultured milk products" means cultured milk products including yogurt resulting from the souring by lactic acid producing bacteria or similar culture of pasteurized milk or milk products and conforms to fat requirements for milk, lowfat milk and skim milk.

(8) "Dairy farm" means a place where one or more milking cows or goats are kept, a part or all of the milk produced thereon being delivered, sold, or offered for sale to a plant.

(9) "Dairy plant", "receiving station" or "company" means any place, premises or establishment where milk or dairy products are received, collected, handled for processing or manufacturing or prepared for distribution.

(10) "Department" means the Department for Human Resources.

(11) "Eggnog" means a milk product consisting of a mixture of milk or milk product of at least six percent (6%) milkfat, at least one percent (1%) egg yolk solids, sweetener and flavoring. Emulsifier and not over five tenths percent (.5%) stabilizer may be added.

(12) "Fieldman" means a person employed by a milk company who is qualified and trained in sanitary methods of production and handling of milk and who performs dairy farm quality control work. (A "fieldman" is not considered an agent of the department.)

(13) "Goat milk" means the lacteal secretion, practically free from colostrum, obtained by the complete milking of healthy goats.

(14) "Grade A milk and milk products" means milk and milk products produced, processed, transported and distributed in

accordance with the department's Grade A milk regulations. It includes but is not limited to the following:

(a) Acidified sour cream;
(b) Acidified sour half and half;
(c) Buttermilk;
(d) Chocolate milk;
(e) Chocolate lowfat milk;
(f) Chocolate skim milk;
(g) Concentrated milk;
(h) Cottage cheese, lowfat cottage cheese, cottage cheese dry curd;
(i) Cultured buttermilk;
(j) Cultured milk and cultured milk products;
(k) Cream;
(l) Eggnog;
(m) Half and half;
(n) Heavy cream;
(o) Light cream;
(p) Light whipping cream;
(q) Lowfat milk;
(r) Milk;
(s) Skim milk;
(t) Sour cream;
(u) Sour half and half and any other Grade A milk or milk product as may be designated by the department.

(15) "Grade A dry milk products" means milk products which have been produced for use in Grade A pasteurized milk products and which have been manufactured under the provisions of the "Grade A Condensed and Dry Milk Products — Recommended Sanitation Ordinance and Code for Dry Milk Products used in Grade A Pasteurized Milk Products."

(16) "Handler," "distributor" or "retailer" means any association, organization, person or other group that offers for sale, sells or otherwise handles milk or milk products.

(17) "Inspector" means an employee of the department who is qualified, trained, and authorized to perform dairy farm or plant inspections, or both, to grade raw milk, to evaluate quality control programs of milk, plants and carry out the enforcement procedures of the department's regulations relating to milk and milk products.

(18) "Manufacturing milk and milk products" means milk and milk products produced, processed, transported and distributed in accordance with the department's manufacturing milk regulations. It includes but is not limited to the following:

(a) Butter;
(b) Cheeses, processed cheeses, cheese foods, cheese spreads and related foods;
(c) Evaporated milk;
(d) Frozen desserts;
(e) Sweetened condensed milk and any other manufactured milk or milk product as may be designated by the department.

(19) "Mechanical cleaning" or "mechanically cleaned" means cleaning, solely by circulation or flowing chemical detergent solutions and water rinses onto and over the surface to be cleaned by mechanical means.

(20) "Milk grader" means a person who is qualified for the grading of raw milk in accordance with quality standards and procedures. (For the purpose of grading and sampling milk, a "milk grader" may be considered a duly authorized agent of the department.)

(21) "Milk hauler" means any person who transports milk or raw milk products to or from a milk plant, receiving station or transfer station. (For the purpose of collecting official samples of raw milk, a "milk hauler" may be considered a duly authorized agent of the department.)

(22) "Milk producer" means any person who operates a dairy farm and provides, offers for sale or sells raw milk to a milk plant, receiving station, transfer station or handler.

(23) "Misbranded milk and milk products" means any milk or milk product misbranded as provided by KRS 217.035.

(24) "Official laboratory" means a biological, chemical, or physical laboratory which is under the direct supervision of the department.

(25) "Official methods" means the current edition of the "Official Methods of Analysis of the Association of Official Analytical Chemists", a publication of the Association of Official Analytical Chemists, Box 540, Benjamin Franklin Station, Washington, D.C., 20044.

(26) "Officially designated laboratory" means a designated milk industry laboratory authorized by the department to do official work on producer samples, for tests required by the department's regulations or a commercial laboratory officially designated by the department for the examination of producer samples or finished products.

(27) "Open date" means the date which shall be affixed on a consumer package or container of Grade A pasteurized milk or milk products subsequent to the date of manufacturing, processing or packaging and which represents the period of time that the product will remain unspoiled and acceptable for consumption when transported, handled and stored under approved conditions.

(28) "Pasteurization or pasteurized" means that every particle of such product shall have been heated in properly operated equipment, approved by the department, to one of the temperatures specified in the table of this subsection, and held continuously at or above that temperature for the specified time (or other time/temperature relationship which has been demonstrated to be equivalent thereto in microbial destruction).

(a) Milk and milk products (including cheese whey):

Temperature	Time
145°F*	30 minutes
161°F*	15 seconds
191°F	1 second
204°F	0.05 second
212°F	0.01 second

*If the dairy ingredient has a fat content of 10 percent or more, or if it contains added sweeteners, the specified temperature shall be increased by 5°F.

(b) Cream for buttermaking:

Temperature	Time
165°F*	30 minutes
180°F*	15 seconds

*If plastic or frozen cream is used for buttermaking, the specified temperature shall be increased by 5°F.

(c) Frozen desserts:

Temperature	Time
155°F	30 minutes
175°F	25 seconds

(29) "Permit" means permission given by the department to produce, buy, transport, process, store, distribute or sell any milk or milk products or to collect official samples thereof.

(30) "Person" means any individual, plant, operator, partnership, corporation, company, firm, trustee, or association.

(31) "Reconstituted or recombined milk and milk products" means milk or milk products which results from the recombining of milk constituents with potable water.

(32) "Sanitizing or bactericidal treatment" means the application of an effective sanitizing agent to a clean surface for the destruction of pathogens and other organisms as far as is practicable. The sanitizing agents used shall comply with the Federal Food, Drug and Cosmetic Act and the regulations of the department.

(33) "Standard methods" means the current edition of the "Standard Methods for the Examination of Dairy Products", a publication of the American Public Health Association, 1015 Eighteenth Street, N.W., Washington, D.C., 20036.

(34) "Sterilization or sterilized" means the complete in-container method of heating the container and contents at a minimum of 212°F for sufficient time and vacuum to give complete destruction to all living organisms.

(35) "3-A sanitary standards and accepted practices" means the standards and practices for dairy equipment formulated by the 3-A sanitary standards committees representing the International Association of Milk, Food and Environmental Sanitarians, the U.S. Public Health Service and the Dairy Industry Committee, published by the International Association of Milk, Food and Environmental Sanitarians, 413 Kellogg Avenue, Ames, Iowa, 50010.

(36) "Transfer station" means any place, premises or establishment where milk or milk products are transferred directly from one transport tank to another.

(37) "Ultra-pasteurized" means that such product shall have been thermally processed at or above 280°F for at least two (2) seconds, either before or after packaging, so as to produce a product which has an extended shelf life under refrigerated conditions.

(38) "Unsafe food additives" means any food additive prohibited by KRS 217.045.

L. W. TRUE, Secretary

ADOPTED: November 18, 1974
RECEIVED BY LRC: November 19, 1974 at 4:36 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Secretary, Department for Human Resources, Capitol Annex Building, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
(902 KAR 50:020)

RELATES TO: KRS 217C.010 to 217C.990
PURSUANT TO: KRS 13.082, 194.050, 211.090(1)(c)
SUPERSEDES: MMP-5.

NECESSITY AND FUNCTION: The Department for Human Resources is directed by KRS Chapter 217C to regulate the production, transportation, processing, handling, sampling, examination, grading, sale and such other matters relating to Grade A milk and milk products as may be necessary to protect the public health. This regulation establishes uniform permit requirements and sanitary standards for Grade A milk producers, processors and handlers.

Section 1. Permits Required for Producers, Processors and Handlers of Grade A Milk. No person shall bring into, or receive into this state for sale, or offer for sale, or have in storage any Grade A milk or milk product, who does not possess an appropriate permit from the department; provided, that grocery stores, restaurants, soda fountains, or similar estab-

lishments where milk or milk products are served, or sold at retail, but not processed are exempt from this permit requirement but shall comply with applicable requirements of this regulation. Persons selling milk or milk products under private label shall be considered a distributor and shall obtain a permit as required herein. Only a person who complies with the requirements of this regulation shall be entitled to such a permit. Permits shall not be transferable with respect to persons or locations.

Section 2. Inspection of Dairy Farms and Milk Plants, Receiving Stations, and Transfer Stations. (1) Each dairy farm, milk plant, receiving station and transfer station within this state shall be inspected by the department or local health department having jurisdiction prior to the issuance of a permit. Following the issuance of a permit, each dairy farm and transfer station shall be inspected at least once every six (6) months and each milk plant and receiving station shall be inspected at least once every three (3) months. Should the violation of any requirement set forth in Sections 5 or 6 be found to exist, a second inspection shall be required after the time deemed necessary to remedy the violation, but not before three (3) days. The reinspection shall be used to determine compliance with the requirements of Sections 5 or 6. Any violation of the same requirement of Sections 5 or 6 on such reinspection shall call for permit suspension in accordance with Section 14. One (1) copy of the inspection report shall be handed to the operator, or other responsible person or be posted in a conspicuous place on an inside wall of the establishment. The inspection report shall not be defaced and shall be made available to the department or local health department having jurisdiction upon request. An identical copy of the inspection report shall be filed with the records of the department or local health department having jurisdiction.

(2) Every milk producer, hauler, distributor, or plant operator shall, upon request of the department or local health department having jurisdiction, permit, access of officially designated persons to all parts of this establishment or facilities to determine compliance with the provisions of this regulation. A distributor or plant operator shall furnish the department or local health department having jurisdiction, upon request, for official use only, a true statement of the actual quantities of milk and milk products of each grade purchased and sold, and a list of all sources of such milk and milk products, records of inspections, tests and pasteurization time and temperature records.

(3) No person in an official capacity shall obtain any information under the provisions of this regulation which is entitled to protection as a trade secret and use such information for personal advantage or reveal it to any unauthorized person.

Section 3. Examination and Analysis of Milk and Milk Products. (1) During any consecutive six (6) months, at least four (4) samples of raw milk for pasteurization shall be taken from each producer and four (4) samples of raw milk for pasteurization shall be taken from each milk plant after receipt of the milk by the milk plant and prior to pasteurization. In addition, during any consecutive six (6) months, at least four (4) samples of each milk product shall be taken from every milk plant. Samples of milk and milk products shall be taken while in possession of the producer or distributor at any time prior to final delivery. Samples of milk and milk products from dairy retail stores, food service establishments, grocery stores, and other places where milk and milk products are sold shall be examined periodically as determined by the department or local health department having jurisdiction. Proprietors of such establishments shall furnish the department or local health department having jurisdiction, upon his request, with the names of all distributors from whom milk or milk products are obtained.

(2) Required bacterial counts, somatic cell counts and cooling temperature checks shall be performed on raw milk for pasteurization. In addition, antibiotic tests on each producer's milk or on commingled raw milk shall be conducted at least four (4) times during any consecutive six (6) months. When commingled milk is tested, all producers shall be represented in the sample. All individual sources of milk shall be tested when test results on the commingled milk are positive. Required bacterial counts, coliform determinations, phosphatase and cooling temperature checks shall be performed on pasteurized milk and milk products.

(3) Whenever two (2) of the last four (4) consecutive bacteria counts, confirmatory somatic cell counts, coliform determinations, or cooling temperatures, taken on separate days, exceed the limit of the standard for the milk or milk product, the department or local health department having jurisdiction shall send a written notice thereof to the person concerned. This notice shall be in effect so long as two (2) of the last four (4) consecutive samples exceed the limit of the standard. An additional sample shall be taken within fourteen (14) days of the sending of such notice, but not before the lapse of three days. Immediate suspension of permit in accordance with Section 14 shall be instituted whenever the standard is violated by three (3) of the last five (5) bacteria counts, confirmatory somatic cell counts, coliform determinations, or cooling temperatures.

(4) Whenever a phosphatase test is positive, the cause shall be determined. Where the cause is improper pasteurization, it shall be corrected, and any milk or milk product involved shall not be offered for sale.

(5) Samples shall be analyzed at an official or appropriate officially designated laboratory. All sampling procedures and required laboratory examinations shall be in substantial compliance with the current edition of "Standard Methods for the Examination of Dairy Products" of the American Public Health Association, and the current edition of "Official Methods of Analysis of the Association of Official Agricultural Chemists:" Such procedures and examinations shall be evaluated in accordance with the methods of evaluating milk laboratories recommended by the United States Public Health Service. Examinations and tests shall be conducted to detect adulterants, including pesticides, as the department or local health department having jurisdiction shall require. Assays of milk or milk products for vitamin addition shall be made at the direction of the department in a laboratory acceptable to the department or local health department having jurisdiction.

Section 4. (1) Chemical, Bacteriological and Temperature Standards for Grade A Milk and Milk Products. All Grade A raw milk for pasteurization and all Grade A pasteurized milk and milk products shall be produced, processed, and pasteurized to conform with the following chemical, bacteriological and temperature standards and sanitation requirements of this regulation and where applicable the administrative procedures of the 1965 "Pasteurized Milk Ordinance" recommended by the U. S. Public Health Service. No process or manipulation other than pasteurization, processing methods integral therewith, and appropriate refrigeration shall be applied to milk and milk products for the purpose of removing or deactivating microorganisms. "3-A" Sanitary Standards for equipment are required if available and applicable.

(2) Standards:

(a) Grade A raw milk for pasteurization: Temperature; Cooled to 50°F. or less and maintained thereat until processed. Bacterial Limits; Individual producer milk not to exceed 100,000 per ml. prior to commingling with other producer milk. Not exceeding 300,000 per ml. as commingled milk prior to pasteurization. Antibiotics; No detectible antibiotic residue. Somatic Cells; Not exceeding 1,500,000 per ml.

(b) Grade A pasteurized milk and milk products (except cultured products): Temperature; Cooled to 45°F. or less and maintained thereat. Bacterial limits; Milk and milk products – 20,000 per ml. Coliform Limit; Not exceeding 10 per ml. Phosphatase; Less than lug per ml., by Scharer Rapid Method (or equivalent by other means).

(c) Grade A pasteurized cultured products: Temperature; Same as subsection (b). Coliform Limit; Same as subsection (b). Phosphatase; Same as subsection (b). Bacterial Limits; Exempt.

Section 5. Sanitation Requirements for Grade A Raw Milk for Pasteurization. (1) Abnormal Milk. Cows which show evidence of the secretion of abnormal milk in one (1) or more quarters based upon bacteriological, chemical, or physical examination, shall be milked last or with separate equipment, and the milk shall be discarded. Cows treated with, or cows which have consumed chemical, medicinal or radioactive agents which are capable of being secreted in the milk or which, in the judgment of the department or local health department having jurisdiction, may be deleterious to human health, shall be milked last or with separate equipment, and the milk disposed of as the department or local health department having jurisdiction, may direct.

(2) Milking Barn, Stable or Parlor; Construction. A milking barn, stable or parlor shall be provided on all dairy farms in which the milking herd shall be housed during milking time operations. The areas used for milking purposes shall have floors constructed of concrete or equally impervious material; have walls and ceilings which are smooth, painted or finished in an approved manner, in good repair, ceiling dust tight; have separate stalls or pens for horses, calves and bulls; be provided with natural or artificial light, well distributed for day or night milking; provide sufficient airspace and air circulation to prevent condensation and excessive odors; not be overcrowded; and have dust tight covered boxes or bins, or separate storage facilities for ground, chopped or concentrated feed.

(3) Milking Barn, Stable or Parlor; Cleanliness. The interior shall be kept clean. Floors, walls, windows, pipelines and equipment shall be free of filth and litter and shall be kept clean. Swine and fowl shall be kept out of the milking barn.

(4) Cowyard. The cowyard shall be graded and drained and shall have no standing pools of water or accumulations of organic wastes; provided, that in loafing or cattle-housing areas, cow droppings and soiled bedding shall be removed, or clean bedding added, at sufficiently frequent intervals to prevent the soiling of the cow's udder and flanks. Waste feed shall not be allowed to accumulate. Manure packs shall be properly drained and shall provide a reasonably firm footing. Swine shall be kept out of the cowyard.

(5) Milkhouse or Room; Construction and Facilities:

(a) A milkhouse or room of sufficient size shall be provided, in which the cooling, handling and storing of milk and the washing, sanitizing, and storing of milk containers and utensils shall be conducted.

(b) The milkhouse shall be provided with a smooth floor constructed of concrete or equally impervious material graded to drain and maintained in good repair. Liquid waste shall be disposed of in a sanitary manner; all floor drains shall be accessible and shall be trapped if connected to a sanitary sewer system.

(c) The walls and ceilings shall be constructed of

smooth material, in good repair, well painted, or finished in an equally suitable manner.

(d) The milkhouse shall have adequate natural or artificial light and be well ventilated.

(e) The milkhouse shall be used for no other purpose than milkhouse operations; there shall be no direct opening into any barn, stable or into a room used for domestic purposes; provided, that a direct opening between the milkhouse and milking barn, stable or parlor is permitted when a tight-fitting self-closing solid door(s) hinged to be single or double acting is provided.

(f) Water under pressure shall be piped into the milkhouse.

(g) The milkhouse shall be equipped with a two-compartment wash vat and adequate hot water heating facilities.

(h) When a transportation tank is used for the cooling and storage of milk on the dairy farm, such tank shall be provided with a suitable shelter for the receipt of milk. Such shelter shall be adjacent to, but not a part of, the milkroom and shall comply with the requirements of the milkroom with respect to construction, light, drainage, insect and rodent control and general maintenance.

(6) Milkhouse or Room; Cleanliness. The floors, walls, ceilings, windows, tables, shelves, cabinets, wash vats, non-product contact surfaces of milk containers, utensils and equipment and other milkroom equipment shall be clean. Only articles directly related to milkroom activites shall be permitted in the milkroom. The milkroom shall be free of trash, animals and fowl.

(7) Toilet. Every dairy farm shall be provided with one (1) or more toilets, conveniently located and properly constructed, operated and maintained in a sanitary manner. The waste shall be inaccessible to flies and shall not pollute the soil surface or contaminate any water supply.

(8) Water Supply. Water for milkhouse and milking operations shall be from a supply properly located, protected and operated, and shall be easily accessible, adequate and of a safe, sanitary quality.

(9) Utensils and Equipment; Construction. All multi-use containers, equipment and utensils used in the handling, storage or transportation of milk shall be made of smooth, nonabsorbent, corrosion-resistant, nontoxic materials, and shall be so constructed as to be easily cleaned. All containers, utensils and equipment shall be in good repair. All milk pails used for hand milking and stripping shall be seamless and of the hooded type. Multiple-use woven material shall not be used for straining milk. All single-service articles shall have been manufactured, packaged, transported, stored and handled in a sanitary manner and shall comply with the applicable requirements of Section 6(11). Single-service articles shall not be reused. Farm holding or cooling tanks, welded sanitary piping and transportation tanks shall comply with the applicable requirements of Section 6(10) and (11). All equipment shall meet "3-A Sanitary Standards" if available and applicable.

(10) Utensils and Equipment; Cleaning. The product-contact surfaces of all multi-use containers, equipment and utensils used in the handling, storage or transportation of milk shall be cleaned after each usage.

(11) Utensils and Equipment; Sanitization. The product-contact surfaces of all multi-use containers, equipment and utensils used in the handling, storage or transportation of milk shall be sanitized before each usage.

(12) Utensils and Equipment; Storage. All containers, utensils, and equipment used in the handling, storage or transportation of milk, unless stored in sanitizing solutions, shall be stored to assure complete drainage, and shall be protected from contamination prior to use.

(13) Utensils and Equipment; Handling. After sanitization, all containers, utensils and equipment shall be handled in such manner as to prevent contamination of any product-contact surface.

(14) Milking; Flanks, Udders and Teats. Milking shall be done in the milking barn, stable, or parlor. The flanks, udders, bellies and tails of all milking cows shall be free from visible dirt. All brushing shall be completed prior to milking. The udders and teats of all milking cows shall be cleaned and treated with a sanitizing solution just prior to the time of milking, and shall be relatively dry before milking. Wet hand milking is prohibited.

(15) Milking; Surcingles, Milk Stools and Antikickers. Surcingles, milk stools and antikickers shall be kept clean and stored above the floor.

(16) Milking; Transfer and Protection of Milk. Each pail or container of milk shall be transferred immediately from the milking barn, stable or parlor to the milkhouse. No milk shall be strained, poured, transferred or stored unless it is properly protected from contamination.

(17) Personnel; Hand-Washing Facilities. There shall be provided adequate hand-washing facilities, including running water, soap or detergent, and individual sanitary towels, in the milkhouse and in or convenient to the milking barn, stable or parlor.

(18) Personnel; Cleanliness. Hands shall be washed clean and dried with an individual sanitary towel immediately before milking, before performing any milkhouse function, and immediately after the interruption of any of these activities. Milkers and milk haulers shall wear clean outer garments while milking or handling milk, milk containers, utensils, or equipment.

(19) Cooling. Raw milk for pasteurization shall be cooled to 50°F or less within two (2) hours after milking and prior to commingling with other producer milk and shall be maintained at that temperature or less until delivered.

(20) Vehicles. Vehicles used to transport milk in cans or bulk from the dairy farm to the milk plant or receiving station shall be constructed and operated to protect their contents from sun, freezing, and contamination. Such vehicles shall be kept clean, inside and out and no substance capable of contaminating milk shall be transported with milk.

(21) Insect and Rodent Control. Effective measures shall be taken to prevent the contamination of milk, containers, equipment, and utensils by insects and rodents, and by chemicals used to control such vermin. Milkrooms shall be free of insects and rodents. Surroundings shall be kept neat, clean and free of conditions which might harbor or be conductive to the breeding of insects and rodents.

Section 6. Sanitation Requirements for Grade A Pasteurized Milk and Milk Products. A receiving station shall comply with subsections (1) to (15), inclusive, and (17), (20), and (22), of this Section except that the partitioning requirement of subsection (5) shall not apply. A transfer station shall comply with subsections (1), (4), (6), (7), (8), (9), (10), (11), (12), (14), (15), (20), and (22) of this Section; and as climatic and operating conditions require, the applicable provisions of subsections (2) and (3) of this Section; provided, that in every case, overhead protection shall be required. Facilities for the cleaning and sanitizing of bulk transport tanks shall comply with subsections (1), (4), (6), (7), (8), (9), (10), (11), (12), (14), (15), (20), and (22) of this Section; and as climatic and operating conditions require, the applicable provisions of subsections (2) and (3) of this Section; provided, that in every case, overhead protection shall be required.

(1) Floors; Construction. The floors of all rooms in which milk or milk products are processed, handled, or stored, or in which milk containers, equipment, and utensils are washed, shall be constructed of concrete or other equally impervious and easily cleaned material. They shall be smooth, properly sloped, provided with trapped drains and kept in good repair; provided, that cold-storage rooms used for storing milk and milk products need not be provided with floor drains when the floors are sloped to drain to one or more exits; provided further, that storage rooms for storing dry ingredients or packaging materials need not be provided with drains and the floors may be constructed of tightly joined wood.

(2) Walls and Ceilings; Construction. Walls and ceilings of rooms in which milk or milk products are handled, processed or stored, or in which milk containers, utensils, and equipment are washed, shall have a smooth, washable, light-colored surface in good repair.

(3) Doors and Windows. Effective means shall be provided to prevent the access of flies and rodents. All openings to the outside shall have solid doors or glazed windows which shall be closed during dusty weather.

(4) Lighting and Ventilation. All rooms in which milk and milk products are handled, processed or stored or in which milk containers, equipment and utensils are washed shall be well lighted and well ventilated.

(5) Separate Rooms. There shall be separate rooms for pasteurizing, processing, cooling and packaging; and for cleaning of milk cans and bottles. In addition, plants receiving milk in bulk transport tanks shall provide for cleaning and sanitizing facilities.

(6) Toilet-Sewage Disposal Facilities. Every milk plant shall be provided with toilet facilities. Toilet rooms shall not open directly into any room in which milk or milk products are processed. Toilet rooms shall be completely enclosed and shall have tight-fitting, self-closing doors. Dressing rooms, toilet rooms and fixtures shall be kept in a clean condition, in good repair and shall be well ventilated and well lighted. Sewage and other liquid wastes shall be disposed of in a sanitary manner approved by the department.

(7) Water Supply. Water for milk plant purposes shall be from a supply properly located, protected and operated, and shall be easily accessible, adequate and of a safe, sanitary quality approved by the department.

(8) Hand-Washing Facilities. Convenient hand-washing facilities shall be provided, including hot and cold or warm running water, soap, and individual sanitary towels or other approved hand-drying devices. Hand-washing facilities shall be kept in a clean condition and in good repair.

(9) Milk Plant Cleanliness. All rooms in which milk and milk products are handled, processed, stored, or in which containers, utensils, or equipment are washed or stored, shall be kept clean, neat and free of evidence of insects and rodents. Pesticides shall be safety used. Only equipment directly related to processing operations or to the handling of containers, utensils and equipment, shall be permitted in the pasteurizing, processing, cooling, packaging and bulk milk storage rooms.

(10) Sanitary Piping. All sanitary piping, fittings and connections which are exposed to milk and milk products, or from which liquids may drip, drain, or be drawn into milk or milk products, shall consist of smooth, impervious, corrosion-resistant, nontoxic, easily cleanable material. All piping shall be in good repair. Pasteurized milk and milk products shall be conducted from one piece of equipment to another only through sanitary piping.

(11) Construction and Repair of Containers and Equipment. All multi-use containers and equipment with which milk or milk products come into contact shall be of smooth, impervious, corrosion-resistant, nontoxic material; shall be constructed for ease of cleaning; and shall be kept in good repair. All

single-service containers, closures, gaskets, and other articles with which milk or milk products come in contact shall be nontoxic, and shall have been manufactured, packaged, transported, and handled in a sanitary manner. Articles intended for single-service use shall not be reused. All equipment shall meet "3-A Sanitary Standards" if such standards are available.

(12) Cleaning and Sanitizing of Containers and Equipment. The product-contact surfaces of all multi-use containers, utensils, and equipment used in the transportation, processing, handling, and storage of milk and milk products shall be effectively cleaned and shall be sanitized before each use.

(13) Storage of Cleaned Containers and Equipment. After cleaning, all multi-use milk or milk product containers, utensils, and equipment shall be transported and stored to assure complete drainage, and shall be protected from contamination before use.

(14) Storage of Single-Service Containers, Utensils, and Materials. Single-service caps, cap stock, parchment paper, containers, gaskets, and other single-service articles for use in contact with milk and milk products shall be purchased and stored in sanitary tubes, wrappings, or cartons; shall be kept therein in a clean, dry place until used; and shall be handled in a sanitary manner.

(15) Protection from Contamination. Milk plant operations, equipment and facilities shall be located and conducted to prevent any contamination of milk or milk products, ingredients, equipment, containers, and utensils. All milk or milk products or ingredients which have been spilled, overflowed, or leaked shall be discarded. The processing or handling of products other than milk and milk products in the pasteurization plant shall be performed to preclude the contamination of such milk and milk products.

(16) Pasteurization. Pasteurization shall be performed as defined by the department relating to milk and milk products.

(17) Cooling of Milk. All raw milk and milk products shall be maintained at 50°F. or less until processed. All pasteurized milk and milk products, except those to be cultured, shall be cooled immediately in approved equipment to a temperature of 45°F. or less. All pasteurized milk and milk products shall be stored at a temperature of 45°F. or less and shall be maintained thereat. Every room or tank in which milk or milk products are stored shall be equipped with an accurate thermometer.

(18) Bottling and Packaging. Bottling and packaging of milk and milk products shall be done at the place of pasteurization in approved mechanical equipment.

(19) Capping. Capping or closing of milk and milk product containers shall be done in a sanitary manner by approved mechanical capping or closing equipment. The cap or closure shall protect the pouring lip to at least its largest diameter.

(20) Personnel; Cleanliness. Hands shall be thoroughly washed before commencing plant functions and as often as may be required to remove soil and contamination. No employee shall resume work after visiting the toilet room without thoroughly washing his hands. All persons engaged in the processing, pasteurization, handling, storage, or transportation of milk, milk products, containers, equipment and utensils shall wear clean outer garments. The use of tobacco by any person while engaged in the processing of milk or milk products is prohibited.

(21) Vehicles, All vehicles used for transportation of pasteurized milk and milk products shall be constructed and operated so that the milk and milk products are maintained at 50°F. or less, and are protected from sun, from freezing and from contamination.

(22) Surroundings. Milk plant surroundings shall be kept clean, neat and free from conditions which might attract or harbor flies, other insects and rodents, or which otherwise constitute a nuisance.

Section 7. Animal Health. (1) Tuberculosis. All milk for pasteurization shall be from herds which are located in a modified accredited tuberculosis area as determined by the United States Department of Agriculture; provided, that herds located in an area that fails to maintain such accredited status shall have been accredited by said department as tuberculosis free, or shall have passed an annual tuberculosis test.

(2) Brucellosis. All milk for pasteurization shall be from herds participating in a brucellosis eradication program which meets one of the following conditions:

(a) Located in a certified brucellosis-free area as defined by the United States Department of Agriculture and enrolled in the testing program for such areas; or

(b) Located in a modified certified brucellosis area as defined by the United States Department of Agriculture and enrolled in the testing program for such areas; or

(c) Meets United States Department of Agriculture requirements for an individually certified herd; or

(d) Participates in a milk ring testing program which is conducted on a continuing basis at intervals of not less than every three (3) months or more than every six (6) months with individual blood tests on all animals in herds showing suspicious reactions to the milk ring test; or

(e) Have an individual blood agglutination test annually with an allowable maximum grace period not exceeding two (2) months.

(3) Other Diseases. For diseases other than brucellosis and tuberculosis, the department shall require such physical, chemical or bacteriological test as it deems necessary. The diagnosis of other diseases in dairy cattle shall be based upon the findings of a licensed veterinarian or a veterinarian in the employ of an official agency. Any diseased animal disclosed by such test(s) shall be disposed of as the department or local health department directs.

Section 8. Sale of Grade A Pasteurized Milk and Milk Products to Final Consumer. Only Grade A pasteurized milk and milk products shall be sold to the final consumer, or to restaurants, soda fountains, grocery stores, or similar establishments; provided, that in an emergency, the sale of pasteurized milk and milk products which have not been graded, or the grade of which is unknown, may be authorized by the department or local health department having jurisdiction, in which case, such milk and milk products shall be labeled "ungraded."

Section 9. Serving Containers, Transfer and Cooling for Grade A Milk. (1) Except as permitted in this Section, no milk producer or distributor shall transfer milk or milk products from one container or tank truck to another on the street, in any vehicle, store or in any place except a milk plant, receiving station, transfer station or milkhouse especially provided for that purpose. The dipping or ladling of milk or milk products is prohibited.

(2) No person shall sell or serve any milk or milk product except in the individual, original container received from the distributor or from an approved bulk dispenser; provided, that this requirement shall not apply to milk for mixed drinks requiring less than one-half pint of milk, or to cream, whipped cream, or half-and-half which is consumed on the premises and which may be served from the original container of not more than one-half (1/2) gallon capacity, or from a bulk dispenser approved for such service by the department.

(3) No person shall sell or serve any pasteurized milk or milk product which has not been maintained at a temperature of 45°F. or less. If containers of pasteurized milk or milk products are stored in ice, the storage container shall be properly drained.

Section 10. Sale of Imported Grade A Milk and Milk Products. Milk and milk products imported from points beyond the limits of routine inspection of this state may be sold in this state provided they are produced or pasteurized under regulations which are substantially equivalent to this regulation and that have been awarded an acceptable milk sanitation compliance and enforcement rating by a state milk sanitation rating officer certified by the United States Public Health Service, Food and Drug Administration; and provided further, that such governmental unit accepts Kentucky's Grade A milk and milk products on a reciprocal basis.

Section 11. Future Dairy Farms and Milk Plants. Properly prepared plans for all milkhouses, milking barns, stables, parlors, transfer stations, receiving stations, and milk plants regulated under this regulation which are hereafter constructed, reconstructed, or extensively altered, shall be submitted to the department or local health department having jurisdiction for written approval before work is begun.

Section 12. Personnel Health. No person affected with any disease in a communicable form, or while a carrier of such disease, shall work at any dairy farm or milk plant in any capacity which brings him into contact with the production, handling, storage or transportation of milk, milk products, containers, equipment and utensils; and no dairy farm or milk plant operator shall employ in any such capacity any such person, or any person suspected of having any disease in a communicable form, or of being a carrier of such disease. Any producer or distributor of milk or milk products, upon whose dairy farm, or in whose milk plant any communicable disease occurs, or who suspects that any employee has contracted any disease in a communicable form, or has become a carrier of such disease, shall notify the department immediately.

Section 13. Procedure When Infection Is Suspected. When reasonable cause exists to suspect the possibility of transmission of infection from any person concerned with the handling of milk or milk products the department or local health department having jurisdiction is authorized to require any or all of the following measures: the immediate exclusion of that person from milk handling; the immediate exclusion of the milk supply concerned from distribution and use; and adequate medical and bacteriological examination of the person, associates and their body discharges.

Section 14. Grade A Milk Producer, Processor or Handler Permit Suspension and Reinstatement. (1) Whenever the department or local health department having jurisdiction has reason to believe that a public health hazard exists, or whenever the permit holder has interfered with the department or local health department concerned in the performance of their duties, the permit may be suspended immediately upon notice to the permit holder without a hearing. In such event the permit holder may request a hearing which shall be granted as soon as practicable.

(2) In all other instances of violation of the provisions of this regulation the department or local health department having jurisdiction shall serve upon the holder of the permit a written notice of intent to suspend which shall specify the violation(s) in question and afford the holder a reasonable opportunity to correct same.

(3) Upon written application of any person whose permit has

been suspended, or upon application within forty-eight (48) hours of any person who has been served with a notice of intention to suspend and in the latter case before suspension, the department or local health department, having jurisdiction, shall within a reasonable time proceed to a hearing to ascertain the facts of such violation or interference and upon evidence presented at such hearing shall affirm, modify or rescind the suspension or intention to suspend. Any permit suspended under the provisions of this regulation may be reinstated by submission of proper evidence satisfactory to the department or local health department having jurisdiction that the violations have been corrected.

L. W. TRUE, Secretary

ADOPTED: November 18, 1974
RECEIVED BY LRC: November 19, 1974 at 4:36 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Secretary, Department for Human Resources, Capitol Annex Building, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
(902 KAR 50:030)

RELATES TO: KRS 217C.010 to 217C.990
PURSUANT TO: KRS 13.082, 194.050, 211.090(1)(c)
SUPERSEDES: MMP-3
NECESSITY AND FUNCTION: The Department for Human Resources is directed by KRS Chapter 217C to regulate milk for manufacturing purposes. This regulation sets uniform standards for the production, transportation, handling, sampling, examination, grading and sale of manufacturing milk and milk products and for the inspection of dairy farms and provides for the issuance, revocation and reinstatement of producer permits.

Section 1. Manufacturing Milk Producer Permits and Inspections. (1) Prior to the issuance of any permit to a manufacturing milk producer, the department shall conduct an inspection of the producer's facilities. If the producer is not in substantial compliance with this regulation, he shall not be issued a permit and violations shall be given him in writing and posted in a conspicuous place at the dairy farm. A reinspection will be made by the department after the time deemed necessary to correct the violation(s), but not before the lapse of three (3) days. Provided that, if the inspector determines during the inspection that corrections on the farm will require some capital investment, a reasonable extension of time shall be granted by the department. Upon reinspection, if the farm does not meet the requirements for a permit, it shall not be issued and the producer's authorization to sell milk for human food from the farm shall be withheld by the department until such time as the farm qualifies for a permit. Whenever authorization to sell milk from a farm is withheld by the department, a request for reinspection shall be made by the producer in writing, including a statement that the violation(s) previously noted by the last inspection report have been corrected.
(2) All new producers must be inspected by the department prior to beginning shipment.
(3) Permits shall not be transferable with respect to persons or locations and shall remain valid unless suspended or revoked by the department.

Section 2. Quality Requirements and Enforcement Procedures for Raw Milk. (1) Basis. The classification of raw milk for manufacturing purposes shall be based on organoleptic examination (sight and odor) and quality control tests for sediment content and bacterial estimate, abnormal milk and antibiotics. Examinations and tests to detect pesticides or other adulterants may be conducted by the department as deemed necessary.
(2) Sight and Odor. The flavor and odor of acceptable raw milk shall be fresh and sweet. The milk shall be free from objectionable feed and other off-flavors and off-odors that would adversely affect the finished product, and it shall not show an abnormal condition (including, but not limited to curdled, ropy, bloody or mastitic condition), as indicated by sight or odor.
(3) Frequency of Tests:
(a) Bacterial Estimate; monthly.
(b) Sediment content; monthly.
(c) Antibiotics; quarterly.
(d) Abnormal Milk; annually with quarterly follow-up on all tests in excess of 1,500,000 somatic cell/ml.
(e) Adulteration (excessive water) and Pesticides; as deemed necessary by the department.
(4) Methods of Testing. Methods for determining quality test shall be those described in the current edition of Standard Methods, and shall be performed in an official laboratory or an officially designated laboratory.

(5) Quality Standards.
(a) Bacterial Estimate Classification:

Bacterial Estimate Classification	Direct Microscopic Clump Count Standard Plate	Methylene Blue Test Decolorized in	Resazurin Reduction to Munsell Color Standards 5P7/4	Resazurin 1 Hour
No. 1 Satisfactory	Not Over 500,000	Not Less Than 4 1/2 Hours	Not Less Than 2 1/2 Hours	Purple
No. 2 Satisfactory	Not Over 3,000,000	Not Less Than 2 1/2 Hours	Not Less Than 1 1/2 Hours	Lavendar
No. 3 & 4 Unsatisfactory	Over 3,000,000	Less Than 2 1/2 Hours	Less Than 1 1/2 Hours	Pink and decolorized

(b) Sediment Content Classification:

Sediment Content Classification	Milk in Cans (off-the-bottom method, 1 and one-eighth inch diameter disc)*	Milk in Farm Bulk Tanks (mixed sample 0.40 inch diameter disc)*
No. 1 Acceptable	Not to exceed 0.50 mg.	Not to exceed 0.50 mg. equivalent
No. 2 Acceptable	Not to exceed 1.50 mg.	Not to exceed 1.50 mg. equivalent
No. 3 Probational	Not to exceed 2.50 mg.	Not to exceed 2.50 mg. equivalent
No. 4 Reject	Over 2.50 mg.	Over 2.50 mg. equivalent

*Sediment content based on comparison with applicable charts of Sediment Standards prepared by the U. S. Department of Agriculture.

(c) Antibiotic Classification. Negative on individual producer test.
(d) Abnormal Milk. Not in excess of 1,500,000 somatic cell count/ml.
(6) Enforcement Procedures.
(a) Sight and Odor. All bulk tank loads or individual producer milk received shall be examined on an organoleptic basis by the hauler or by milk grader. Milk shall not be received if any off odors or abnormal conditions are found which will adversely affect the finished product. Producer milk which is rejected for sight or odor by a hauler or milk grader shall be identified by coloring if in cans or tagged with a reject tag if in a bulk tank.
(b) Bacterial Estimates. At least once each month at irregular intervals, a representative mixed sample of each producer's milk shall be tested by the company. Producers shall be notified of the results of all tests performed. A producer shall be given a warning notice by the department or a company representative authorized in writing by the department, whenever two (2) of the last four (4) counts exceed bacterial standards specified herein. An additional sample shall be taken within fourteen (14) days of the sending of such notice, but not before the lapse of three (3) days. A producer shall remain under warning notice so long as two (2) of the last four (4) analyses exceed the standards. A producer's permit shall be suspended by the department whenever three (3) of the last four (4) samples exceed the standard. A producer may have his permit reinstated by the department upon written request from the producer whenever the cause of high bacterial count is corrected or is believed to have been corrected as shown by farm inspection and the first shipment of milk meeting the satisfactory bacterial standards. Such producer, upon reinstatement, shall have the status of a new producer. Upon reinstatement, the producer shall have no milk on hand which was produced during the period when his permit was suspended unless otherwise specified by the department.
(c) Sediment:
1. Bulk Tank Producers. If the sediment disc is classified as #1, #2, or #3, the producer's milk may be accepted. If the sediment disc is classified #4, the milk shall be rejected and the producer shall be notifed by the department or a company representative authorized by the department in writing. Provided, that if the shipment of milk is commingled with other milk in a transport tank prior to the sediment test being run, the producer's milk shall be resampled by the hauler or milk grader and retested by the company on the next pick-up. If the retest of this sample is classified #4, the milk from this farm shall not be accepted thereafter until a satisfactory sediment test is obtained. If

the milk is classified #3, the producer shall be notified and each additional milk pick-up shall be sampled and tested for a period not to exceed ten (10) days. If at the end of this ten (10) day period, the milk does not meet the #1 or #2 sediment test standard, it shall not be accepted thereafter until a satisfactory sediment test is obtained.

2. Can Producers. If the sediment disc is classified #1, #2 or #3, the producer's milk may be accepted. If the sediment disc is classified #4, the milk shall be rejected and the producer shall be notified by the department or a company representative authorized in writing by the department. In the case of milk classified as #3 or #4, all cans of that producer shall be tested and the producer shall be notified. Milk classified as #4 shall be rejected and an approved color added to the milk. This procedure for retesting successive shipments and accepting #3 milk and rejecting #4 milk may be continued for a period not to exceed ten (10) days. If at the end of this time all the producer's milk does not meet the #1 or #2 sediment test standards, it shall not be accepted thereafter until a satisfactory sediment is obtained.

(d) Antibiotics. Once each three (3) months, each producer's milk shall be tested in a commingled sample (not exceeding fifteen (15) producers). Provided, that where a commingled sample is positive each producer represented in the sample shall be tested immediately and if the producer sample is positive, the milk shall be withheld from the market until a negative sample is obtained by the department or milk grader.

(e) Abnormal Milk. Each company shall have an approved abnormal milk screening program. Each producer shall be tested at least once each year and those showing a somatic cell count in excess of 1,500,000 per ml shall be notified in writing by the company and also given a list of the principal causes of excess somatic cell counts. Whenever practicable, the fieldmen shall visit those producers having somatic cell counts in excess of 1,500,000 per ml to assist the producer in the correction of the problem. Producers having a somatic cell count in excess of 1,500,000 per ml shall be tested at least once each three (3) months or until the problem is corrected. Whenever two (2) of the last four (4) somatic cell counts exceed 1,500,000 per ml, the producer shall be given a warning notice by the department or a company representative authorized in writing by the department. The producer shall remain under "warning notice" so long as two (2) of the last four (4) analyses are unsatisfactory. A producer's permit shall be suspended by the department when three (3) of the last four (4) somatic cell counts exceed the standard. A producer may have his permit reinstated by the department upon written request from the producer whenever the cause of the high somatic cell count is corrected or is believed to have been corrected, and the first shipment of milk must meet the standards. Such producer, upon reinstatement, shall have the status of a new producer.

(f) New Producers. An examination for bacterial quality and sediment shall be made on the first shipment of milk from producers shipping milk to a plant for the first time or after a period of non-shipment for ten (10) days. Thereafter, the milk shall meet the requirements for frequency of test and producer compliance outlined in this Section.

(g) Transfer Producer.

1. All producers desiring to transfer from one company to another shall request, in writing, his quality records for the past ninety (90) days a copy of his last inspection sheet and permit if one has been issued. These records shall be evaluated and approved by the new company before the milk may be accepted. Each company shall issue the producer's transfer records, upon receipt of a written request, within twenty-four (24) hours of a normal working week using the forms approved by the department. A copy of the producer transfer records shall be forwarded to the department within five (5) days, by the company issuing the transfer records. The existing status of a transfer producer with regard to his farm sanitation and milk quality record shall be in effect with the new company. Producers whose permit has been suspended by the department are not eligible to transfer, until such time as their permit has been reinstated. The new buyer shall examine and classify each transfer producer's milk within ten (10) days after receipt of the producer's first shipment, and shall subsequently examine shipments in accordance with the provisions of this Section.

2. The status of any Grade A producer whose permit has been suspended shall be cleared by the manufacturing milk company with the department before the milk can be accepted. If this milk is received for a period in excess of ten (10) days, such producer would be subject to all provisions of this regulation.

3. Grade A surplus milk shall be tested or screened by the manufacturing milk company upon arrival to assure themselves and the department that the milk is in compliance with the manufacturing milk standards.

Section 3. Farm Requirements for Milk for Manufacturing.

(1) Health of Herd:

(a) General Health. All animals in the herd shall be maintained in a healthy condition.

(b) Tuberculin Test. The herd shall be located in an area within the state which meets the requirements of a modified accredited area in which not more than one-half of one percent (1/2 of 1%) of the cattle have been found to be infected with tuberculosis as determined by the provisions of the "Uniform Methods and Rules" for establishing and maintaining tuberculosis-free herds of cattle, and modified accredited areas which are approved by the Animal Disease Eradication Division, Agricultural Research Service, U. S. Department of Agriculture. If the herd is not located in such an area, it shall be tested annually under the jurisdiction of the aforesaid program. All additions to the herd shall be from an area or from herds meeting these same requirements.

(c) Brucellosis Test. The herd shall be located in an area within the state in which the percentage of cattle affected with brucellosis does not exceed one percent (1%) and the percentage of herds in which brucellosis is present does not exceed five percent (5%), in accordance with provisions of the "Uniform Methods and Rules" for establishing and maintaining Certified brucellosis-free areas which are approved by the Animal Disease Eradication Division, Agricultural Research Service, U. S. Department of Agriculture. If the area in which the herd is located does not meet these requirements, the herd shall be blood-tested annually or milk-ring-tested semiannually. All additions to the herd shall be from herds meeting these same requirements.

(2) Milking Procedures. Milking shall be done in an approved milking barn, stable, or parlor under relatively dust free conditions.

(a) The udders, flanks and teats of all milking cows shall be free of dirt and dust at time of milking, as far as is practicable.

(b) Cows with secrete abnormal milk shall be milked last or with separate equipment. This milk shall be excluded from the supply, and is prohibited from sale under this regulation.

(c) Milking shall be carried out in an approved area.

(3) Milking Barn or Milking Area. An approved milking area of adequate size and arrangement shall be provided to permit normal sanitary milking operations.

(a) Adequate light shall be properly distributed for both day and night milking.

(b) The milking area shall be well ventilated to minimize odors and prevent excessive condensation.

(c) Floors and gutters shall be kept clean, in good repair, graded to drain and be constructed of concrete or other impervious material.

(d) No swine, fowl or other animals shall be permitted in the milking area.

(e) Bedding shall be permitted in the milking area provided it is kept clean and relatively dust free. Manure shall be removed daily.

(f) If feed or other material is stored overhead, the milking area shall be sealed.

(g) Walls and ceilings shall be kept clean and in good repair. It is recommended that the milking area be completely enclosed. However, if clean, orderly, dust free milking operations can be conducted, the requirements of walls may be waived.

(h) Feed shall be stored in such manner as will not increase the dust content of the air or attract flies in the milking area.

(i) The milking area floor shall be kept clean, the manure removed daily, and stored to prevent access of cows to accumulation thereof.

(j) Outside surfaces of pipeline systems located in the milking area shall be kept clean.

(k) Milk stools, surcingles and antikickers shall be kept clean.

(4) Cowyard and Cattle Housing Area. The cowyard and cattle housing area shall be constructed to be well drained and relatively free of organic waste.

(a) The cowyard shall be graded to drain as well as local conditions will permit.

(b) Cowyards which are muddy due to recent rains shall not be considered in violation of this Section.

(c) The cattle housing area shall be free of excessive manure, soiled bedding, and waste material to prevent the soiling of cows.

(d) All manure removed from the milking area shall be stored so as to prevent access of cows to accumulation thereof and to minimize fly breeding during the summer months.

(5) Milkhouse or Milkroom. There shall be provided a conveniently located milkhouse or milkroom in which the cooling, handling and storing of milk, the washing, sanitizing and storing of equipment and utensils shall be done. Provided, that present milking areas with milkhouse, milkroom facilities combined in a non-separated operation given approval prior to the effective date of this regulation will be acceptable for as long as the combined facility is operated in a sanitary manner.

(a) The floor shall be constructed of concrete and well drained.

(b) The walls and ceiling shall be constructed of relatively smooth, easily cleanable material. A light colored material is recommended.

(c) A drain through the floor or wall shall be provided. The drain shall not be located under a can cooler or bunk tank. The drain may discharge to the surface of the ground provided that waste from the drain does not pool or cause an insect breeding problem.

(d) The milkhouse space shall be large enough to allow ample room as follows: Walkways and working areas shall be a minimum of thirty-six (36) inches, and the bulk tank shall be kept a minimum of eighteen (18) inches from the walls on all sides except that tank with a self-contained unit may be closer to the wall. There shall be a minimum of six (6) inches between the lowest point of the bulk tank and the floor.

(e) Artificial light shall be provided with a minimum of 100 watts or more capacity. The light fixture shall not be located over the bulk tank. Flood lights are recommended near the ends but not over bulk tanks.

(f) Ventilation shall be sufficient to prevent odors and condensation.

(g) The milkhouse shall be kept clean and free from unnecessary articles and toxic substances and used for no other purposes except as may be permitted by the department.

(h) All outer openings shall be screened or protected against the entrance of insects. Outer doors shall open outward and be self-closing. Provided, that during the winter months when a screen door may be taken down the milkhouse door may open inward if it is self-closing. On bulk tank installations, an approved hose port shall be properly constructed through the outer wall for milk pick-up operations.

(i) Running water under pressure shall be provided. Water heating facilities conveniently available to supply ample hot water to the milkhouse shall be provided for all bulk tank installations. An ample supply of water shall be available to the milkroom for all can shippers.

(j) A two-compartment wash and rinse vat shall be provided, except when milking equipment is cleaned in place, a single compartment wash vat will be acceptable.

(k) A concrete slab at least four feet by six feet (4' X 6') shall be located outside the milkhouse under the hose port.

(l) The milkhouse shall be supplied with approved brushes, cleaners, and sanitizers to properly clean and sanitize equipment and utensils.

(m) The can cooler may be stored in a suitable place away from the milkhouse in order to be easily accessible to the can hauler, provided approval is given by the department.

(6) Utensils and Equipment. Utensils, milk cans, milking machines (including pipeline systems), and other equipment used in the handling of milk shall be maintained in good condition, shall be free from rust, open seams, milkstone, or any unsanitary condition, and shall be washed, rinsed and drained after each milking, stored in suitable facilities and sanitized immediately before use. All new farm bulk tanks shall meet "3-A Sanitary Standards" for construction and shall be installed in accordance with regulations of the department. Single service articles shall be properly stored and shall not be reused.

(a) Utensils-Construction. All multi-use containers, equipment and other utensils used in the handling, storage or transportation of milk or milk products shall be made of smooth, nonabsorbent, noncorrodible, nontoxic material, properly constructed and easily cleaned and be kept in good repair. Joints and seams shall be welded or soldered flush. Woven-wire cloth shall not be used for straining milk. When milk is strained, single-service strainer pads shall be used and shall not be reused. Single-service articles shall be properly stored, handled, dispensed and used in a manner that prevents contamination of milk or milk contact surfaces.

1. All multi-use containers, utensils, pails and pipes shall be constructed of smooth, heavy-gauge material, with a not readily corrodible surface which is nonabsorbent and nontoxic (the use of cadmium is expressly prohibited), and shall be of such construction as to be easily cleaned. All joints and seams shall be flush, with a solid, welded or soldered, burnished surface.
2. All containers, utensils, and other equipment shall be in good repair, and free of breaks and corroded places.
3. Strainers, if used, shall be so constructed as to utilize single-service strainer pads only, and such strainer pads are not reused. Woven-wire cloth strainers shall not be used.
4. All milking machines, including pails, heads, milk claws, milk tubing, and other milk contact parts shall be so constructed as to be easily cleaned.
5. New or replacement milk cans shall have an umbrella type cover.
6. All cleaned-in-place milk pipelines installed after the effective date of this regulation shall be so installed as to be rigid and self-draining. All connections shall provide a smooth, flush interior surface.
7. Pipelines may be accepted if joined with tygon or other material approved by the department, providing joints are hand cleaned if not sufficiently cleaned by CIP methods. Each joint of this type shall have a tight, rigid hanger next to the joint.

(b) Utensils-Cleaning. All multi-use containers, equipment and other utensils used in the handling, storage or transportation of milk and milk products shall be thoroughly cleaned after each usage.

(c) Utensils-Bactericidal Treatment. All multi-use containers, equipment, and other utensils used in the handling, storage or transportation of milk or milk products shall, before each usage, be subjected effectively to an approved bactericidal process. Steam, Hot-water, or hot-air treatment shall not be accepted unless the equipment or containers are completely immersed or exposed for the required time, or longer, at the required temperature, or higher, throughout the period of exposure. Pouring hot or so-called boiling water from vessel to vessel shall not be acceptable. All milk containers, utensils, and other equipment, with the exception of milking-machine pulsators and air hoses, shall be immersed for at least one (1) minute, in, or exposure for at least one (1) minute to a flow of, an approved chemical bactericide containing at least fifty (50) ppm chlorine or other approved sanitizer of proper strength after use. All milk contact surfaces shall be wetted by the bactericidal solution, and piping so treated shall be filled. Bactericidal sprays may be used for large equipment. Chemical solutions, once used, shall not be reused for bactericidal treatment on any subsequent day, but may be reused for other purposes.

(d) Utensils-Storage. All containers and other utensils used in the handling, storage or transportation of milk or milk products, unless stored in bactericidal solutions, shall be stored so as to drain dry, and so as not to become contaminated before being used. All equipment and utensils shall be accessible for inspection.

1. All milk utensils and equipment shall be left in the bactericidal solution or stored in the milkhouse on racks, in such manner as to protect them from contamination, inverting such articles as can be inverted. Pipeline milkers which are cleaned-in-place may be stored in place. Such storage racks should be constructed of metal protected against rusting, with the lowest shelf not less than twenty-four (24) inches above the floor.
2. Strainer pads, parchment papers and gaskets shall be kept, until used, in the original package with covers closed, and stored in a suitable container or cabinet to protect them from contamination.
3. All equipment and utensils shall be accessible for inspection.

(e) Utensils-Handling. After bactericidal treatment, containers and other milk and milk product utensils shall be handled in such a manner as to prevent contamination of any surface with which milk or milk products come into contact. Sanitized product-contact surfaces, including farm cooling holding tank openings and outlets shall be protected against contact with unsanitized equipment and utensils, hands, clothing, splash, condensation and other sources of contamination. Any sanitized product-contact surfaces, which has been otherwise exposed to contamination shall be again cleaned and sanitized before being used.

Section 4. Cooling. (1) All milk shall be cooled within two (2) hours after milking to 50°F or lower until transferred to the transport truck, unless delivered to the plant within two (2) hours after milking. Milk in bulk tanks shall be cooled to 40°F or lower until two (2) hours after milking and maintained at 50°F or lower until transferred to the transport truck.

(2) Can cooling facilities shall be available to cool and store a full supply of milk between pick-up at 50°F or below. Can milk shall be collected at least every fourth day.

(3) Bulk tanks shall be designed and sized for everyday or every other day pick-up and be capable of cooling the milk to 40°F after each milking and maintaining the milk at 50°F or below. In no case shall bulk tank milk be picked up after three (3) days.

(4) Milk shall not be transferred from one producer to another or received by one producer from another.

Section 5. Water Supply. (1) Each producer shall have an adequate, properly located and properly protected water supply.

(2) The supply shall be adequate for the needs of the producer to properly clean his equipment, milkhouse and milking area.

(3) The supply shall, on physical inspection, be protected against surface water and in the case of cisterns have a filter or roof wash barrel of approved type.

(4) In no case shall the supply be within fifty (50) feet of any cesspool, privy or lateral field.

Section 6. Milkhouse, Milking Area and Toilet Waste.

(1) Waste from the milkhouse, milking area and toilet shall be properly disposed of in a manner approved by the department.
(2) Milkhouse and milking area waste discharging to the ground surface shall not pool or cause fly breeding problems.
(3) Waste from flush type toilets shall be properly disposed of underground.
(4) Pit privies shall be properly constructed to prevent fly breeding.

Section 7. Personnel Health and Cleanliness. No person affected with any disease in a communicable form, or while a carrier of such disease, shall work at any dairy farm in any capacity which brings him into contact with the production, handling, storage and transportation of milk for manufacturing purposes, containers, equipment and utensils; and no milk producer shall employ in any such capacity any such person, or any person suspected of having any disease in a communicable form, or of being a carrier of such disease. Any milk producer upon whose dairy farm any communicable disease occurs or who suspects that any employee has contacted any disease in a communicable form, or has become a carrier of such disease in a communicable form, shall notify the regulatory agency immediately. All persons engaged in the milking operation shall wear clean outer garments. The milkers' hands shall be kept clean.

Section 8. Procedure When Infection is Suspected. When reasonable cause exists to suspect the possibility of transmission of infection from any person concerned with the handling of milk for manufacturing purposes, the department shall require any or all of the following measures:
(1) The immediate exclusion of that person from milk handling;
(2) The immediate exclusion of the milk supply concerned;
(3) Adequate medical and bacteriological examination of the person and body discharges.

Section 9. Prohibited Acts Relating to Manufacturing Milk Producers. The following acts and the causing thereof within the Commonwealth of Kentucky are hereby prohibited:
(1) No person shall produce, sell or offer for sale any manufacturing milk or milk products within this state without a permit as provided in this regulation.
(2) No person shall, within this state produce, provide, sell, offer or expose for sale or have in possession with intent to sell any manufacturing milk or milk product which is adulterated, misbranded or otherwise in violation of this regulation.
(3) No person shall prohibit entry or inspection, or prohibit the taking of a sample or prohibit the access to records or evidence, to duly authorized agents of the department.
(4) No person shall remove, destroy, alter, forge or falsely represent, without proper authority any tag, stamp, mark or label used by the department.
(5) No person shall remove or dispose of a detained or quarantined article without proper authority from the department.

Section 10. Manufacturing Milk Producer Permit Suspension and Reinstatement. (1) Individual producer's permit may be suspended, whenever the department has reason to believe that a public health hazard exists; or whenever the producer has violated any of the requirements of this regulation; or whenever the producer has interfered with the department in the performance of its duties. Provided, that the department shall, in all cases except where the milk involved creates, or appears to create an imminent hazard to the public health; or in any case of a willful refusal to permit authorized inspection, serve upon the producer a written notice of intent to suspend the permit, which notice shall specify with particularity the violation(s) in question and afford the permit holder reasonable opportunity to correct such violation(s). A suspension of a permit shall remain in effect until the violation(s) has been corrected to the satisfaction of the department.
(2) Upon written application of any person whose permit has been suspended, or upon application within forty-eight (48) hours of any person who has been served with a notice of intention to suspend and in the latter case before suspension, the department shall within a reasonable time proceed to a hearing to ascertain the facts of such violation or interference and upon evidence presented at such hearing shall affirm, modify or rescind the suspension or intention to suspend. Any permit suspended under the provisions of this Section may be reinstated by submission of proper evidence satisfactory to the department that the violations have been corrected.

Section 11. Survey Procedures. On and after July 1, 1975, each manufacturing milk company and a random number of their producers shall be surveyed by the department each year. In the event a company or its producers do not have a sanitation survey rating acceptable to the department, they shall be given a reasonable period of time by the department to improve their rating to an acceptable level. If upon resurvey, the company rating is not of an acceptable level, the department may notify the company to show cause why its permit should not be suspended. If upon resurvey, the producer's rating is still not of an acceptable level, each producer shipping milk to such company shall be inspected by the department to determine individual compliance. Each producer found in violation may have their permit suspended in accordance with this regulation. No producer shall be allowed to transfer to another company during the reinspection period unless authorized by the department.

L. W. TRUE, Secretary

ADOPTED: November 18, 1974
RECEIVED BY LRC: November 19, 1974 at 4:37 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Secretary, Department for Human Resources, Capitol Annex Building, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
(902 KAR 50:040)

RELATES TO: KRS 217C.010 to 217C.990
PURSUANT TO: KRS 13.082, 194.050, 211.090(1)(c)
SUPERSEDES: MMP-4
NECESSITY AND FUNCTION: The Department for Human Resources is directed by KRS Chapter 217C to regulate milk haulers. The function of this regulation is to provide uniform standards for the transportation, handling, sampling, examination and grading of raw milk and the issuance and revocation of milk hauler permits.

Section 1. Milk Hauler Permit Requirements. No person shall haul raw milk in this state without a permit from the department. Provided, however, that individual producer delivery or transport delivery shall not be required to have a permit. Permits shall not be transferable with respect to persons or locations. Permits shall continue in force unless suspended or revoked for cause.

Section 2. Bulk Milk Hauler Standards. Each bulk milk hauler shall be equipped with an accurate pocket-type metal stemmed thermometer when collecting milk from dairy farms, and shall observe the following sanitary practices in his milk collection operations:
(1) His hands and outer clothing shall be clean during all pick-up operations.
(2) The milk shall be smelled through the port opening in the cover of the bulk tank for off-odors prior to raising the lid for a visual examination of the raw milk.
(3) A visual examination shall be made of the raw milk in the bulk tank. Milk which is visibly unfit for human consumption in accordance with the provisions of KRS Chapters 217 and 217C shall be rejected and not collected. The lid shall be closed immediately after making the visual examination whenever possible.
(4) The milk transfer hose used to withdraw raw milk from the farm bulk tank shall not exceed twenty (20) feet in length and enter the milkhouse only through the porthole provided for that purpose.
(5) If milk has leaked past the core of the outlet valve of the farm bulk tank, the outlet port of the valve shall be washed and sanitized prior to withdrawing the milk.
(6) When the cap from the end of the transfer hose is being removed it shall be handled in a sanitary manner and stored so as to prevent it from being contaminated while milk is being pumped from the farm bulk tank into the bulk milk tank truck.
(7) After the milk has been removed from the farm bulk tank, the bottom of the tank shall be observed for sediment and other foreign material.
(8) Sediment and other foreign material conditions observed shall be noted on the plant and producer's copy of the ticket.
(9) The date and time of milk collection and the temperature of the raw milk shall be entered on the weigh ticket.
(10) After the milk has been removed from the farm bulk tank, the transfer hose shall be removed and recapped before the farm bulk tank is rinsed with water. After recapping, the transfer hose shall be rinsed free of exterior soil.
(11) A bulk milk hauler shall not collect milk from any dairy farm for delivery to a milk plant, receiving station or transfer station unless such farm holds a valid permit or authorization for sale from the department or local health department having jurisdiction.
(12) At the time of collection of milk from each dairy farm, the bulk milk hauler shall collect the entire volume of acceptable milk being stored in the bulk tanks on each dairy farm. Only milk in properly constructed and operated equipment shall be collected.
(13) All precautions shall be taken to prevent the entrance of flies into the milkhouse.
(14) At least once each three (3) months, the bulk milk hauler shall check the accuracy of the thermometer on each of his milk producer's bulk milk tanks against his pocket-type thermometer. The temperatures obtained from both thermometers shall be entered on the weigh ticket. If there is a difference between the readings on the two (2) thermometers, the reading of the bulk milk hauler's thermometer shall be reported as the official temperature on that day and each succeeding day until the thermometer on the bulk milk tank is adjusted or repaired to be accurate.
(15) If milk in a bulk tank is rejected, the reason for rejection shall be noted by the hauler and the tank tagged with appropriate tags prepared by or approved by the department.

Section 3. Sampling Appurtenances for Bulk Milk Trucks. Every bulk milk tank truck used to collect raw milk on a bulk milk route shall be equipped with:
(1) A sample dipper or other sampling device of sanitary construction approved by the department.
(2) A container suitable for the storage of the sample dipper in a sanitizing solution enroute between the farms on the bulk route. If other sampling devices are used, they

shall be protected from contamination.

(3) A sample carrying case constructed of such material and in such a way as to maintain producer raw milk samples at a temperature of 32°F to 40°F from the time such samples are collected until they are delivered to the milk plant, receiving station or transfer station.

(4) A sample rack approved by the department and of sufficient size to hold at least one (1) sample of raw milk in an upright position from each bulk milk tank of each milk producer represented on the load of raw milk being transported to a milk plant, receiving station or transfer station plus one (1) sample to be used for temperature determination.

Section 4. Sample Collection From Bulk Tanks. The milk hauler shall collect a sample of milk from each farm bulk tank after the milk has been thoroughly agitated (a minimum of five (5) minutes) and before opening the outlet valve, at a frequency directed by the department. Such sample shall be collected in the following manner:

(1) If a sample dipper is used, it shall be clean and transported between farms on the bulk milk route in a sanitizing solution equivalent to 100 p.p.m. chlorine or other approved sanitizers. Other sampling devices shall be kept free of contamination.

(2) After removal from the sanitizing solution, all of the sanitizing solution shall be drained from the sample dipper.

(3) The sample dipper shall then be rinsed twice in the milk in the farm bulk tank and then drained.

(4) A sample shall then be collected through the port opening in the cover of the bulk tank and placed in a sterile container.

(5) The sample container shall then be closed and immediately placed in melting ice water in the sample carrying case on the bulk milk tank truck in such a way that the top of the sample container is not submerged in the refrigerant. Producer raw milk samples shall be maintained at a temperature of 32°F to 40°F until delivered to the milk plant, receiving station or transfer station. Such samples shall not be frozen.

(6) Each sample collected shall be identified with date the sample was collected, the temperature of the milk in the farm bulk tank, the route and patron or identity number of the milk producer and the person collecting the sample.

(7) Prior to or at the time of collecting raw milk from the first milk producer or the bulk milk route, the bulk milk hauler shall collect a sample of milk for temperature determination. Such sample shall be refrigerated until it arrives at the laboratory.

(8) Sampling equipment shall be rinsed in clean water immediately after each usage.

(9) If one-pint samples are used to conduct the required sediment tests of each milk producer's raw milk, the bulk milk hauler shall collect and identify such full one-pint samples as requested by the milk plant, receiving station, transfer station or department. A sample dipper, which shall be cleaned and sanitized prior to the collection of each sample, shall be used. Such one-pint sample shall be collected and transported in such a manner as to not interfere with the proper conduct of sediment tests.

Section 5. Frequency of Raw Milk Pick-up. All raw milk for manufacturing purposes shall be collected as required by the department's regulation relating to standards for raw milk for manufacturing purposes. Raw milk collection frequencies may be waived by the department in the case of emergencies. All Grade A bulk tank raw milk shall be collected at least every forty-eight (48) hours, and all Grade A milk shipped in cans shall be collected every twenty-four (24) hours, except in the case of emergencies.

Section 6. Bulk Milk Tank Truck Owner Standards. Every bulk tank truck used to collect raw milk on a bulk milk route shall be of sanitary design and construction. The owner of the bulk tank truck shall be responsible for maintaining it and its milk contact appurtenances in good repair and in a clean, sanitary condition. Each bulk milk tank truck and its milk contact appurtenances shall be cleaned after the completion of each day's usage and sanitized prior to beginning the next day's operation in a manner and at a location approved by the department. The bulk milk tank truck and its milk contact appurtenances shall be protected from contamination after being cleaned and sanitized. Milk in bulk milk tank trucks shall be maintained at a temperature of 50°F or less from the time of collection until delivered to a milk plant, receiving station or transfer station. Milk in farm bulk tanks in excess of 50°F shall not be commingled with other producers' milk on a bulk tank truck. The name and address of the milk plant or the owner of the bulk milk pick-up tank shall be legibly marked on both sides or on the rear of the vehicle in letters not less than one and one-half (1 and 1/2) inches in height. Each bulk milk route owner shall provide a bulk milk hauler who holds a valid permit for all bulk milk collection. The permit shall be carried on the person or in the vehicle.

Section 7. Milk Plant, Receiving Station and Transfer Station Standards. It shall be the responsibility of the milk plant, receiving station or transfer station to provide competent personnel to receive producer raw milk samples from each bulk milk tank truck. The temperature of the temperature sample (if applicable), shall be recorded and the samples properly identified and stored prior to delivery to the laboratory. The milk plant, receiving station or transfer station shall also be responsible for providing facilities for the storage of producer raw milk samples at a temperature of 32°F to 40°F at which temperature they shall be maintained until they are received by the laboratory for analysis. Producer raw milk samples shall not be transferred to another sample container after they have been collected by the bulk milk hauler. Required laboratory analysis shall begin no later than the second day after the date the sample was collected. Milk producers and bulk milk haulers shall not receive notice of which samples are to be used for bacteriological analysis.

Section 8. Milk Hauler Permit Suspension, Revocation and Reinstatement. (1) Whenever the department or local health department having jurisdiction has reason to believe that a public health hazard exists, or whenever the permit holder has interfered with the department or local health department concerned in the performance of their duties, the permit may be suspended immediately upon notice to the permit holder without a hearing. In such event the permit holder may request a hearing which shall be granted as soon as practicable.

(2) In all other instances of violation of the provisions of this regulation, the department or local health department having jurisdiction shall serve upon the holder of the permit a written notice of intent to suspend which shall specify the violation(s) in question and afford the holder a reasonable opportunity to correct same.

(3) Upon written application of any person whose permit has been suspended, or upon application within forty-eight (48) hours of any person who has been served with a notice of intention to suspend and in the latter case before suspension, the department or local health department, having jurisdiction, shall within a reasonable time proceed to a hearing to ascertain the facts of such violation or interference and upon evidence presented at such hearing shall affirm, modify, or rescind the suspension or intention to suspend. Any permit suspended under the provisions of this section may be reinstated by submission of proper evidence satisfactory to the department or local health department having jurisdiction that the violations have been corrected.

L. W. TRUE, Secretary

ADOPTED: November 18, 1974
RECEIVED BY LRC: November 19, 1974 at 4:37 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Secretary, Department for Human Resources, Capitol Annex Building, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
(902 KAR 50:050)

RELATES TO: KRS 217C.010 to 217C.990
PURSUANT TO: KRS 13.082, 194.050, 211.090(1)(c)
SUPERSEDES: FDC 14-1
NECESSITY AND FUNCTION: The Department for Human Resources is directed by KRS Chapter 217C to regulate milk for manufacturing purposes. This regulation sets uniform sanitary and operational standards for manufacturing milk plants, receiving stations, transfer stations and handlers and provides for the issuance and revocation of permits relating thereto.

Section 1. Permits and Inspections. (1) No person shall operate a manufacturing milk plant, receiving station, transfer station or be a handler of manufacturing milk in this state who does not possess a valid permit as herein provided. Prior to the issuance of a permit, each plant, receiving station, transfer station or handler shall be inspected by the department. Inspections shall be made at least annually thereafter.

(2) Only a person who is in satisfactory compliance with the requirements of this regulation shall be entitled to a permit. Permits shall not be transferable with respect to persons or locations and shall expire December 31, following the date of issuance.

(3) Manufactured milk and milk products from points beyond the limits of routine inspection of the Commonwealth of Kentucky, or its police jurisdiction, may be sold in the Commonwealth of Kentucky, or its police jurisdiction, provided they are produced and processed under regulations which are substantially equivalent to this regulation, and provided further, that the governmental unit concerned accepts Kentucky's manufacturing milk and milk products on a reciprocal basis.

(4) Properly prepared plans for all transfer stations, receiving stations and milk plants regulated under this regulation which are hereafter constructed, reconstructed or extensively altered, shall be submitted to the department for approval before work is begun.

Section 2. Examination of Milk and Dairy Products. (1) To assure that products produced by the manufacturing milk plants meet the department's standards of identity for manufacturing milk products, a representative sample of each finished product shall be collected and analyzed by the department annually or more often as the department deems necessary.

(2) Commingled plant raw milk or bulk tank samples shall be collected and analyzed in an official laboratory or an officially designated laboratory at a frequency deemed necessary by the department.

(3) Commingled samples from the raw milk receipts for the entire day or holdover milk from the previous day, shall be collected and analyzed. The logarithmic average of the samples shall be considered the plant average for this date.

(4) A plant will be considered in compliance with this

Section whenever the bacteriological quality of commingled milk does not exceed 10,000,000 in more than two (2) of the past four (4) tests performed. The frequency of testing shall be at least semi-annually.

(5) Whenever two (2) of the last three (3) bacterial analysis exceeds 10,000,000 a warning, in writing, shall be issued by the department, and the frequency of testing increased to at least once each three (3) months. This frequency of testing shall remain in effect until such time as two (2) of the last three (3) tests are less than 10,000,000 at which time the testing procedure outlined in subsection (4) shall be in effect.

(6) Whenever three (3) of the last four (4) bacterial analysis exceeds 10,000,000 the plant shall be given an opportunity for a hearing to show cause why its permit should not be suspended.

Section 3. General Sanitation Requirements for Manufacturing Milk Plants, Receiving Stations or Transfer Stations. The requirements of Sections 4 to 19 shall apply to all buildings in which manufacturing milk or milk products are transferred, received, stored, processed, packaged or otherwise held and the premises thereof and includes all equipment, utensils, containers and facilities.

Section 4. Premises. (1) Construction and maintenance of driveways and adjacent plant traffic areas shall be of concrete, asphalt, or similar material to keep the dust and mud to a minimum.

(2) The adjacent surroundings shall be free from refuse, rubbish and waste materials to prevent harborage of rodents, insects, and other vermin.

(3) A suitable drainage system shall be provided which will allow rapid drainage of all water from plant buildings and driveways, including surface water around the plant and on the premises, and all such water shall be disposed of in such a manner as to prevent a nuisance or health hazard.

Section 5. Construction and Maintenance. (1) The floors shall be constructed of tile, concrete or equally impervious material, kept in smooth and good repair, graded so that there will be no pools of standing water or milk products after flushing, and all openings to the drains shall be equipped with traps properly constructed and kept in good repair.

(2) On new construction bell-type traps shall not be used. The plumbing shall be so installed as to prevent the backup of sewage into the drain lines and to the floor of the plant.

(3) Sound, smooth wood floors which can be kept clean, may be used in rooms where new containers and supplies and certain packaged finished products are stored.

(4) The walls and ceilings shall be smoothly finished with a suitable material of light color, which is relatively impervious to moisture.

(5) All openings to the outer air including doors, windows, skylights and transoms shall be effectively protected or screened against the entrance of flies and other insects, rodents, birds, dust and dirt.

(6) All rooms shall have at least thirty (30) foot-candles of light intensity on all working surfaces and at least fifty (50) foot-candles of light intensity in areas where dairy products are graded or examined for condition and quality. Other rooms shall be provided with at least five (5) foot-candles of light intensity when measured at a distance of thirty (30) inches from the floor.

(7) Where contamination of product by broken glass is possible, light bulbs, fluorescent tubes, fixtures, skylight, or other glass suspended over the product shall be protected against breakage.

(8) Exhaust or inlet fans, vents, hoods or temperature and humidity control facilities shall be provided where and when needed, to minimize or eliminate undesirable room temperatures, objectionable odors, moisture condensation, or mold.

(9) Inlet fans shall be provided with an adequate air filtering device to eliminate dirt and soot from the incoming air.

Section 6. Rooms and Compartments. Separate rooms shall be provided as follows: (1) Receiving Room (Can Milk). If raw can milk is received the receiving room shall be separated from the processing room by a partition (partial or complete).

(2) Bulk Tank Truck Wash-Up and Unloading Facilities. If bulk milk is received, a bulk tank truck wash-up facility shall be provided at the receiving location or other suitable locations approved by the department. A minimum of overhead protection and three (3) sides shall be provided. Bulk tank trucks shall be unloaded in an approved facility or an approved truck manhole filter shall be provided.

(3) Processing and Packaging Rooms. All processing and packaging rooms shall be separated and arranged in such a way to allow for an orderly sanitary operation.

(4) Coolers and Freezers. Coolers and freezers where dairy products are stored shall be reasonably dry and maintained at the proper uniform temperature and humidity to adequately protect the product and minimize the growth of mold. Adequate circulation of air shall be maintained at all times.

(5) Supply Room. The supply rooms used for the storing of packaging materials, containers, and miscellaneous ingredients shall be so arranged to permit access to the supplies and for cleaning and inspection of the room.

(6) Boiler and Tool Rooms. The boiler and tool room shall be separated from other rooms where milk and dairy products are processed, manufactured, packaged, handled or stored.

(7) Toilet and Dressing Rooms. Adequate toilet and dressing room facilities shall be conveniently located, adequately ventilated, and provided with solid self-closing doors. Toilet rooms shall not open directly into any room in which milk or dairy products are processed, manufactured, packaged or stored. Handwashing sign shall be posted conspicuously in each toilet or dressing room directing employees to wash their hands before returning to work.

(8) Laboratory. Consistent with the size and type of plant and the volume of dairy product manufactured or received, an approved laboratory shall be maintained and properly staffed with qualified and trained personnel for quality control and analytical testing for those tests required by this regulation. A central laboratory serving more than one (1) plant may be acceptable if conveniently located to the dairy plants and if samples and results can be transmitted without undue delay.

Section 7. Water Supply. (1) There shall be an ample hot and cold water of sanitary quality, adequately distributed throughout the plant and protected against contamination.

(2) Water from other approved sources may be used for boiler fed water and condenser water provided that such waterlines are completely separated from the waterlines carrying the sanitary water supply, and the equipment is so constructed and controlled as to preclude contamination of product contact surfaces.

(3) Bacteriological examination shall be made of the sanitary water supply at least twice a year, or as often as necessary to determine purity and suitability for use in manufacturing dairy products. Tests shall be made by the department except for supplies that are regularly tested for purity and bacteriological quality, and approved by the Department for Natural Resources and Environmental Protection.

(4) The location, construction and operation of any private well, shall be approved by the department and the results of all water tests from private supplies shall be kept on file at the plant for which the test was performed.

(5) Drinking water facilities of a sanitary type shall be provided in the plant and shall be conveniently located.

Section 8. Handwashing Facilities, Steam and Air Under Pressure. (1) Facilities including hot and cold water, soap or other detergents and sanitary single-service towels or air dryers, shall be located in or adjacent to toilet and dressing rooms and also at such other places in the plant as may be essential to the cleanliness of all personnel handling products.

(2) Vats for washing equipment or utensils shall not be used as handwashing facilities.

(3) Self-closing metal or plastic containers shall be provided for used towels and other wastes.

(4) Steam. Steam shall be supplied in sufficient volume and pressure for satisfactory operation of each applicable piece of equipment. Culinary steam used in direct contact with milk or dairy products shall comply with the recommended practices for "Producing Culinary Steam for Processing Milk and Milk Products."

(5) Air Under Pressure. The method for supplying air under pressure which comes in contact with milk or dairy products or any product contact surface shall comply with the 3-A accepted practices for supplying air under pressure.

Section 9. Milk Plant Cleanliness. (1) All rooms shall be kept clean, neat and free of evidence of insects and rodents.

(2) Only equipment directly related to processing operations or the handling of containers, utensils and equipment is permitted in the pasteurizing, processing, cooling, packaging and bulk milk storage rooms.

(3) The outside of all piping, other equipment, shelves, tables, fans and etc. shall be kept relatively clean.

(4) Can washers and similar equipment shall be kept clean and free from accumulations of scale or debris.

(5) Plant waste shall be kept in covered containers and disposed of in a sanitary manner.

(6) Pesticides shall be safely used and properly stored.

Section 10. Construction, Repairs, and Installation of Equipment, Containers and Utensils. (1) The equipment and utensils used for the processing, handling or storage of milk and milk products shall be constructed to be readily demountable where necessary for cleaning and sanitizing. The product contact surfaces of all utensils and equipment such as holding tanks, pasteurizers, coolers, vats, agitators, pumps, homogenizers, vacuum equipment, sanitary piping and fittings or any other specialized equipment shall meet 3-A sanitary standards unless otherwise specified in this regulation. Equipment or utensils for which there are no 3-A sanitary standards shall meet the approval of the department. The construction, repair, installation and operation of equipment and utensils specified in this regulation which were in use prior to the effective date of this regulation may not be required to meet 3-A sanitary standards, provided the equipment and utensils are in good repair and satisfactory for their intended use. Provided, further, that all new or replacement equipment and utensils shall meet 3-A sanitary standards, if applicable.

(2) All CIP systems shall comply with the 3-A sanitary practices for permanently installed sanitary products, pipelines and cleaning systems.

(3) All equipment and utensils shall be kept in good repair.

(4) Can Washers. Can washers shall have sufficient capacity and ability to discharge a clean, dry can and cover and shall be kept properly timed in accordance with the instructions of the manufacturer. The water and steam lines supply-

ing the washer shall maintain a reasonably uniform pressure and if necessary be equipped with pressure regulating valves.

(5) Product Storage Tanks or Vats. Storage tanks or vats shall be fully enclosed or tightly covered and well insulated. This shall not preclude the use of air vents if properly protected. Any opening at the top of the tank or vat, including the entrance of the shaft, shall be suitably protected against the entrance of dust, moisture, insects, oil or grease. The sight glasses, if used, shall be clean and in good repair. Vats which have hinged covers shall be so designed that moisture or dust on the surface cannot enter the vat when the covers are raised. If the storage tanks or vats are equipped with air agitation, the system shall be of an approved type and properly installed in accordance with the 3-A accepted practices for supplying air under pressure. Storage tanks or vats intended to hold product for longer than approximately eight (8) hours shall be equipped with adequate refrigeration or have adequate insulation. All storage tanks shall be emptied and cleaned at least every seventy-two (72) hours. All new storage tanks or vats shall meet the appropriate 3-A sanitary standards and shall be equipped with the thermometers in good operating order. Recording thermometers shall be required on all new silo type storage tanks.

(6) Pasteurizers. In addition to meeting 3-A sanitary standards, the timing pump or device and the recorder controller shall be sealed by the department at the correct setting to assure pasteurization. All pasteurization units shall be tested initially upon installation and whenever any alteration or replacement is made which affects the operation and at least annually thereafter.

Section 11. Cleaning and Sanitizing of Equipment and Containers. (1) The equipment, sanitary piping and utensils used in receiving and processing of the milk, and manufacturing and handling of the product shall be maintained in a sanitary condition. Sanitary seal assemblies shall be removable on all agitators, pumps and vats, and shall be inspected at regular intervals and kept clean. Unless other provisions are recommended in the following Section, all equipment not designed for CIP cleaning shall be disassembled after each day's use for thorough cleaning. All product contact surfaces shall be subject to an effective sanitizing treatment immediately prior to use, except where dry cleaning is permitted.

(2) Dairy cleaners, detergents, wetting agents, sanitizing agents or other similar materials which will not contaminate or adversely affect the products may be used. Steel wool or metal sponges shall not be used in the cleaning of any dairy equipment or utensils.

(3) CIP cleaning, including spray-ball systems, shall be used only on equipment and pipeline systems which have been designed and engineered for that purpose. All caps, plugs, special fittings, valve seats, cross ends, pumps, plates and tee ends shall be opened or removed and brushed clean. Immediately prior to starting the product flow, the product contact surfaces shall be given bactericidal treatment.

(4) Milk transport tanks, sanitary pipings, fittings and pumps shall be cleaned and sanitized at least once each day, after use; provided, that if they are not to be used immediately after emptying a load of milk, they shall be washed promptly after use and given bactericidal treatment before reuse.

Section 12. Storage of Cleaned Containers and Equipment. After cleaning, all multi-use milk or milk product containers, utensils and equipment shall be transported and stored to assure complete drainage or stored in bactericidal solutions and shall be protected from contamination before use.

Section 13. Storage of Single-Service Containers, Utensils and Materials. Single-service liners, papers, gaskets, containers and other single-service articles for use in contact with milk and milk products shall be purchased and stored in sanitary containers; shall be stored in a clean, dry place until used; and shall be handled in a sanitary manner.

Section 14. Protection from Contamination. (1) Raw Product Storage. All milk shall be held and processed under conditions and at temperatures that will avoid contamination and rapid deterioration. Drip milk from can washers or any other source shall not be used for the manufacture of dairy products.

(2) Storage of Finished Product. The product shall be stored in such a manner as to be orderly and easily accessible for inspection and cleaning of the storage rooms. Rooms should be cleaned regularly. Care shall be taken in the storage of any other product foreign to dairy products in the same room in order to prevent impairment or damage to the product from mold, absorbed odors, or vermin or insect infestation. Control of humidity and temperature shall be maintained at all times, consistent with good commercial practices, to prevent conditions detrimental to the product and container.

(3) Refrigerated Storage. The finished product shall be placed on shelves, dunnage, pallets or other approved methods and properly identified. It shall be stored under temperatures that will best maintain the initial quality. The product shall not be exposed to anything from which it might absorb any foreign odors or be contaminated by drippage or condensation.

(4) Transfer of Milk from Bulk Tank Trucks. Milk shall be transferred under sanitary conditions from bulk tank trucks through stainless steel piping or approved tubing.

Section 15. Cooling. All raw milk within the plant storage tanks shall be maintained at 50°F or lower until processing begins. This does not preclude holding milk at higher temperatures for a period of time, where applicable to particular manufacturing or processing practices.

Section 16. Packaging and Repackaging. Packaging dairy products or cutting and repackaging all styles of dairy products shall be conducted under rigid sanitary conditions. The atmosphere of the packaging rooms, the equipment and packaging material shall be practically free from mold and bacterial contamination. Methods for checking the level of contamination shall be as prescribed by the standard methods.

Section 17. Personnel Cleanliness. All employees shall wash their hands before beginning work and upon returning to work after using toilet facilities, eating, smoking or otherwise soiling their hands. Employees shall follow good hygienic practices while on duty. Expectorating or use of tobacco in any form shall be prohibited in each room and compartment where any milk, dairy product, or supplies are prepared, stored or otherwise handled. Clean white or light colored washable or disposable outer garments and caps (paper caps, hair nets or safety hats are acceptable) shall be worn by all persons engaged in receiving, testing, processing milk, manufacturing, packaging or handling dairy products.

Section 18. Personnel Health. No person while affected with any disease in a communicable form, or while a carrier of such disease, or while afflicted with boils, infected wounds, sores, or an acute respiratory infection, shall work in any area of a plant, receiving station, transfer station or be a handler of manufacturing milk, in any capacity in which there is a likelihood of such person contaminating milk or milk contact surfaces with pathogenic organisms, or transmitting disease to other individuals; and no person known or suspected of being affected with any such disease or condition shall be employed in such an area or capacity. If the manager or person in charge of the plant, receiving station, transfer station or handler has reason to suspect that any employee has contracted any disease in a communicable form or has become a carrier of such disease, he shall notify the department immediately. Provided, further, the department may require a physical examination and laboratory test if infection or disease is suspected.

Section 19. Plant Records. Adequate plant records shall be maintained of all required tests on all raw milk receipts. Such records shall be available for examination at all reasonable times by the inspector. These records shall include:

(1) Quality test results on raw milk from each producer including routine tests and monthly summary showing number and percent of total in each class, retest and rejections of raw milk. Such records shall be maintained for the previous twelve (12) months.

(2) Pasteurization recorder charts; CIP work-up charts and cooler recorder charts. Such records shall be retained for six (6) months.

(3) Water Supply test results from private systems. The current copy shall be retained for six (6) months.

Section 20. Supplemental Requirements for Plants Manufacturing, Processing and Packaging Cheese. The requirements of this Section shall apply to all plants manufacturing, processing and packaging cheese:

(1) Starter Vats. Bulk starter vats shall be of stainless steel or equally corrosion-resistant metal and shall be in good repair, equipped with tight fitting lids and have adequate temperature controls such as valves, indicating or recording thermometers.

(2) Cheese Vats. The vats used for making cheese shall be of metal construction with adequate jacket capacity for uniform heating. The inner liner shall be minimum sixteen (16) guage stainless steel or other equally corrosion-resistant metal, properly pitched from side to center and from rear to front for adequate drainage. The liner shall extend over the edge of the outer jacket. The junction of the liner and outer jackets shall be constructed so as to prevent milk or cheese from entering the inner jacket.

(3) Mechanical Agitators. The mechanical agitators shall be of sanitary construction. The carriage and track shall be constructed as to prevent the dropping of dirt or grease into the vat. All new or replaced carriages and tracks shall be completely enclosed. Each plant shall have a replacement program in effect for all carriages and tracks not completely enclosed.

(4) Hoops and Followers. The hoops, forms and followers shall be constructed of stainless steel or heavy tinned steel. If tinned, they shall be kept tinned and free from rust.

(5) Press. All parts of the cheese press which come in contact with the product shall be constructed of stainless steel. The pressure device shall be the continuous type. Press cloths shall be maintained in good repair and in a sanitary condition. Single-service press cloths shall be used only once.

(6) Rindless Cheese Press. The press used to heat seal the wrapper applied to rindless cheese shall have square interior corners, reasonably smooth interior surface and have controls that shall provide uniform pressure and heat equally to all surfaces.

(7) Paraffin Tanks. The metal tank shall be adequate in size, may have wood or other approved material, rather than metal racks to support the cheese, have heat controls and an indicating thermometer.

(8) Cookers. The cookers shall be the steam jacketed or

direct steam type. They shall be constructed of stainless steel or other equally corrosion-resistant material. Each cooker shall be equipped with an indicating thermometer and should be equipped with a temperature recording device. The recording thermometer stem may be placed in the cooker if satisfactory time charts are used; if not, the stem shall be placed in the hotwell or filler hopper. Steam check valves on direct steam type cookers shall be mounted flush with cooker wall, be constructed of stainless steel and designed to prevent the backup of product into the steamline, or the steamline shall be constructed of stainless steel pipes and fittings which can be readily cleaned.

(9) Fillers. The hoppers of all fillers shall be covered if practical but the cover may have sight ports. If necessary, the hopper may have an agitator to prevent buildup on side wall.

(10) Trimming and Cleaning. The natural cheese shall be cleaned free of all nonedible portions. Paraffin and bandages as well as rind surface, mold, or unclean areas or any other part which is unwholesome or unappetizing shall be removed.

(11) Cooking the Batch. Each batch of cheese within the cooker, including the optional ingredients shall be thoroughly commingled and the contents pasteurized at a temperature of at least 158°F and held at that temperature for not less than thirty (30) seconds. Care shall be taken to prevent the entrance of cheese particles or ingredients after the cooker batch of cheese has reached the final heating temperature. After holding for the required period of time, the hot cheese shall be emptied from the cooker as quickly as possible.

(12) Forming Containers. Containers either lined or unlined shall be assembled and stored in a sanitary manner to prevent contamination. The handling of containers by filler crews shall be done with extreme care and observance of personal cleanliness. Performing and assembling of pouch liners and containers shall be kept to a minimum and the supply rotated to limit the length of time exposed to possible contamination prior to filling.

(13) Filling Containers. Hot fluid cheese from the cookers may be held in hotwells or hoppers to assure a constant and even supply of processed cheese to the filler or slice former. Filler valves shall effectively measure the desired amount of product into the pouch of containers in a sanitary manner and shall cut off sharply without drip or drag of cheese across the opening. An effective system shall be used to maintain accurate and precise weight control. Damaged or unsatisfactory packages shall be removed from production, and the cheese may be salvaged into sanitary containers and added back to cookers.

(14) Closing and Sealing Containers. Pouches, liners or containers having product contact surfaces after filling shall be folded or closed and sealed in a sanitary manner, preferably by mechanical means, so as to assure against contamination. Each container in addition to other required labeling shall be coded in such a manner as to be easily identified as to date of manufacture by lot or sublot number.

(15) Packaging and Repackaging. Packaging rindless cheese or cutting and repackaging all styles of bulk cheese shall be conducted under rigid sanitary conditions. The atmosphere of the packaging rooms, the equipment and the packaging material shall be practically free from mold and bacterial contamination.

(16) Whey Disposal. Adequate sanitary facilities shall be provided for the disposal of whey. If outside disposal facilities are used, necessary precautions shall be taken to minimize flies, insects and development of objectionable odors. Whey or whey products intended for human food shall at all times be handled in a sanitary manner in accordance with the procedures specified in this regulation for handling milk and dairy products.

Section 21. Supplemental Requirements for Plants Manufacturing, Processing and Packaging Evaporated, Condensed, Ultra-Pasteurized or Sterilized Milk Products. The requirements of this Section shall apply to all plants manufacturing, processing and packaging evaporated, condensed, ultra-pasteurized or sterilized milk products:

(1) Evaporators and Vacuum Pans. All equipment used in the removal of moisture from milk or milk products for the purpose of concentrating the solids should meet the requirements for 3-A sanitary standards for milk and milk products evaporators and vacuum pans. All new or used replacements for this type of equipment shall meet the appropriate 3-A sanitary standards.

(2) Fillers. Both gravity and vacuum type fillers shall be of sanitary design and all product contact surfaces, if metal, shall be made of stainless steel or equally corrosion-resistant material, except that certain evaporated milk fillers having brass parts may be approved if free from corroded surfaces and kept in good repair. Nonmetallic product contact surfaces shall meet the requirements for 3-A sanitary standards for rubber and rubber like materials or for multiple-use-plastic materials. Fillers shall be designed so that they in no way will contaminate or detract from the quality of the product being packaged.

(3) Batch or Continuous In-Container Sterilizers. Batch or continuous in-container sterilizers shall be equipped with accurate temperature controls and effective valves for regulating the sterilization process. The equipment shall be maintained in such a manner as to assure control of the length of time of processing and to minimize the number of damaged containers.

(4) Small Containers. The filling of small containers with product shall be done in a sanitary manner. The containers shall not contaminate or detract from the quality of the product in any way. After filling, the container shall be hermetically sealed.

(5) Bulk Containers. Bulk containers for unsterilized product shall be suitable and adequate to protect the product in storage or transit. The bulk container (including bulk tankers) shall be cleaned and sanitized before filling, and filled and closed in a sanitary manner.

(6) Aseptic Filling. A previously sterilized product shall be filled under conditions which prevent contamination of the product by living organisms or spores. The containers prior to being filled shall be sterilized and maintained in a sterile condition. The containers shall be sealed in a manner that prevents contamination of the product.

Section 22. Supplemental Requirements for Plants Manufacturing, Processing and Packaging Instant Nonfat Dry Milk, Nonfat Dry Whole Milk, Dry Buttermilk, Dry Whey and Other Dry Milk Products. The requirements of Sections 23 to 33 shall apply for plants manufacturing instant nonfat dry milk, nonfat dry milk, dry whole milk, dry buttermilk, dry whey and other dry milk products.

Section 23. Preheaters. The preheaters shall be of stainless steel or other equally corrosion-resistant material, cleanable, accessible for inspection and shall be equipped with suitable automatic temperature controls.

Section 24. Hotwells. The hotwells shall be enclosed or covered and equipped with indicating thermometers either in the hotwell or in hot milk inlet line to the hotwell and if used for holding high heat products they should also have recorders.

Section 25. Evaporators or Vacuum Pans. Open type evaporators or vacuum pans shall be equipped with an automatic condenser water level control, barometric leg, or so constructed so as to prevent water from entering the product, and should meet the applicable 3-A sanitary standards. When enclosed type condensers are used, no special controls are needed to prevent water from entering the product.

Section 26. Surge Tanks. If surge tanks are used for hot milk and temperature of product, including foam, being held in the surge tank during processing is not maintained at a minimum of 150°F then two (2) or more surge tanks shall be installed with cross connections to permit flushing and cleaning during operation. Covers easily removable for cleaning shall be provided and used at all times.

Section 27. High Pressure Pumps and Lines. High pressure lines may be cleaned in place and shall be of such construction that deadends, valves and the high pressure pumps can be disassembled for hand cleaning.

Section 28. Spray Dryers. Spray dryers shall be of a continuous discharge type and all product contact surfaces shall be of stainless steel or other equally corrosion-resistant material. Sight glasses or ports of sufficient size shall be located at strategic and exhaust recording thermometers. The filter system shall consist of filtering media or devices that will effectively, and in accordance with good commercial practices, prevent the entrance of foreign substances into the drying chamber. The filtering system shall be cleaned or component parts replaced as often as necessary to maintain a clean and adequate air supply. In gas-fired dryers, precautions shall be taken to assure complete combustion. Air shall be drawn into the dryer from sources free from objectionable odors and smoke, dust or dirt.

Section 29. Roller Dryers. The drums of a roller dryer shall be smooth, readily cleanable and free of pits and rust. The knives shall be maintained in such condition so as not to cause scoring of the drums. The end boards shall have an impervious surface and be readily cleanable. They shall be provided with a means of adjustment to prevent leakage and accumulation of milk solids. The stack, hood and the drip pan inside of the hood and related shields shall be constructed of stainless steel. The lower edge of the hood shall be constructed so as to prevent condensate from entering the product zone. The hood shall be properly located and the stack of adequate capacity to remove the vapors. The stack shall be closed when the dryer is not in operation. The augers shall be of stainless steel or properly plated, and readily cleanable. The auger troughs and related shields shall be of stainless steel. All air entering the dryer room shall be filtered to eliminate dust and dirt. The filter system shall consist of filtering media or device that will effectively and in accordance with good commercial practices, prevent the entrance of foreign substance into the drying room. The filtering system shall be cleaned or component parts replaced as often as necessary to maintain a clean and adequate air supply. All dryer adjustments shall be made and the dryer operating normally before food grade powder can be collected from the dryer.

Section 30. Collectors and Conveyors. Collectors and conveyors shall be made of stainless steel or equally non-corrosive material. Filter sack collectors, if used, shall be in good condition and the system shall be of such construction that all parts are accessible for cleaning and inspection.

Section 31. Dry Dairy Product Cooling Equipment. Cooling equipment shall be provided with sufficient capacity to cool

the product to 110°F or lower immediately after removal from dryer and prior to packaging. If bulk bins are used, the product should be cooled to approximately 90°F, but shall be not more than 110°F. A suitable dry air supply with effective filtering shall be provided where air cooling and conveying is used.

Section 32. Special Treatment Equipment. (1) Sanitary Construction. All special equipment such as instantizing systems, flakers, pulverizers or hammer mills used to further process dry milk products shall be of sanitary construction.

(2) Sifters. All sifters shall be constructed of stainless steel or other equally non-corrosive material. The mesh size of sifter screen used for various dry dairy products shall be those recommended in the appendix of the 3-A standard for sifters.

(3) Portable and Stationary Bulk Bins. Bulk bins shall be constructed of stainless steel, aluminum or other equally corrosion-resistant material.

(4) Automatic Sampling Device. If automatic sampling devices are used, they shall be constructed in such a manner as to prevent contamination of the product.

(5) Dump Hoppers, Screens, Mixers and Conveyors. The product contact surfaces of dump hoppers, screens, mixers and conveyors which are used in the process of transferring dry products from bulk containers to fillers for small packages or containers, shall be of stainless steel or equally corrosion-resistant material and designed to prevent contamination. The dump hoppers shall be of such height above floor level as to prevent foreign material or spilled product from entering the hopper.

(6) Filler and Packaging Equipment. All filling and packaging equipment shall be of sanitary construction.

(7) Heavy Duty Vacuum Cleaners. Each plant handling dry milk products shall be equipped with a heavy duty industrial vacuum cleaner. Regular scheduling shall be established for its use in vacuuming applicable areas.

(8) Clothing and Shoe Covers. Clean clothing and shoe covers shall be provided exclusively for the purpose of cleaning the interior of the dryer when it is necessary to enter the dryer to perform the cleaning operation.

Section 33. Operations and Operating Procedures. (1) Pasteurization. All milk, buttermilk, and whey used in the manufacture of dry dairy products shall be pasteurized at the plant where dried, except that condensed whey and acidified buttermilk containing forty (40) percent or more solids may be transported to another plant for drying without repasteurization. Milk or skim milk to be used in the manufacture of nonfat dry milk shall be heated prior to condensing to at least the minimum pasteurization temperature. Condensed skim milk made for pasteurized skim milk may be transported to a drying plant, provided that it shall be effectively repasteurized at the drying plant prior to drying.

(2) Buttermilk or Cream. All buttermilk or cream from which it is derived shall be pasteurized prior to condensing.

(3) Cheese Whey. All cheese whey shall be pasteurized prior to condensing.

(4) Condensed Surge Supply. Surge tanks or balance tanks if used between the evaporators and dryer shall be used to hold only the minimum amount of condensed product necessary for a uniform flow to the dryers. Such tanks holding product at temperatures below 150°F shall be completely emptied and washed after each four (4) hours of operation or less. Alternate tanks shall be provided to permit continuous operating during washing of tanks.

(5) Condensed Storage Tanks. Excess production of condensed product over that which the dryer will take continuously from the pans should be bypassed through a cooler into a storage tank at 50°F or lower and held at this temperature until used. Product cutoff points shall be made at least every twenty-four (24) hours and the tank completely emptied, washed and sanitized before reuse.

(6) Drying. Each dryer should be operated at not more than the manufacturer's rated capacity for the highest quality dry product consistent with the most efficient operation. This does not preclude the remodeling or redesigning of dryers after installation when properly engineered and designed. The dry products shall be removed from the drying chamber continuously during the drying process.

(7) Cooling Dry Products. Prior to packaging and immediately following removal from the drying chamber the dry product shall be cooled to a temperature not exceeding 110°F.

(8) Packaging, Repackaging and Storage Containers. In no instance will containers which have previously been used for nonfood items or food which would be deleterious to the dairy product be allowed to be used for the bulk handling of dairy products.

(9) Filling. Containers which are to be lined shall not be prepared more than one (1) hour in advance of filling. Every precaution shall be taken during the filling operation to minimize product dust and spillage. When necessary, a mechanical shaker shall be provided; the tapping or pounding of containers shall be prohibited. The containers shall be closed immediately after filling and the exteriors shall be vacuumed or brushed when necessary to render them practically free of product remnants before transferred from the filling room to the palleting or dry storage areas.

(10) Repackaging. All exterior surfaces of individual containers shall be practically free of product before overwrapping or packing in shipping containers. Conveyors, packaging and carton making equipment shall be vacuumed frequently during the operating day to prevent the accumulation of dust. No bottles or glass materials of any kind shall be permitted in the repacking or hopper room. The inlet openings of all hoppers and bins shall be of minimum size, screened and placed well above the floor level. A thorough cleanup including windows, doors, walls, light fixtures and ledges shall be performed as frequently as is necessary to maintain a high standard of cleanliness and sanitation. All waste dry dairy products including dribble product at the fillers shall be properly identified and disposed of as animal feed.

Section 34. Supplemental Requirements for Plants Manufacturing, Processing and Packaging Butter and Related Products. The requirements of this Section shall apply for plants manufacturing, processing and packaging butter and related products: (1) Continuous Churn. All product contact surfaces shall be of non-corrosive material. All nonmetallic product contact surfaces shall comply with 3-A standards for plastic, rubber and rubberlike materials.

(2) Conventional Churn. Churns shall be constructed of aluminum, stainless steel or equally corrosion-resistant metal. All gasket material shall be fat resistant, nontoxic and reasonably durable. Seals around the doors shall be tight.

(3) Bulk Butter Trucks, Boats and Packers. Bulk butter trucks, boats and packers shall be constructed of aluminum, stainless steel or equally corrosion-resistant material.

(4) Butter, Frozen or Plastic Cream Melting Machine. Shavers, shredders or melting machines, used for rapid melting of butter, frozen or plastic cream, shall be of stainless steel or equally corrosion-resistant metal.

(5) Printing Equipment. All product contact surfaces shall be aluminum, stainless steel or equally corrosion-resistant metal, or plastic, rubber and rubberlike material which meets 3-A standards, except that conveyors may be constructed of material which can be properly cleaned and maintained in a satisfactory manner.

(6) Brine Tanks. Brine tanks used for the treating of parchment liners shall be constructed of noncorrosive material and have an adequate and safe means of heating the salt solution for the treatment of the liners. The tanks shall also be provided with a satisfactory drainage outlet.

(7) Starter Vats. Bulk starter vats shall be of stainless steel or equally corrosion-resistant metal and constructed according to applicable 3-A sanitary standards.

(8) Pasteurization. The milk or cream shall be pasteurized at the plant where the milk or cream is processed into the finished product.

(9) Caps and Covers. Caps or covers which extend over the lip of the container shall be used on all cups or tubs containing two pounds or less to protect the product from contamination during subsequent handling.

(10) Liners and Wrappers. Prior to use, parchment liners for bulk butter packages shall be completely immersed in a boiling salt solution in a suitable container constructed of stainless steel or other equally noncorrosive material. The liners shall be maintained in a solution for not less than thirty (30) minutes. The solution shall consist of at least fifteen (15) pounds of salt for every eighty-five (85) pounds of water and shall be strengthened or changed as frequently as necessary to keep the solution full strength and in good condition. Other liners such as polyethylene shall be treated or handled in such a manner as to prevent contamination of the liner prior to filling.

(11) Storage of Finished Product in Coolers. All products shall be kept under refrigeration at temperatures of 40°F or lower after packaging until ready for distribution or shipment.

(12) Sharp Freezers. Plastic cream or frozen cream intended for storage shall be placed in quick freezer rooms immediately after packaging, for rapid and complete freezing within twenty-four (24) hours. The packages shall be piled or spaced in such a manner that air can freely circulate between and around the packages. The rooms shall be maintained at -10°F or lower and shall be equipped to provide sufficient high-velocity air circulation for rapid freezing. After the products have been completely frozen, they may be transferred to a freezer storage room for continued storage.

(13) Freezer Storage. The room shall be maintained at a temperature of 0°F or lower. Adequate air circulation is desirable. Butter intended to be held more than thirty (30) days shall be placed in a freezer room as soon as possible after packaging. If not frozen before being placed in the freezer, the packages shall be spaced in such a manner as to permit rapid freezing and repiled, if necessary, at a later time.

Section 35. Prohibited Acts Relating to Manufacturing Milk Plants, Receiving Stations, Transfer Stations and Handlers. The following acts and the causing thereof within the Commonwealth of Kentucky are hereby prohibited: (1) No person shall process, handle, sell or offer for sale any milk or milk products for manufacturing purposes within this state without a permit as provided in this regulation.

(2) No person shall, within this state process, handle, provide, sell, offer or expose for sale, or have in possession with intent to sell any milk or milk product for manufacturing purposes which is adulterated, misbranded or otherwise in violation of this regulation.

(3) No person shall prohibit entry or inspection, or prohibit the taking of a sample or prohibit access to records or evidence, to duly authorized agents of the department.

(4) No person shall remove, destroy, alter, forge or falsely represent, without proper authority any tag, stamp, mark or label used by the department.

(5) No person shall remove or dispose of a detained or quarantined article without proper authority from the department.

Section 36. Manufacturing Milk Plant, Receiving Station, Transfer Station and Handler Permit Suspension and Reinstatement. (1) Permits issued under this regulation may be suspended, whenever the department has reason to believe that a public health hazard exists; or whenever the permit holder has violated any of the requirements of this regulation; or whenever the permit holder has interfered with the department in the performance of its duties. Provided, that the department shall, in all cases except where the milk or milk products involved creates, or appears to create, an imminent hazard to the public health; or in any case of a willful refusal to permit authorized inspection, serve upon the permit holder a written notice of intent to suspend the permit, which notice shall specify with particularity the violation(s) in question and afford the permit holder reasonable opportunity to correct such violation(s). A suspension of a permit shall remain in effect until the violation(s) has been corrected to the satisfaction of the department.

(2) Following the issuance of a permit, each milk plant, receiving station, transfer station or handler shall be inspected at least annually. Should the violation of any requirement set forth in this regulation be found to exist, a second inspection may be required after the time deemed necessary to remedy the violation, but not before three (3) days; the reinspection will be used to determine compliance with the requirements of this regulation. Whenever a violation continues to exist on the reinspection, the department may issue an official notice, and specify a time for the violation to be corrected. Failure to comply with the requirements of the official notice may be cause for permit suspension in accordance with this regulation.

(3) Upon written application of any person whose permit has been suspended, or upon application within forty-eight (48) hours of any person who has been served with a notice of intention to suspend and in the latter case, before suspension, the department shall within a reasonable time proceed to a hearing to ascertain the facts of such violation or interference and upon evidence presented at such hearing shall affirm, modify or rescind the suspension or intention to suspend. Any permit suspended under the provisions of this Section may be reinstated by submission of proper evidence satisfactory to the department that the violations have been corrected.

Section 37. Trade Secrets. No person who in an official capacity obtains any information under the provisions of this regulation which is entitled to protection as a trade secret (including information as to quantity, quality, source of disposition of milk or milk products, or results of inspections or tests thereof) shall use such information to his own advantage or to reveal it to any unauthorized person.

L. W. TRUE, Secretary

ADOPTED: November 18, 1974
RECEIVED BY LRC: November 19, 1974 at 4:38 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Secretary, Department for Human Resources, Capitol Annex Building, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
(902 KAR 50:060)

RELATES TO: KRS 217C.010 to 217C.990
PURSUANT TO: KRS 13.082, 194.050, 211.090(1)(c)
SUPERSEDES: FDC-4
NECESSITY AND FUNCTION: The Department for Human Resources is directed by KRS Chapter 217C to regulate milk and milk products. The purpose of this regulation is to provide standards for the issuance of permits to manufacturers of ice cream or frozen desserts made from milk.

Section 1. Permits Required for Ice Cream and Frozen Dairy Products Plants. All ice cream and frozen dairy products plants selling, or offering for sale, in this state, any ice cream mix or ice cream or frozen dairy products, shall obtain a permit from the department prior to the sale, or offering for sale, of any such product. Any ice cream or frozen dairy products plant, in compliance with KRS Chapter 217C and the rules and regulations of the department relating to manufacturing milk shall be eligible for a permit upon proper application supported by inspection records available to the department. Any permit issued pursuant to this Section may be revoked or suspended by the department for violation of any applicable law or regulation. All permits issued under this Section shall expire on June 30 following the date of issuance unless renewed.

L. W. TRUE, Secretary

ADOPTED: November 18, 1974
RECEIVED BY LRC: November 19, 1974 at 4:38 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Secretary, Department for Human Resources, Capitol Annex Building, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
(902 KAR 50:070)

RELATES TO: KRS 217C.010 to 217C.990
PURSUANT TO: KRS 13.082, 194.050, 211.090(1)(c)
SUPERSEDES: FDC-1; FDC-10; FDC-17; FDC-18; FDC-20
NECESSITY AND FUNCTION: The Department for Human Resources is directed by KRS Chapter 217C to set standards of identity and labeling requirements for milk and milk products. This regulation adopts, by reference the applicable rules and regulations of the U.S. Food and Drug Administration relating to definitions, product standards of identity and labeling requirements for milk and cream; sour cream and related products; cheeses, processed cheeses, cheese foods, cheese spreads, and related foods, and frozen desserts for the State of Kentucky.

Section 1. Milk and Milk Products Standards of Identity and Labeling Requirements. The standards of identity and labeling requirements as set forth in the April 1, 1974 edition of the "Code of Federal Regulations", Title 21, Food and Drugs, Chapter 1, Subchapter B - Food and Food Products: (i) Part 18, milk and cream, pages 48-54; (ii) Part 19, cheeses, processed cheeses, cheese foods, cheese spreads, and related foods, pages 54-110; (iii) Part 20, frozen desserts, pages 110-122; and (iv) Part 18, A supplement - sour cream and related products as published in the May 7, 1974 Federal Register, Volume 39, Number 89, pages 15993 to 15995; are hereby adopted by reference for the Commonwealth of Kentucky. These publications are published by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C., 20408. Copies of these publications shall be on file in the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky, 40601, and are open for public inspection. Copies are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402.

L. W. TRUE, Secretary

ADOPTED: November 18, 1974
RECEIVED BY LRC: November 19, 1974 at 4:38 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Secretary, Department for Human Resources, Capitol Annex Building, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
(902 KAR 50:080)

RELATES TO: KRS 217C.010 to 217C.990
PURSUANT TO: KRS 13.082, 194.050, 211.090(1)(c)
SUPERSEDES: MMP-6
NECESSITY AND FUNCTION: The Department for Human Resources is directed by KRS Chapter 217C to regulate the production, transportation, processing, handling, sampling, examination, grading, labeling, standards of identity, sale and such other matters relating to milk and milk products as may be necessary to protect the public health. This regulation establishes uniform standards for the open dating of Grade A pasteurized milk and milk products in Kentucky and requires that a consumer information or purchase guide date be legibly applied to retail packages offered for sale to the final consumer.

Section 1. Open Date Required. No person shall sell or offer for sale any Grade A pasteurized milk or milk product in this state in a consumer package that does not bear the open date as required by this regulation.

Section 2. Open Date Labeling. (1) The open date shall appear in such form as to be conspicuous, legible and commonly understandable. It shall be boldface print in contrast to the background, by typography, color, embossing, debossing or molding of other matter on the package, and shall be placed on that part of the container most likely to be displayed, presented, or shown, or examined under customary conditions of display for retail sale, and shall not interfere with legibility of other mandatory labeling requirements of the product.

(2) The open date shall be expressed by the first three (3) letters of the month followed by or preceded by the numeral or numerals constituting the appropriate calendar date, or expressed numerically by the number of the month preceding the number of the day. (For example: June 1 may be expressed "Jun 1", "1 Jun", "06 01", or "06-01.")

(3) The open dating of Grade A pasteurized milk and milk products bottled in glass containers for home delivery are exempt from this regulation.

Section 3. Certification of Open Date Required. (1) Each distributor or processor manufacturing, processing or packaging Grade A pasteurized milk and milk products for sale within this state shall comply with the provisions of this regulation and file and certify with the department the open date for each product. The processor or distributor requesting an open date certification for a product shall provide the department with the research data used to support the product open date certification request.

(2) Samples of products for open date evaluation may be obtained at the processing plant, delivery truck, distributors

or from retail outlets. The temperature and open date shall be officially recorded at the time of sample collection.

Section 4. Enforcement. In the event a product is not sold within the period specified in the open date, the department shall take appropriate action necessary to remedy the condition consistent with applicable public health laws and regulations.

L. W. TRUE, Secretary

ADOPTED: November 18, 1974
RECEIVED BY LRC: November 19, 1974 at 4:39 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Secretary, Department for Human Resources, Capitol Annex Building, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Services
(905 KAR 1:010)

RELATES TO: KRS 199.470(4), 199.473
PURSUANT TO: KRS 13.082, 194.050
SUPERSEDES: DCW-DLS 2, 3, 4
NECESSITY AND FUNCTION: This regulation is to provide clear procedures for the application for permission to place or receive a child, the disposition of a child preceding the granting or denying of permission to place or receive a child, and the investigation of the circumstances surrounding the natural parents of a child to be placed or received under the law of independent adoption. The function of this regulation is to set forth the procedure in independent adoptions from the point of application to place or receive a child to the point of granting or denying permission to place or receive a child.

Section 1. Application for permission to place or receive a child shall be filed in duplicate, in writing with the Secretary of the Department for Human Resources, c/o the Commissioner of the Bureau for Social Services by means of certified or registered mail.

Section 2. The application for permission to place or receive a child shall be considered officially filed when received at the office of the Commissioner of the Bureau for Social Services.

Section 3. The return receipt of certified or registered mail shall be proof of the filing of application.

Section 4. The Secretary of the Department for Human Resources or his designated representative shall have sixty (60) days in which to grant or deny said application for permission for the placement or receiving of the child. The sixty (60) days shall commence upon the date of its official filing.

Section 5. The application for permission to place or receive a child shall contain the following:
(1) Names and addresses of persons wishing to receive a child;
(2) Names and addresses of the mother and father of child to be placed or received;
(3) The name and date of birth or expected date of birth of child to be placed or received;
(4) Present address of child to be placed or received.

Section 6. Forms for application for permission to place or receive a child may be obtained at the various local Bureau for Social Services offices or at the central office in Frankfort.

Section 7. The application for permission to place or receive a child shall be signed by the person or persons wishing to receive a child, the person wishing to place the child, or both.

Section 8. An application for permission to place or receive a child may be made prior to birth of the child.

Section 9. During the time between the filing of the application for permission to place or receive a child and the decision of the Department for Human Resources granting or denying the application, the responsibility for providing for the care of the child cannot rest with the Department for Human Resources. The said responsibility shall remain with the parents of the child or their agent.

Section 10. The return receipt of the application for permission to place or receive a child shall be the implied permission of the Secretary of the Department for Human Resources for the placement of the child in temporary care.

Section 11. The Department for Human Resources shall cooperate with the applicants in finding suitable temporary placement for the child, pending the disposition of the application for permission to place or receive a child.

Section 12. The child shall not be physically placed in the home of the proposed receiving parents until final permission to do so has been granted by the Secretary of the Department for Human Resources; however, if the child has already been placed in the home, consideration shall be given to allowing the child to remain during the evaluation.

Section 13. When an application for permission to place or receive a child has been filed with the Secretary of the Department for Human Resources, the Commissioner of the Bureau for Social Services shall cause an investigation to be made of the proposed receiving home, keeping in mind at all times, the best interest of the child.

Section 14. A representative of the Department for Human Resources shall make every effort to interview the mother and/or father of the child to be placed or received for the purpose of determining whether or not the mother and father are aware of the ethnic and religious background of the receiving parents and whether or not they agree to the placement of the child with the proposed receiving parents. All parties shall cooperate fully in making the parents of the child to be placed or received available to a representative of the Department for Human Resources. Nothing in this regulation shall require the representative of the Department for Human Resources to interview the parents of the child to be placed or received if the said parents cannot be found in the Commonwealth of Kentucky.

Section 15. When the department's investigation has been completed, the applicants shall be notified by registered or certified mail of the Secretary of the Department for Human Resources decision, either granting or denying said permission for the placement or receiving of the child. If the permission is granted, the child may be placed in the home of the receiving parents forthwith. If the permission is denied, the receiving parents or the birth parents may, within ten (10) days after notice of refusal, appeal the decision to the circuit court.

Section 16. When a child has been placed in a proposed receiving home with the permission of the Secretary of the Department for Human Resources, the proposed receiving parents may file the petition for adoption in the circuit court in the county of their residence three (3) months after the date of the child's placement in their home in accordance with KRS 199.470(4).

JERRY B. HISSONG, Commissioner

ADOPTED: November 18, 1974
APPROVED: L. W. TRUE, Secretary
RECEIVED BY LRC: November 20, 1974 at 4:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, Capitol Annex, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Services
(905 KAR 1:030)

RELATES TO: KRS 199.471, 199.472
PURSUANT TO: KRS 13.082, 194.050, 199.472
SUPERSEDES: DCW 7-8
NECESSITY AND FUNCTION: This regulation is necessitated by the mandate found in KRS 199.472. It functions to establish guidelines for the placement of children for adoption by the Department for Human Resources.

Section 1. The rights and best interests of children to be adopted shall be paramount. Placement of children shall be based upon the needs of individual children available for adoption and the ability of the adoptive applicants to meet these needs.

Section 2. The approval of applicants for adoption shall not guarantee the placement of any child with them.

Section 3. In order to be approved, applicants shall make themselves available to representatives of the Department for Human Resources for the purpose of evaluating their abilities to meet the needs of children available for adoption.

Section 4. Applicants shall be subject to departmental visitation, supervision, and evaluation of the child in the applicant's home after the child has been placed.

Section 5. Placement of a particular child with an applicant shall require prior approval by the Department for Human Resources.

Section 6. The Department for Human Resources shall consider placement of a child with an adoptive applicant of appropriate and responsible age, sufficient physical and mental health, adequate financial resources and housing facilities to provide a stable environment that meets the child's needs. The home shall provide an environment that is conducive to the child's well-being.

Section 7. No applicant shall be approved, and no child shall be placed with an applicant, if it is determined that the applicant has opinions or feelings, as evidenced by statement or action, which might be expected to adversely affect the applicant's capacity for adoptive parenting. Such feelings or opinions include, but are not limited to, those concerning infertility, illegitimacy, heredity, race, physical characteristics or resemblances.

Section 8. In order to be approved, an applicant shall have a love for children and shall have a desire and capacity for parenting. They shall have a capacity for feeling satisfaction from contributing to the development of a child, and shall have an ability to deal with developmental differences and a sensitivity to, understanding of, and tolerance for children's differences. They shall be flexible about their expectations and be capable of accepting a child as the child is or may develop.

Section 9. The approved applicants shall be able to present the adoptive child with appropriate opportunities for religious, spiritual, or ethical development.

Section 10. Applicants with natural or adopted children shall be given the same consideration as childless applicants.

Section 11. No applicant for adoption and no child suitable for adoptive placement shall be denied approval or placement solely on the basis of age, race, sex, marital status, religion, or national origin.

Section 12. Brothers and sisters shall not be separated from one another unless the Department for Human Resources shows conclusively that the separation will benefit the child.

JERRY B. HISSONG, Commissioner
ADOPTED: November 18, 1974
APPROVED: L. W. TRUE, Secretary
RECEIVED BY LRC: November 20, 1974 at 4:28 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, Capitol Annex, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Services
(905 KAR 1:050)

RELATES TO: KRS 199.555
PURSUANT TO: KRS 13.082, 194.050, 199.555(3) and (4)
SUPERSEDES: DCW-9
NECESSITY AND FUNCTION: This regulation is required by KRS 199.555(3) and (4). It serves to set forth guidelines for the implementation of the law on subsidized adoptions.

Section 1. The decision to pay a subsidy for the adoption of a particular child shall be the responsibility of the Secretary of the Department for Human Resources or his designated representative and shall be made in the best interest of a child for whom an equally suitable, unsubsidized adoptive home is not available. An adoptive subsidy shall be construed as being primarily for the benefit of the child and not the adoptive parents. An adoptive subsidy shall be limited to adoptive parents receiving a child or children defined as hard-to-place in KRS 199.555(1).

Section 2. The child considered for an adoptive subsidy shall be one who is committed to the Department for Human Resources and is free for adoption. "Free for adoption" means a child who has no parents with a legal claim to his or her custody.

Section 3. Parents receiving a child for subsidized adoption shall meet the same standards as those applied to other adoptive applicants, except as those standards relate to financial resources. Their financial situation shall be such that they are able to meet the daily expenses of their existing family, but are unable to care for an additional child without a subsidy.

Section 4. A contract setting forth the scope and limits of the subsidy shall be signed by the adoptive parents and the Secretary of the Department for Human Resources or his designated representative. The amount of the subsidy shall be determined according to the financial needs of the child and the ability of the adoptive parents to meet those needs. The adoptive subsidy shall begin on the date on which the adoption judgment is entered and shall continue until the child reaches the age of majority, except that the subsidy may be discontinued if and when the child becomes self-supporting, the adoptive parents are no longer responsible for the support of the child, or the financial condition of the adoptive parents improves to the point that the adoptive subsidy is no longer necessary. The subsidy may be decreased or increased as changes occur in the family situation but shall not exceed the amount which would be paid for foster care for the child and may include or may consist entirely of payment for extraordinary medical care. The subsidy shall not be altered by the adoptive parents moving out of the state or out of the country.

Section 5. Annual contact with the adoptive family shall be made by mail or home visit in order to make appropriate adjustments in the amount of the subsidy.

Section 6. The number of subsidized adoptions shall be limited by available funds for the subsidy program.

JERRY B. HISSONG, Commissioner
ADOPTED: November 18, 1974
APPROVED: L. W. TRUE, Secretary
RECEIVED BY LRC: November 20, 1974 at 4:28 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, Capitol Annex, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Services
(905 KAR 1:070)

RELATES TO: KRS 199.640 to 199.670
PURSUANT TO: KRS 13.082, 194.050
SUPERSEDES: DCW-14
NECESSITY AND FUNCTION: The necessity of this regulation is mandated by KRS 199.640 to 199.670. It functions to establish minimum standards for group homes.

Section 1. "Group Home" means a homelike facility for not more than eight (8) foster children, not adjacent to or part of an institutional campus, operated by a sponsoring agency for children who may participate in community activities and use community resources.

Section 2. Administration. (1) Every group home shall file a separate application for license to operate.
(2) A separate application for renewal of license shall be filed annually.
(3) Written approval for each facility to be used as a group home shall be secured from the Department for Human Resources before operation is begun.

Section 3. Board. (1) Every group home or its sponsoring agency shall have a board of directors or an advisory committee of not less than five (5) members.
(2) The majority of the board of directors or the advisory committee should not be paid employees of the group home or its sponsoring agency.
(3) The board of directors or advisory committee shall keep a written record of its proceedings.
(4) The board of directors or advisory committee shall meet at least twice annually.
(5) The board of directors or advisory committee shall keep a written policy manual covering all aspects of the group home operation.
(6) The board of directors or advisory committee shall be responsible for providing liability insurance for all situations in which children under care are transported.

Section 4. Staff. (1) Each facility shall be adequately staffed to provide the necessary components for child care on a twenty-four (24) hour basis.
(2) Each employee shall have a certification of freedom from communicable disease prior to employment and annually thereafter.
(3) The age of child-care staff shall be between a minimum of eighteen (18) and a maximum of sixty-five (65) years. The minimum age requirement shall not apply to other employees of the group home.
(4) Provision shall be made for relief and general housekeeping assistance as needed.
(5) Written job descriptions shall be provided all employees and these shall be reviewed at least annually to bring them into conformity with the duties actually being performed.
(6) Every facility shall provide staff development opportunities.

Section 5. Notification. (1) Prior to the acceptance of a child from another state for care in Kentucky, or placement of a child from Kentucky in another state, the facility shall notify the Interstate Compact Section, Kentucky Department for Human Resources, of the plan.
(2) All correspondence concerning exportation and importation of children to or from other states shall be forwarded in the original and three (3) copies to the Interstate Compact Section.

Section 6. Exportation. (1) When placement for a child in another state is being planned, a referral summary shall be sent to the Interstate Compact Section of the Kentucky Department for Human Resources for review and forwarding to the appropriate agency.
(2) The referral summary shall include sufficient information for the receiving state to give services, including the following: the reason for placement, the child's name, birthdate, the parents' names and last known addresses, significant information regarding the family of the child and child's social and developmental history, the name and address of the last school attended, and the child's current school adjustment.
(3) Approval from the receiving state shall be secured through the Interstate Compact Section prior to sending the child into the receiving state.

Section 7. Importation. Prior to acceptance of a child from another state for care in Kentucky, the facility shall make bond before the county judge. A waiver of the bond may be obtained from the Kentucky Department for Human Resources upon notification of the Interstate Compact Section.

Section 8. Housing. (1) The group home facility shall be adequate in size, of sound construction, and suitable for residential use. It shall be located within easy access of schools, churches, shopping centers, and other community resources.

(2) The facility and grounds shall be maintained in good condition.

(3) A living room of adequate size with comfortable furnishings shall be provided.

(4) Bedrooms may be used to accommodate as many as four (4) children. A minimum of 500 cubic feet of air space per child is required.

(5) There shall be separate sleeping rooms for boys and girls over age five (5).

(6) Each child shall have his own bed, adequate in size, equipped with good springs or an acceptable substitute, mattress, pillow and bedding.

(7) Each child shall have individual drawer space and closet space.

(8) The dining area shall be of sufficient size that all children may eat at the same time.

(a) Table tops must have a surface that is clean and free from cracks and fissures.

(b) Children shall be provided with knife, fork, spoon, and napkin at all meals.

Section 9. Fire Safety Regulations. Group home facilities shall meet applicable standards of the office of the State Fire Marshal and/or local fire department having jurisdiction and shall be subject to annual inspection for licensing purposes.

Section 10. Sanitation. (1) The facility shall have an approved water supply and shall comply with the state plumbing standards and applicable state laws regarding waste disposal systems.

(2) There shall be a ratio of one (1) toilet for each eight (8) children, one (1) lavatory for each six (6) children, and one (1) tub or shower for each ten (10) children.

(3) Interior floors, walls, and ceilings shall be kept clean and be free from cracks, breaks, and other deteriorated conditions.

(4) All windows and doors shall be properly screened against insects in season.

(5) All interior areas shall be well lighted and ventilated.

(6) All bed linens shall be changed at least once a week and more often if necessary.

(7) The kitchen shall be equipped with necessary household appliances. Commercial type ranges are prohibited unless provided with an approved ventilating hood.

(a) Sufficient cabinet space shall be provided to protect cooking utensils, dishes, and silverware from dust when not is use.

(b) Adequate refrigeration is required for perishable foods.

(c) Other foods shall be stored on shelves and kept free from rodents and insects.

(8) Adequate and separate space shall be provided for the following items:

(a) Bed linens, towels, etc.

(b) Used clothing which has not been washed.

(c) Recreation equipment.

(d) Miscellaneous items as household appliances and equipment, furniture, etc.

(e) Refuse and garbage.

Section 11. Food. (1) All food shall be secured from approved sources of supply.

(2) Insecticides and other poisonous substances shall not be stored on shelves adjacent to food.

(3) All spoiled and deteriorated food products shall be disposed of immediately.

Section 12. Medical. (1) Each child shall be given a thorough and complete medical examination for communicable disease by a licensed physician at the time of admission. The examining physician shall report his observations and findings in writing. The report shall include as far as available the following:

(a) Developmental history of the child, his illnessess, operations, and immunizations.

(b) The child's ability to take part in group activities, or schedule of permitted activities when these must be limited.

(c) When indicated, recommendations for psychological and psychiatric evaluation.

(d) Visual and auditory tests.

(e) Recommendations and orders for future care, treatment, and examinations.

(2) Each child shall be vaccinated in accordance with the requirements of the Bureau for Health Services.

(3) Each child shall receive a complete physical examination annually, or at more frequent intervals, as recommended by the physician.

(4) Special attention shall be given to the dental, visual, auditory, and orthopedic conditions of the children. Treatment of correctable defects is required upon the doctor's recommendation.

(5) In the event of the death or serious injury of a child, the office of the Secretary of the Department for Human Resources shall be notified within seventy-two (72) hours. A comprehensive written report shall be forwarded as soon as possible outlining all the circumstances related to the death or serious injury.

Section 13. Dental. (1) The facility shall have a licensed dental consultant.

(2) Every child from age two (2) years and above shall be examined at least once a year by a licensed dentist, and more frequently if indicated.

Section 14. Nutrition. (1) The regular diet shall provide the daily needs of the four (4) basis food groups:

(a) Milk: One (1) quart or more whole milk or fresh skim milk per day shall be served to each child. Dried skim milk shall be used only as an ingredient in cooked foods or in addition to the one (1) quart serving of whole milk or fresh skim milk.

(b) Fruit: There shall be four (4) or more weekly servings per child of fruit such as oranges, grapefruit, tomatoes, tangerines, strawberries or cantaloupe. These foods may be fresh, canned, or frozen.

(c) Dark Green, Yellow Vegetables:

1. There shall be four (4) servings per week per child of dark green or yellow vegetables such as carrots, sweet potatoes, yellow squash, spinach, broccoli, kale, mustard, or other dark greens.

2. There shall be two (2) or more daily servings per child of other fruits and vegetables, including potatoes.

(d) Protein:

1. There shall be at least one (1) daily serving per child of lean meat, eggs, or fish, plus an additional daily serving of one (1) of these or a protein substitute such as dried beans or peas, peanut butter, or cheese.

2. Whole grain (brown) or enriched cereals, bread, and flour shall be served daily.

(2) Special dietary needs of individual children shall be provided on medical advice.

Section 15. Intake Services. (1) Social Services shall be provided for both family and child commensurate with their need.

(2) The facility shall provide an intake service to determine the need for service and the findings shall be recorded in an individual record for each applicant.

(a) The facility shall obtain from the applicant the current information.

(b) The policies and purposes of the facility shall be interpreted to the applicant.

(c) Factual and identifying information shall be recorded including the following: the parents' names, dates and places of birth, address, religion, education, occupation, date and place of marriage, separation or divorce, and if the parent or parents are deceased, the date, address and relationships of close relatives; the guardianship and/or legal custody of the child.

(d) The facility shall obtain verification of the child's birth and legal custody.

(3) The facility shall obtain a developmental history from birth to present for each child admitted to care.

(a) This shall include a medical history, immunization record and report of school progress from the school last attended by the child.

(b) An admission physical examination shall be secured at the time the child is admitted to care.

(4) The facility shall obtain information, if available, from other public or private agencies which have had contact with or are currently working with the family.

(5) A home visit and personal contact with the child, the natural parents, relatives and/or significant other persons shall be made by the referring agency social worker or group home or social service representative prior to admission.

(6) A written preliminary evaluation shall be made, including future plans and goals based upon known facts, in determining the acceptance or rejection of the application for services.

(7) If the application is not accepted, when appropriate, a referral shall be made to an agency providing the needed services. Copies of the application and referral shall be kept on file.

(8) No facility shall accept a child and family for services without the means to meet the presented need.

Section 16. Services to Children When Accepted for Group Home Care. (1) When possible, a plan for permanent placement shall be initiated during the admission process.

(2) The staff shall make every effort to have the parents participate in the treatment plan.

(3) The staff shall involve the child in the treatment plan to the extent consistent with the child's age and understanding.

(4) The nature of the problem(s) and behavior displayed by both child and parents shall be interpreted to all staff in order to make them more effective in implementing the treatment plan.

(5) Regular staff conferences, a minimum of two (2) each year for each child, shall be held to evaluate the adjustment of the child and the family. At this time, decisions regarding continued treatment, management, modifications of behavior, visitation, and future planning shall be considered and shared with the family.

(6) The staff shall be responsible for preparing the family for the return of the child to the home when this is the appropriate plan.

(7) The child shall be involved in the plans for discharge unless precluded by the child's age and/or developmental stage.

Section 17. Records. (1) In the interest of those served and in order to comply with KRS 199.640(3), all records containing information concerning the child and parent shall be so filed and so used as to preserve their confidential nature.
(2) Records on the child and family shall be continuous records beginning with the initial referral and proceeding through treatment and after-care services.
(3) The record shall include, in addition to the completed intake study, the following information:
(a) A copy of the authorization to care for the child.
(b) Date and acceptance of the child and family for services.
(c) Changes in any data recorded in the intake study.
(d) Current school records.
(e) A record of all family contacts.
(f) A record of any significant changes in family composition or situation.
(g) Copies of any psychological reports.
(h) A record of group therapy reports.
(i) A copy of staffing evaluations of the child's progress in treatment.
(j) Copies of correspondence with the family and copies of correspondence with other interested persons and organizations.
(k) Plans for aftercare service.
(l) Date of discharge.
(m) Name and address of person, institution, or agency to whom the child is discharged.
(n) Legal status of the child at time of discharge.

Section 18. Education. (1) The facility shall provide for the education of each child under its care.
(2) Tutoring and specialized training and education by certified teaching personnel shall be provided when the needs of the child require it.

Section 19. Religion. (1) The religious beliefs and rights of children shall be respected.
(2) The facility shall provide opportunities for the child to have an appropriate religious affiliation and religious education in accordance with the religious preference of the child, his parents, or legal guardian.
(3) Children shall not be coerced or expected to participate in religious activities when this would be in conflict with the best interest of the child.

Section 20. Sex Education. (1) Children shall be given accurate and appropriate information about sex and shall be helped to develop desirable standards of sex behavior.
(2) Children shall be provided an opportunity to discuss the ideas they have, their anxieties and concern about matters such as masturbation, menstruation, marriage, and family life.

Section 21. Social Customs and Experience. (1) Personal Hygiene. Each child shall have his own articles of personal hygiene.
(2) Clothing:
(a) The agency shall furnish each child clothing selected especially for him, similar in appearance, quality and quantity to that worn by other children in the community.
(b) Shoes shall be fitted to the individual child.
(c) When possible, children shall participate in shopping for and selecting their clothing.
(3) Social Life:
(a) Dating shall be considered as a normal, healthy, and desirable part of growing up. Teenage youth shall be given opportunities and guidance for dating under appropriate conditions.
(b) Children shall be permitted and encouraged to use community recreation facilities and to exchange visits with families living in the community.
(c) Each child's birthday shall be celebrated.
(d) Traditional holidays shall be celebrated in a fitting manner.
(4) Allowances, Earnings, Expenses:
(a) Each child shall be given an outright allowance in order to have the experience of possessing money and learning how to spend it appropriately.
(b) It shall be made clear to children what expenses they are expected to meet out of their allowance and/or earnings and what expenses shall be met by the facility.
(5) Promotional Use of Children. Exploitation of children for promotional purposes is prohibited.
(a) Children shall not be used in any manner in which they or their family could suffer discomfort or embarrassment.
(b) Children shall not be used to raise funds for the facility.

Section 22. Recreation. (1) A recreation program shall be provided by the group home.

(2) The group home shall provide equipment and space for both indoor and outdoor recreation appropriate to all ages served.
(3) A recreation program shall include the following:
(a) Planned family group activities.
(b) Opportunities for the individual child to develop interests in hobbies, club work, and special talents such as music.
(4) Each child shall be encouraged to participate in community activities such as scout troops, youth clubs, etc.

Section 23. Work Assignments. (1) Children shall not be required to perform the day-by-day maintenance functions of the facility.
(2) Each child who is capable developmentally shall be encouraged and taught to accept the responsiblilty and care of his or her own room and to perform other appropriate chores.
(3) Children shall be given adequate and appropriate recognition for their work contribution.

Section 24. Discipline. (1) Methods of discipline which provide a child a sense of security shall be used.
(2) Children shall not be denied food or forced to eat any food as a means of punishment.
(3) In instances of extremely disturbed behavior, psychological or psychiatric consultation shall be obtained for consideration of a more effective method of handling the child.
(4) The child shall not be separated form the group any longer than is required to produce a therapeutic effect.
(5) In no instances shall harsh, cruel, or unusual punishment be used. The Child Abuse Statutes, KRS 199.335, 208.020(3), (4), and (5), and 208.990(5) and (6) shall be observed.

JERRY B. HISSONG, Commissioner
APPROVED: L. W. TRUE, Secretary
ADOPTED: November 18, 1974
RECEIVED BY LRC: November 20, 1974 at 4:28 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, Capitol Annex, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Services
(905 KAR 1:090)

RELATES TO: KRS 199.011(6), 199.011(7), 199.011(12), 199.640 to 199.670
PURSUANT TO: KRS 13.082, 194.050
SUPERSEDES: DCW-5
NECESSITY AND FUNCTION: This regulation is required by KRS 199.640. It serves to provide guidelines for the operation of private child-caring and child-placing institutions and agencies.

Section 1. For the purpose of this regulation the following definitions are to be used unless context clearly indicates otherwise:
(1) "Advisory committee" means a group, association, or committee who counsels or recommends regarding the institution's or agency's services and programs.
(2) "Adoption" means the legal process by which a child becomes the child of a person or persons other than his or her biological parents.
(3) "Agency" means a single or multipurpose body organized to achieve goals, of which institutional operation may be one facet.
(4) "Board of directors" means that group which is by law or charter delegated with responsibility for governing the agency or institution.
(5) "Child" means any person who has not reached his or her eighteenth birthday.
(6) "Executive director" means the agency or institutional administrator who may be entitled "administrator," "manager," "superintendent," and the like.
(7) "Foster care" means substitute family care for a child for a planned temporary or extended period when his or her own family cannot care for the child.
(8) "Institution" means a child-caring facility providing care or maintenance for nine (9) or more children.
(9) "Social services" means a planned program of assistance to help an individual to move toward a mutual adjustment of the individual and his or her social environment to be performed by or under the supervision of a social worker who at a minimum has a Bachelor's Degree from a recognized college or university.

Section 2. General. Every child-caring and/or child-placing institution or agency shall provide the following information when applying for licensing, and annually thereafter as a part of the required annual review:
(1) The name, address, and telephone number of the agency or institution.
(2) The geographical area to be served.
(3) The rated capacity of the institution.
(4) A copy of the articles of incorporation, if incorporated.
(5) A copy of the constitution and bylaws.
(6) A statement of the purposes, objectives, scope of services to be provided, and intake policy specifying type of children to be accepted for care.
(7) A list of officers and board members including addresses and professions.
(8) A financial statement showing assets, liabilities, estimated income and sources thereof, covering the most recent fiscal year.
(9) A list of all staff including positions or titles, qualifications and salary schedules.
(10) An architect's drawings for any building to be constructed or substantially remodeled.

Section 3. Board. (1) Every institution and/or agency shall have a board of directors or an advisory committee.

(2) The board of directors or an advisory committee shall keep a written record of its proceedings.

(3) The minimum number of board members and/or advisory committee members shall be nine (9). At least five (5) board members and/or advisory committee members shall reside in Kentucky.

(4) The board and/or advisory committee shall meet at least quarterly in every calendar year.

(5) At least one (1) board or advisory committee meeting shall be at the institution and/or agency in every calendar year.

Section 4. Executive Director. (1) Every institution and/or agency shall have a full-time employee who shall be designated executive director for the purpose of this regulation.

(2) Agencies operated under the jurisdiction of a juvenile court may designate an officer of the court as executive director for the purpose of this regulation.

Section 5. Administration. (1) Each institution and/or agency shall be responsible to see that liability insurance is provided for all situations in which institution and/or agency children are transported.

(2) A personnel record shall be maintained on each employee. The personnel record shall contain at least the following material: name of employee, date and place of birth, education, social security number, positions, dates and places of past employment, date of current employment, and a signed withholding tax form. Every record shall also include at least annual written job evaluations made by the immediate supervisor. The employee's date and reason for termination and last known home address shall be included in the personnel record.

Section 6. Personnel Policies and Practices Manual. The agency shall maintain such written information as general job descriptions, qualifications for each position, salary ranges, the basis upon which increments are given, working schedule, agency policy regarding vacations, sick leave, and educational leave.

Section 7. Staff. (1) Institutions and/or agencies shall be sufficiently staffed to provide the necessary components for child care on a twenty-four (24) hour basis.

(2) Employees shall be at least eighteen (18) years of age unless under direct supervision of other staff. Retirement shall be mandatory at age sixty-five (65) unless this provision is waived by the department upon evidence of satisfactory performance of the assigned duties.

(3) Each employee shall have a certification of freedom from communicable disease prior to being employed and annually thereafter.

(4) The institution and/or agency shall see that any employee under indictment or legally charged for felonious conduct shall immediately be removed from the program of the institution and/or agency until such time as he is cleared of the charge.

Section 8. Staff Development. (1) Every institution and/or agency shall have a staff development program.

(2) The executive director shall assume or delegate responsibility for implementation of the staff development program.

Section 9. Notification. (1) Prior to the acceptance of a child from another state for care in Kentucky, or placement of a child from Kentucky in another state, the agency or institution shall notify the Interstate Compact Section of the Department for Human Resources of the plan.

(2) All correspondence concerning exportation and importation of children to or from other states shall be forwarded in the original and three (3) copies to the Interstate Compact Section.

Section 10. Exportation. (1) When placement for a child in another state is being planned, a referral summary shall be sent to the Interstate Compact Section of the Kentucky Department for Human Resources for review and forwarding to the appropriate agency.

(2) The referral summary shall include sufficient information for the receiving state to give services to the case, including the following: the reason for placement, the child's name, birthdate, the parents' names and last known addresses, significant information regarding the family of the child and the child's social and developmental history, the name and address of the last school attended, and the child's current school adjustment.

(3) Approval from the receiving state shall be secured through the Interstate Compact Section prior to sending the child into the receiving state.

Section 11. Importation. Prior to the acceptance of a child from another state for care in Kentucky, the institution or agency shall make bond before the county judge as provided in KRS 199.350. A waiver of the bond may be obtained from the Kentucky Department for Human Resources as provided in KRS 199.370 upon notification of the Interstate Compact Section.

Section 12. Medical. (1) Each child admitted to an institution and/or agency shall be given a thorough and complete medical examination including examination for communicable disease by a licensed physician at the time of entrance. The examining physician shall report his observations and findings in writing. The report shall include the following:

(a) Developmental history of the child, his illnesses, operations, and immunizations.
(b) The child's ability to take part in group activities, or a schedule of permitted activities when these must be limited.
(c) When indicated, recommendations for psychological and psychiatric evaluation.
(d) Visual and auditory tests.
(e) Recommendations and orders for future care, treatment, and examinations.

(2) Each child cared for by the institution and/or agency shall be vaccinated in accordance with the requirements of the Bureau for Health Services.

(3) Each child shall receive a complete physical examination annually, or at more frequent intervals, as recommended by the physician.

(4) Special attention shall be given to the dental, eye, ear, and orthopedic conditions of children. Treatment of correctable defects upon doctor's recommendation is required.

(5) In the event of the death or serious injury of any child, the office of the Secretary for Human Resources shall be notified verbally within seventy-two (72) hours. A comprehensive written report shall be forwarded as soon as possible outlining all the circumstances related to the death or serious injury.

Section 13. Dental. (1) Every institution and/or agency shall have a licensed dental consultant.

(2) Every child from age two (2) years and above shall be examined a minimum of once a year and more frequently if recommended by a licensed dentist.

Section 14. Nutrition. (1) All institutions and/or agencies shall provide the daily needs of the four (4) basic food groups:

(a) Milk group: One (1) quart or more whole milk or fresh skim milk per day. Dried skim milk shall be used only as an ingredient in cooked foods, or in addition to the one (1) quart serving of whole milk or fresh skim milk.
(b) Vegetable and fruit group: There shall be four (4) or more weekly servings of vegetables and fruits such as oranges, grapefruit, tomatoes, tangerines, strawberries, or cantaloupe. These foods may be fresh, canned or frozen.
(c) Dark green, yellow vegetables:
1. There shall be four (4) or more servings per week of dark green or yellow vegetables such as: carrots, sweet potatoes, yellow squash, spinach, broccoli, kale, mustard or other dark greens.
2. There shall be two (2) or more daily servings of other fruits and vegetables, including potatoes.
(d) Protein foods:
1. There shall be at least one (1) daily serving of lean meat, eggs, or fish, plus an additional daily serving of dried beans, peas, peanut butter or cheese.
2. Whole grain (brown) or enriched cereals, bread, and flour shall be served daily.

(2) Special dietary needs of individual children shall be met in accordance with medical advice.

(3) Menus shall be prepared at least one (1) week in advance.

(4) Records of all meals actually served shall be retained for a year, and shall be available for periodic review and evaluation by licensing personnel.

Section 15. Preschool Care. (1) Infants and children of preschool age shall not be placed in institutions unless all other resources have been exhausted, or if the child seems to have need of the structure of the institution.

(2) When institutions receive preschool children under the conditions listed under subsection (1) of this section, the following requirements shall be met:

(a) For infants under two (2) years, twenty-four (24) hour coverage shall be provided by at least one (1) R.N. or L.P.N. A consulting pediatrician and/or physician shall be on call. Formulas and diets shall be prepared by qualified personnel and supervised by the R.N. or L.P.N. under the direction of the physician.
(b) Child care staff shall be required to have appropriate training under supervision in the care of infants and children before being allowed to work with the children. There shall be at least one (1) child care staff person in attendance for every three (3) children.
(c) Within a year after admission, children placed in institutions because of some physical or mental developmental problem shall have appropriate plans made whereby they can receive the best available care to enable them to develop to their full potential.

Section 16. Living Unit. (1) Cubic space of bedrooms shall meet state health standards. Each bedroom shall have no less than 500 cubic feet of space per child. Beds shall be at least three (3) feet apart on all sides.

(2) There shall be separate sleeping rooms for boys and girls over age five (5).

(3) Each child shall have his own bed, adequate in size, equipped with good springs or an acceptable substitute, mattress, pillow, and bedding.

(4) All bed linen shall be changed at least once a week and

more often if necessary.
(5) Each child shall have individual drawer space, closet space, and a chair.
(6) Each living unit shall have a living room where children can gather at any time for quiet reading and study, general relaxation, or entertaining.
(7) There shall be separate toilet and bath facilities for boys, girls, and staff. There shall be a ratio of one (1) toilet for each eight (8) children, one (1) lavatory for each six (6) children, and one (1) tub or shower for each ten (10) children.

Section 17. Work Assignments. (1) Children shall not be depended upon for the day-to-day maintenance functions of the institution.
(2) Domestic and maintenance staff shall be employed in sufficient numbers to carry out the day-by-day maintenance functions of the institution.

Section 18. Clothing. (1) A well-chosen, adequate supply of clothing shall be made available to a child while living in the institution.
(2) Donated clothing shall be selected with utmost care to avoid use of shoddy, soiled garments, or outmoded styles.
(3) Shoes shall be fitted to the individual child.
(4) All clothing shall be marked with the child's name or otherwise identified.

Section 19. Personal Hygiene. (1) Effort shall be expended for children in institutional living to develop acceptable standards of modesty and respect for the privacy of others.
(2) Each child shall have his own articles of personal hygiene such as toothbrush, comb, hairbrush, washcloth, towel, razor, toothpaste, shaving cream, and deodorant. Sanitary napkins shall be provided for girls.

Section 20. Recreation, Leisure, and Social Life. (1) The institution shall provide equipment and space for both indoor and outdoor recreation appropriate to all ages served.
(2) Each child's birthday shall be celebrated.
(3) Traditional holidays shall be celebrated in a fitting manner.
(4) Children shall have access to a daily newspaper and to magazines suitable for the age group served.

Section 21. Discipline and Controls. (1) Solitary seclusion in a locked room without constant and appropriate supervision is prohibited.
(2) The child shall not be separated from the group any longer than is required to produce a therapeutic effect.
(3) In no instance, shall harsh, cruel, or unusual discipline be used. The child abuse statutes, KRS 199.335, 208.020(4) and (5), and KRS 208.990(5) and (6), or their successor statutes, shall be observed.
(4) Children shall not be denied food or forced to eat any food as a means of discipline.
(5) In instances of extremely disturbed behavior, psychological or psychiatric consultation shall be obtained for consideration of a more effective method of handling the child.

Section 22. Religion. (1) The religious beliefs and rights of children shall be respected.
(2) The institution shall provide opportunities for the child to have an appropriate religious affiliation and religious experience in accordance with the religious preference of the parent(s), the child, or legal guardian.
(3) Children shall be encouraged to participate in religious activities and shall not be coerced or expected to participate in all activities when this would not be in the best interest of the child.

Section 23. Education. (1) If children attend school at the institution, the educational program shall conform to the requirements of the Department of Education and the teaching staff shall be certified as provided under KRS 161.030.
(2) Sufficient time and appropriate facilities shall be provided for quiet study after school hours.
(3) Encyclopedias, dictionaries, books, and other necessary educational and appropriate materials shall be readily accessible. Local and public libraries should be used but shall not take the place of such resources within the institution.

Section 24. Sex Education. Children shall be given accurate and appropriate information about sex and shall be helped to develop desirable attitudes and standards of sex behavior.

Section 25. Promotional Use of Children. Exploitation of children for promotional purposes is prohibited. Children shall not be used in any manner in which they or their family could suffer discomfort or embarrassment.

Section 26. Existing Buildings. (1) Existing buildings shall be brought into and maintained in compliance with the 1966 Edition of the "Kentucky Standards of Safety for New Nursing and Personal Care Homes," as revised in accordance with KRS 227.300.
(2) Exceptions to the requirement that all two story structures except Construction Type A, Type B, and Protected Noncombustible shall have approved sprinkler systems after July 1, 1970, may be made by the office of the Fire Marshal provided that all other fire-safety regulations have been met.
(3) Lighted exit signs shall not be required in existing two (2) story buildings, provided emergency power to light required exit halls and corridors is installed according to the above standards.

Section 27. New or Converted Buildings. (1) Buildings or sections of buildings constructed, substantially remodeled, or converted to use as institutional occupancies, shall conform to the requirements of the 1966 Edition of the "Kentucky Standards of Safety for New Nursing and Personal Care Homes," as revised in accordance with KRS 227.300.
(2) Doors, other than required exit doors, shall be a minimum of thirty-six (36) inches in width and ninety (90) inches in height and have a fire resistance rating of at least one (1) hour.
(3) Exit corridors in one (1) story buildings with a maximum capacity of eight (8) children shall be a minimum of five (5) feet in unobstructed width.

Section 28. Fire Protection and Safety. The 1966 standards of safety shall apply to "institutional occupancy" as defined in Article II of the Kentucky standards of safety and shall mean the occupancy or use of a building or structure or any portion thereof by children who are cared for and maintained on a twenty-four (24) hour basis for compensation or otherwise.

Section 29. Plan Review of Future Construction. When an institution is hereafter constructed or extensively remodeled or when an existing structure is converted for use as an institution, properly prepared plans and specifications for such construction, remodeling, or alteration, showing layout, arrangement, and construction materials of work areas, and the location, size, and type of fixed equipment and facilities, shall be submitted to the Department for Human Resources and the Department of Justice for approval before such work is begun.

Section 30. Water Supply. The water supply shall be from an approved source, adequate in supply, properly protected and satisfactorily treated and under ample pressure for distribution. Adequate, approved drinking fountains conveniently located are required.

Section 31. Waste, Toilets, and Handwashing. (1) All plumbing and waste disposal systems shall comply with the state plumbing standards and applicable state laws and regulations regarding waste disposal systems.
(2) There shall be separate toilets, washrooms and bathrooms for boys and girls of school age and separate rest rooms for staff and visitors to the institutions.
(3) There shall be a ratio of one (1) toilet for each eight (8) children, one (1) lavatory for each six (6) children, and one (1) tub or shower for each ten (10) children.
(4) There shall be a minimum of one (1) tub or shower in each building in which children live.
(5) Individual washcloth, towel, comb, hair brush, toothbrush, toothpaste, soap, and drinking cup shall be furnished each child.
(6) Toilet articles shall have identifying marks so that even small children can locate their own.
(7) Soap in sufficient quantity and of suitable grade shall be provided.

Section 32. Housing Facilities. (1) All interior areas shall be well-lighted.
(2) There shall be adequate lighting provided in all areas of the buildings and the grounds immediately outside the buildings.
(3) All sleeping rooms shall be outside rooms and shall be above the highest level of ground adjacent thereto.
(4) Each mattress shall have a protective, waterproof covering when the needs of the child indicate its use.

Section 33. Farming operations (Dairying and Food Processing). (1) Dairy operations, food processing, and slaughter houses shall be subject to state health laws and regulations.
(2) Processing of meat products shall be subject to federal meat inspection laws.
(3) Donated home canned foods shall be prohibited and all sources of food shall be from approved sources.

Section 34. Lunchroom Facilities and Food Service. Lunchroom facilities shall comply with applicable requirements of Regulation FDC-22, State Food Service Code, effective July 1, 1969, or any revision thereof.

Section 35. Insect and Rodent Control. (1) A program shall be employed to rid and control insect and rodent infestation on the agency property.
(2) Refuse shall be stored, transported, and disposed in a manner acceptable to the Bureau for Health Services.

Section 36. Intake. (1) The institution and/or agency shall provide an intake service to determine the need for service and the findings shall be recorded in an individual record for each applicant.
(2) The institution and/or agency shall obtain from the applicant(s) the current problem or problems which led them to request services from the agency.
(3) The institution's and/or agency's policies and purposes which include services and program shall be interpreted to the applicant.
(4) The following factual and identifying information shall be obtained by the agency and/or institution: the parents'

names, dates and places of birth, address, religion, education, occupation, date and place of marriage, separation or divorce, and if the parent or parents are deceased, the date, place, and cause of death, the name(s), date(s) and place(s) of birth, address, last attended school of all the family's close relatives, the guardianship and/or legal custody of the children.

(5) The institution and/or agency shall obtain verification of the child's birth and legal custody.

(6) The institution and/or agency shall obtain a past family history with sufficient information indicating the reasons for the family seeking help.

(7) For each child applying for service, the institution and/or agency shall obtain the child's developmental history from birth to present. This shall include a medical history, immunization record, and report of school progress from the school last attended by the child. A physical examination shall be secured at the time the child is admitted to care.

(8) The institution and/or agency shall obtain information, if available from other public or private institutions and/or agencies which have had contacts and are currently working with the child or his family.

(9) When voluntarily placed at an institution and/or agency, written consent or agreement shall be obtained from the family by the institution and/or agency for the care of the child, medical care, the visitation rights of the parent, and termination of services.

(10) Depending upon the family's situation and the institution's and/or agency's policies, the following written consents shall be obtained: foster care, adoption services, financial payments, gifts and allowances, and clothing.

(11) The institution and/or agency shall make a written preliminary evaluation, including future plans and goals based upon known facts, in determining the acceptability of the application for services.

(12) No institution and/or agency shall accept a child and family when the institution and/or agency does not have the facilities and program to meet the presented need for service.

(13) An agreement, designating the services each shall render, shall be signed between the institution and/or agency and other persons or agencies sharing responsibility while the child and his/her family are under the institution's and/or agency's care.

Section 37. Services to Family and Child When Accepted for Institution or Agency Care. (1) Social Services shall be provided for both family and child.

(2) Assignment of cases shall be determined by the service plan formulated for the child and family at the time of intake and admission. It is recommended that caseloads should not exceed forty (40) cases per worker.

(3) Contacts with the family, both at the institution and in the family home, shall be scheduled on a regular basis.

(4) The institution shall make every effort to have the parents participate in the service plan.

(5) The institution shall involve the child in the plan to the extent consistent with the child's age and understanding.

(6) When planning calls for permanent separation, the institution shall help the family and child handle their feelings regarding permanent separation.

(7) The nature of the problem(s) and behavior displayed both by child and parents shall be interpreted to the staff in order to make them more effective in implementing the service plan.

(8) At least, semi-annual staff conferences shall be held to evaluate the adjustment of the child and the family. At this time, decisions regarding continued treatment, management, and modifications of behavior, visitation, and future planning shall be considered and shared with the family.

(9) When appropriate, the institution shall be responsible for referring parents to other resources in the community, such as psychiatric and/or medical clinics, group work services or relief-giving agencies, in addition to services offered directly by the active institution.

(10) Visiting on and off the campus shall be arranged by the institution. No child shall be permitted to visit in a non-related home until the suitability of this home has been determined by the institution.

(11) The institution shall be responsible for preparing the family for the return of the child into the home when this is the service plan.

Section 38. Foster Care. (1) Before placing a child in a foster home, the institution and/or agency shall be responsible for having a study made of the home.

(2) The institution and/or agency shall keep a written record of the findings of this study and the evidence on which these findings are based.

(3) The foster home study shall record at least the following activities: a personal interview with every member of the household, though not necessarily a separate interview with each one, and at least one (1) visit to the home.

(4) To be approved, the foster home study shall determine that:

(a) All members of the household will welcome a foster child into the home.

(b) The foster parents are emotionally stable and mature people showing good potentialities for foster parenthood.

(c) The foster parents have the ability to accept the child's relationship with his or her parent.

(d) All members of the household are of a good reputation and constitute a harmonious group.

(e) All members of the household are free from communicable disease as certified by a licensed physician and in sufficiently normal physical and mental health to be able to provide necessary care for the child.

(f) The standards of housekeeping and cleanliness are acceptable.

(g) The physical standards of the home are those generally accepted as necessary for health and safety.

(h) The water supply and sanitation of the home comply with all requirements of the local health authorities.

(i) The home provides play space, both in and out of doors suited to the age and needs of the child.

(j) the home is accessible to such community resources as the child requires, such as schools, and churches.

(5) No institution and/or agency shall have in placement more than two (2) children under two (2) years of age in the same home at the same time, except in a home maintained as a temporary shelter and limited to children under two (2) years of age.

(6) The foster home shall have been selected for a particular child so as to meet his individual needs and to give him the best substitute possible for normal family life. The foster parents must understand the terms of each placement, accept supervision from the institution or agency, and abide by other institution and/or agency requirements.

(7) The number of children placed in the same foster home shall be limited by the children's needs and the ability of the foster home to meet these needs.

(8) At no time shall the total number of children, including the foster parent's own children, exceed six (6) in number, except in the case of sibling groups.

(9) No child shall be placed with persons normally resident in another state or be permitted to go with such persons to take up residence in another state without prior authorization from the proper authority of that state. (See Sections 10 and 11 of this regulation.)

(10) Homes approved for the care of foster children shall not be used simultaneously for any other social services, such as a day care center, home for the elderly, etc.

(11) Homes shall be evaluated on a yearly basis and the findings recorded in the case record.

Section 39. Placement Process. (1) The natural parents and child shall be included in the placement plan for the child.

(2) Pre-placement visits by the child under institution or agency supervisions shall be scheduled before final placement in the foster home.

(3) Casework services with the parents and the child should be adapted to their individual capacities, needs, and problems.

(4) Planning for the child regarding matters such as visitation, health, and education shall be carried on between the parent, the case worker, and foster parent, rather than directly between the parent and the foster parent.

Section 40. Supervision of Children in Foster Homes. (1) There shall be supervisory visits not less than every thirty (30) days in accordance with the needs of the child and the foster family.

(2) The institution and/or agency shall make every effort to see that the legal rights of the parents, and the child, are protected. It shall also make every effort to see that the family ties are maintained between the child and his family during the period of foster care, unless thorough study by the institution and/or agency indicates otherwise.

(3) Each child shall have clothing for his exclusive use, comparable in quality and variety to that worn by other children with whom he will associate.

(4) The institution and/or agency shall be responsible for seeing to it that children attend school in accordance with the school attendance laws.

(5) The institution and/or agency shall secure psychological and psychiatric services or other services such as vocational counseling when indicated by the child's needs.

(6) The institution and/or agency shall be responsible for securing adequate medical care for children under supervision.

(7) Religious training given to children shall be in accordance with their existing religious affiliation where possible.

(8) Semi-annual evaluations shall be made to determine the adjustment of the child and family and future planning.

Section 41. Maintenance of Records. (1) In the interest of those served and in order to comply with KRS 199.640(4), all records containing information concerning children, parents, and foster parents shall be so filed and so used as to preserve their confidential nature.

(2) Safeguards shall be taken to protect case record material from fire and other hazards.

(3) Records on children and the family shall be continuous records of their adjustment, conditions, and development.

(4) The record shall include the following information, in addition to the completed intake study:

(a) A copy of the institution's and/or agency's authorization to care for the child.

(b) Date of acceptance of the family and child for services.

(c) A copy of each signed agreement with parents or guardian.

(d) A record of all placements with dates and names of foster homes, institutions, or boarding schools.

(e) A record of all supervisory and casework contacts with the family and child.
(f) Current address of both parents.
(g) Changes in any data recorded in the intake study.
(h) Copies of correspondence with the family and copies of correspondence with other interested persons and organizations.
(i) Plans for aftercare service.
(j) Date of discharge.
(k) Name and address of persons or institution and/or agency to whom discharged.

Section 42. Adoptive Services. (1) No child shall be placed for adoption until the parental rights of any parent having legal rights to the child are terminated by circuit court order.

(2) The parent or parents of the child shall not be induced to surrender the child by any promise of financial aid or other consideration such as continued medical care, nor shall their acceptance for casework service be contingent upon any agreement or undertaking to surrender the child, nor shall any coercion be used to influence them either to give up the child or to keep him.

(3) The institution and/or agency shall not accept a consent to adoption or termination of parental rights with the understanding that the child is to be placed in a particular home already selected by someone outside the institution and/or agency.

(4) The authority granted to institutions and/or agencies licensed by the Department for Human Resources authorizing them to accept authority to place a child for adoption shall not be used to facilitate adoptive placements planned by individuals not licensed to place children, such as doctors, lawyers, ministers, etc.

(5) In general, a home shall not be studied for the purpose of placing a particular child nor shall a couple be encouraged to apply for a particular child. The decision to adopt should be based upon emotionally healthy needs, such as the desire to have a more nearly complete life, to accept parental responsibility, to contribute to the development of another human being, to love and be loved.

Section 43. Study on Child for Whom Adoption is Planned. (1) A medical examination of the child is required and the findings are to be shared with the adoptive parent(s).

(2) Information on the child's family background and individual development shall be obtained. The information shall include as a minimum the following:
(a) Name, age, nationality, education, occupation, religion, health history, and physical description of the mother and father of the child. If the child is born out of wedlock, it is the responsibility of the institution and/or agency placing the child to make clear to the mother the importance of having as much information as possible on the natural father of the child in order to establish the child's probable hereditary endowment.
(b) Education, occupation, health, and standing in the community of the mother's and father's parents, siblings, and other close relatives.
(c) Probable mental potential of the child.

Section 44. Selection of Adoptive Home. (1) Before placing a child for adoption, the institution and/or agency shall complete a study of the adoptive home.

(2) The institution and/or agency shall keep a written record of the findings of this study and the evidence on which these are based.

(3) This study shall include a record of at least the following activities: a personal interview with each member of the household, at least one (1) visit to the home, and a minimum of three (3) personal references.

(4) This study shall determine that:
(a) All members of the household will welcome the child into the home.
(b) The adoptive parent(s) are emotionally stable and mature people.
(c) All members of the adoptive family are free from communicable disease as certified by a registered physician. The adoptive parent(s) examining physician shall send the agency a medical report on the adoptive parent(s).
(d) All members of the household constitute a harmonious family group.
(e) The adoptive parent(s) are of such an age that they could be the child's natural parents. Chronological age alone should not be the determining factor. The adoptive parent(s) should be in sufficiently normal physical and mental health to be able to provide necessary care for the child.
(f) If the adoptive family is a legal family including both father and mother, verification shall be made of the marriage of the adoptive parents and all previous marriages and divorces of each adoptive parent, including deaths of former spouses.
(g) The adoptive parent(s) economic circumstances are such that they can reasonably be expected to continue to meet the ordinary needs of the child. Management of income should be considered more important than the amount.
(h) The standards of housekeeping and cleanliness are conducive to good health.
(i) The home has adequate space and accommodations.
(j) The physical standards of the home are those which are necessary for health, comfort, and safety.

Section 45. Understanding with Adoptive Parent(s). Before placement of the child, the conditions under which adoptive parent(s) accept the child for care shall be clearly understood. This understanding shall embody at least the following provisions:

(1) The adoptive parent(s) agree to file an adoptive petition at a time agreed on by the institution and/or agency.

(2) The adoptive parent(s) agree to permit supervision by the institution and/or agency during the period of time preceding the final decree.

(3) The institution and/or agency is responsible for helping the adoptive parent(s) understand the facts of the child's background and current behavior. Care shall be taken to protect the identity of the birth parents. The institution or agency shall interpret to the adoptive parent(s) the necessity of helping the child develop a wholesome concept of adoption and the importance of his heritage.

(4) The adoptive parent(s) will not take up residence in another state without the institution's or agency's permission until legal action is completed.

(5) The adoptive parent(s) and the institution and/or agency agree that the child may be removed at the request of either at any time before the filing of the petition.

Section 46. Adoption Placement Process. (1) When appropriate, the child, natural parents and/or foster parents shall participate in the pre-placement process.

(2) Pre-placement meetings shall be arranged for the adoptive parent(s) and a child one (1) year of age or older.

(3) When preparing the child for the selected adoptive parent(s), the institution and/or agency shall explore with the older child his readiness to accept this placement.

Section 47. After Placement Services. (1) The institution or agency placing a child shall remain responsible for him until the adoption has been granted. This responsibility involves at least the following:
(a) Two (2) meetings by the worker with the child and family, one (1) of which meetings shall be in the home before the granting of the adoption judgment.
(b) Awareness of changes in the adoptive family including health, educational, or behavioral problems.
(c) Upon request of the Department for Human Resources, provision of information necessary to report to the court and supplementary information as required. Upon the request of the Department, the agency placing the child shall file the report to the court as required by KRS 199.510.

(2) Should an institution or agency place a child for adoption, and, upon petition, the court refuse to grant a judgment, the institution or agency shall remove the child from the petitioner's home and place him elsewhere, unless the court orders otherwise.

Section 48. Maintenance of Records. The case record of each child placed for adoption shall include all the information gathered during the intake study and the following:

(1) A description of and facts about the child's family situation which necessitated placement of the child away from his family and/or termination of parental rights.

(2) A certified copy of the order of the circuit court committing the child to the institution or agency for the purpose of adoption.

(3) Verification of the child's birth record and the registration number of same.

(4) A copy of the child's medical record up to the time of placement.

(5) A copy of the required study of the adoptive home.

(6) Date of placement in the adoptive home.

(7) A statement of the basis of the selection of this home for the child.

(8) A record of after-placement services with dates of contacts and observations made.

(9) Dates of filing and granting of decrees and other court hearings relative to the adoption.

(10) Child's adoptive name.

Section 49. Aftercare. (1) Discharge of the child and family from the services of the institution or agency shall be done on a planned basis. This includes the child's return home, placement with another institution or agency or in other living arrangements.

(2) the institution or agency shall be responsible for preparing the child for the transition and be of assistance to both the child and family in the readjustment.

(3) Continued institutional or agency services shall be made available to the family for as long as indicated by the institution or agency and family. When the situation proves satisfactory, final discharge shall be effected.

(4) When further services are needed, appropriate referral(s) shall be made.

JERRY B. HISSONG, Commissioner

ADOPTED: November 18, 1974
APPROVED: L. W. TRUE, Secretary
RECEIVED BY LRC: November 20, 1974 at 4:29 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, Capitol Annex, Frankfort, Kentucky 40601.

References to Kentucky Revised Statutes

KRS Section	Regulation No.
2.110	703 KAR 2:020
2.190	703 KAR 2:020
12.080	200 KAR 1:010E
	200 KAR 1:010
Chapter 13	1 KAR 1:010
15.020	40 KAR 1:010
15.025	40 KAR 1:020
17.210	806 KAR 50:100
18.110	101 KAR 1:010
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18.120	101 KAR 1:020
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18.160	101 KAR 1:030
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121.180 (2)	801 KAR 1:020E
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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.)

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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
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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
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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
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- 060 Applications and examinations
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- 090 Types of appointments
- 100 Probationary period
- 110 Promotion, transfer, demotion and detail to special duty
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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
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- 060 Refunds
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- 100 Insurance
- 120 Voluntary contributions
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TITLE 103 DEPARTMENT OF REVENUE

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- 010 Protests and appeals

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- 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
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- 100 Apportionment and allocation – Telephone and telegraph companies
- 110 Apportionment and allocation – Pipeline companies
- 120 Apportionment and allocation – Trucklines – Bus – Airlines
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Ch. 17 Income tax – Individual
- 020 Combined individual returns
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050 Standard deduction
070 Personal tax credits
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030 Monthly reporting requirements

Ch. 25 Sales and Use Tax — Registration and Collection
050 Factors and agents
060 Temporary and transient vendors
070 Railroad companies; display of retailers' permit
100 Receipts for tax paid to retailers — Use tax

Ch. 26 Sales and Use Tax — Service and Professional Occupations
010 Service enterprises in general
020 Physicians and surgeons
030 Optometrists, Oculists and Opticians
050 Common carriers
060 Painters and finishers
080 Dentists and dental laboratories
090 Veterinarians
100 Towel and linen service

Ch. 27 Sales and Use Tax — Miscellaneous Retailer Occupations
020 Blueprints and photostat copies
030 Brokers, lienors and fiduciaries
040 Finance companies
050 Florists and nurserymen
090 Memorial dealers
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140 Publishers of newspapers, magazines and periodicals
170 Sales by civic clubs and similar organizations

Ch.28 Sales and Use Tax — Miscellaneous Retail Transactions
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070 Freight and delivery charges
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150 Fuels used in the manufacture of electricity
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040 Repossessions and bad debts
050 Returned merchandise
060 Cash discounts
070 Goods damaged in transit
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TITLE 104 COMMISSION ON HUMAN RIGHTS

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010 Posting and distribution of notices
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030 Employer records and reports
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TITLE 200 EXECUTIVE DEPARTMENT FOR FINANCE & ADMINISTRATION

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Ch. 2 Travel Expense and Reimbursement
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Ch. 2 Board of Pharmacy
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020 Examinations
030 Reciprocity — Temporary license
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050 Licenses and permits; Fees
055 License renewal; revival fee
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Ch. 4 Board of Business Schools
020 Bonding requirements
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Ch. 5 Board of Optometric Examiners
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Ch. 7 Board for Licensing Hearing Aid Dealers
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TITLE 301 DEPARTMENT OF FISH AND WILDLIFE RESOURCES

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012 Boating, swimming and water skiing
015 Boats and outboard motors — Size limits
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050 Small state-owned lakes, special regulations of
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060 Sport and rough fish
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075 Gigging, snagging, tickling and noodling
080 Fish and aquatic organisms
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021E Migratory birds; seasons, limits
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TITLE 401 BUREAU OF ENVIRONMENTAL QUALITY

Ch. 1 Division of Plumbing
(010 reserved for definitions)
020 Installation permits

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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
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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
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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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