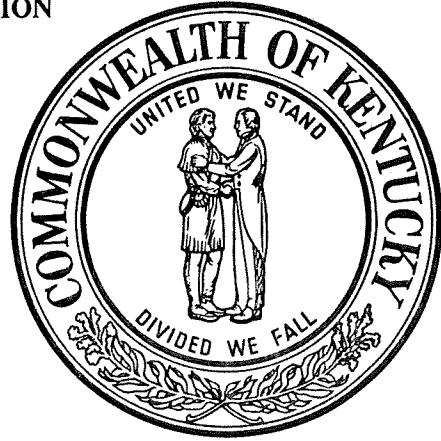


LEGISLATIVE RESEARCH COMMISSION  
FRANKFORT, KENTUCKY

VOLUME 2, NUMBER 6

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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.

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Title	Chapter	Regulation
806	KAR	50 : 155
Cabinet, Department, Board or Agency	Bureau, Division or Major Function	Specific Area of Regulation

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## Public Hearings

11 KAR 5:020. Definitions. [2 Ky.R. 269]

11 KAR 5:050. Student application. [2 Ky.R. 271]

The Kentucky Higher Education Assistance Authority has scheduled a public hearing on these two regulations for 10 a.m. EST Tuesday, January 6, 1976, in the Capital Plaza Auditorium, Frankfort, Kentucky.

Persons desiring additional information may contact Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 120 Mero Street, Frankfort, Kentucky 40601.

## Emergency Regulation

**JULIAN M. CARROLL, GOVERNOR**

**EXECUTIVE ORDER 75-1055**

November 26, 1975

**EMERGENCY REGULATION**

Department of Revenue

WHEREAS, energy costs are rapidly escalating throughout the country; and

WHEREAS, educational, charitable, and religious institutions are suffering a financial hardship as a result of these escalating energy costs; and

WHEREAS, an inconsistency exists in current procedures for applying sales tax to energy sold to educational, charitable, and religious institutions, and to correct the inconsistency through normal filing procedure as provided in Kentucky Revised Statutes, Chapter 13, would permit the problem to continue through the winter season, when energy uses are at their highest level;

NOW, THEREFORE, I, JULIAN M. CARROLL, Governor of the Commonwealth of Kentucky, by the authority vested in me by Section 13.085(2) of the Kentucky Revised Statutes, hereby acknowledge the finding of the Department of Revenue that an emergency exists and direct that the attached Regulation become effective immediately upon being filed in the Office of the Legislative Research Commission.

JULIAN M. CARROLL, Governor

THELMA L. STOVALL, Secretary of State

**SECRETARY OF THE CABINET**

Department of Revenue

**103 KAR 30:230E. Electricity and natural gas purchased by educational, charitable and religious institutions.**

RELATES TO: KRS 139.470

PURSUANT TO: KRS 13.082

EFFECTIVE: November 26, 1975

EXPIRES: March 27, 1976

NECESSITY AND FUNCTION: KRS 139.470(1) exempts from sales and use tax those transactions which

the state is prohibited from taxing under the Kentucky Constitution. Section 170 of the Kentucky Constitution states in part: "There shall be exempt from taxation . . . places actually used for religious worship . . . institutions of purely public charity, and institutions of education not used or employed for gain by any person or corporation . . ." Under current administration policy of the Department of Revenue, Section 170 is interpreted to exempt from sales tax, only sales of property to the above institutions which is of a type that ordinarily can be purchased outside Kentucky. Therefore, electricity and natural gas are not included in the tax-exempt category while other sources of energy, such as coal and fuel oils, are included. This regulation corrects this inconsistency in current procedure and includes in the tax-exempt category, sales of electricity and natural gas to educational, charitable, and religious institutions.

Section 1. Definitions: (1) Educational Institutions. The term "educational institution" as used in this regulation means a resident nonprofit school, college, or university, the income of which is devoted solely to education and where systematic instruction in any and all of the useful branches of learning is given by methods common to schools and institutions of learning. No distinction is to be made between public, private or parochial schools when the determination is made as to whether a particular school comes within the definition.

(2) Charitable Institutions. This term relates to all resident institutions of purely public charity not used or employed for gain by any person or corporation and includes nonprofit charitable hospitals.

(3) Religious Institutions. This term means any church established for public worship within this state, its agencies, and its parent or governing body.

Section 2. On and after the effective date of this regulation, sales tax does not apply to receipts from sales of electricity and/or natural gas to those purchasers defined in Section 1, provided the property is to be used solely within the purchaser's tax-exempt function.

Section 3. Educational, charitable, and religious institutions shall issue exemption certificates (Revenue Form 51A126) to suppliers of electricity and natural gas in the manner currently used for other tax-exempt purchases.

Section 4. The Department of Revenue shall work closely with suppliers of electricity and/or natural gas implementing this regulation so as to eliminate insofar as possible the necessity for prorating customer billings or the granting of sales tax refunds. It is the intent of the regulation that the exemption commence with the first billing after the effective date of the regulation consistent with the suppliers' ability to make the necessary adjustment

to reflect this change on the bill to the customer. However, in no event shall tax apply to any billing prepared after thirty (30) days from the effective date of this regulation.

MAURICE P. CARPENTER, Commissioner  
ADOPTED: November 26, 1975  
APPROVED: WILLIAM E. SCENT, Secretary  
RECEIVED BY LRC: November 26, 1975 at 3:50 p.m.

### Amended Regulations

(In order to show the effect of amendments, the original regulation is reprinted with matter being deleted enclosed within brackets and new matter underlined where typewritten, or in italics if typeset.)

#### SECRETARY OF CABINET Kentucky Retirement Systems (Proposed Amendment)

##### 105 KAR 1:010. Contributions and interest rate.

RELATES TO: KRS 16.505 to 16.645, 61.510 to 61.700, 78.510 to 78.990

PURSUANT TO: KRS 13.082, 16.640, 61.645, 78.780  
NECESSITY AND FUNCTION: KRS 16.645, 61.565 and 78.545, require the board to determine the employer contribution rate based on an actuarial valuation. KRS 61.670 requires the board to adopt actuarial tables as necessary for the administration of the system and for the annual determination of assets and liabilities of the system. This regulation sets the employer contribution rates, and establishes the bases for all actuarial tables necessary in the administration of the retirement programs for members of the Kentucky Employees Retirement System (KERS), County Employees Retirement System (CERS) and State Police Retirement System (SPRS).

Section 1. The employer contribution rate payable by a participating agency applicable to creditable compensation earned on or after July 1, 1974 shall be as follows:

- KRS 61.565 State Police Retirement System . . . . . 12½%
- KRS 61.565 Kentucky Employees Retirement System . 7¼%
- KRS 61.565 County Employees Retirement System . . . 7¼%
- KRS 61.592 Kentucky Employees Retirement System . 14%
- KRS 61.592 County Employees Retirement System . . . 16%

Section 2. The interest rate on a recontribution of refund as provided under KRS 16.527, 61.552 and 78.607 and delayed contribution due to non-election of member as provided under KRS 61.552 and 78.607 and deferred participation of a participating agency shall be six (6) percent compounded annually, except that the interest rate on recontribution of refund made by an employee who has been reinstated by order of the Personnel Board shall be at the rate of zero (0) percent, if the refund is recontributed within a reasonable period of time.

Section 3. Interest creditable on a member's accumulated contributions in accordance with KRS 16.560, 61.565 and 78.640 shall be at the rate of three (3) percent.

Section 4. Reduction factors to be applied to determine immediate annuity equivalent to annuity deferred to

normal retirement age under KRS 16.577, 16.578, 61.595, 61.640, 61.680 and 78.680(2) shall be as follows except:

(1) KERS hazardous duty employees with less than five (5) years of hazardous duty service will have their early retirement benefits computed based on the number of years prior to normal retirement age based on the appropriate factor as follows:

Years Prior to Normal Retirement Age	Percentage Payable [Reduction Factor]
1	94.5%
2	89.0%
3	83.5%
4	78.0%
5	72.5%

(2) A member retiring under provisions of KRS 61.680 from SPRS or TRS with a CERS or KERS account who has combined service of thirty (30) or more years and has not attained age fifty-five (55) will have benefits from CERS or KERS computed using the appropriate factor as follows:

Years Prior to Age 55	Percentage Payable [Reduction Factor]
1	95.0%
2	90.0%
3	85.0%
4	80.0%
5	75.0%
6	71.0%
7	67.0%
8	63.0%
9	59.0%
10	55.0%

(3) Effective January 1, 1976, a KERS or CERS member retiring under provisions of KRS 61.595(2) or 78.680(2) who would attain thirty (30) years of service prior to age sixty-five (65) if employment were continued shall have



early retirement benefits computed using the appropriate factor as follows:

Years Required To Complete 30 Years Service	Percentage Payable
1	95.0%
2	90.0%
3	85.0%
4	80.0%
5	75.0%
6	71.0%
7	67.0%
8	63.0%
9	59.0%
10	55.0%

Early Age	Normal Retirement Age		
	65	60	55
64	95.0%		
63	90.0%		
62	85.0%		
61	80.0%		
60	75.0%		
59	71.0%	94.5%	
58	67.0%	89.0%	
57	63.0%	83.5%	
56	59.0%	78.0%	
55	55.0%	72.5%	
54	51.3%	69.2%	94.5%
53	47.9%	65.9%	89.0%
52	44.9%	62.6%	83.5%
51	42.1%	59.3%	78.0%
50	39.5%	56.0%	72.5%
49	37.1%	53.0%	68.8%
48	34.9%	50.1%	65.2%
47	33.0%	47.4%	61.7%
46	31.3%	44.8%	58.2%
45	29.9%	42.3%	54.7%
44	28.7%	40.0%	51.3%
43	27.6%	37.8%	47.9%
42	26.7%	35.8%	44.9%
41	25.8%	34.0%	42.1%
40	25.1%	32.3%	39.5%
39	24.4%	30.8%	37.1%
38	23.8%	29.4%	34.9%
37	23.2%	28.1%	33.0%
36	22.5%	26.9%	31.3%
35	21.9%	25.9%	29.9%
34	21.2%	25.0%	28.7%
33	20.6%	24.1%	27.6%
32	20.0%	23.4%	26.7%
31	19.5%	22.7%	25.8%
30	19.0%	22.1%	25.1%
29	18.5%	21.5%	24.4%
28	18.0%	20.9%	23.8%
27	17.5%	20.4%	23.2%
26	17.0%	19.8%	22.5%
25	16.5%	19.2%	21.9%

The member's exact age in years and months shall be determined and the above factors shall be used to extrapolate in order to determine the appropriate factor.

Section 5. The following actuarial assumptions are adopted by the Board of Trustees of Kentucky Retirement Systems as required under KRS 61.670 and shall be used to determine actuarial tables as are necessary for the administration of the Kentucky Employes Retirement System as provided by KRS 61.510 to 61.700, the County Employes Retirement System under KRS 78.510 to 78.990 and the State Police Retirement System under KRS 16.505 to 16.645. These assumptions shall also be used for the annual actuarial valuation for determination of assets and liabilities of these retirement systems.

(1) Kentucky Employes Retirement System and County Employes Retirement System non-hazardous members:

ACTUARIAL ASSUMPTIONS

Interest—6%.

Valuation of Assets—Book value except that unrealized appreciation of investments is capitalized but only to the extent required to result in a total yield of 6% for the year from dividends and capitalized appreciation.

Mortality—Pre-retirement—1951 Group Annuity Mortality Table Projected by Scale C to 1960, without age adjustment for males, but set back one year for females. Post-retirement—Same as pre-retirement. Mortality of members receiving disability allowances—1965 Disabled Annuitants Mortality Table of Railroad Retirement Board.

Turnover—First 2 years—100%. Thereafter annual turnover rates varying by ages as illustrated below.

Disability—Annual rates varying by age as illustrated below.

Retirement Rates—Early Retirement: Assumed 50% will retire as soon as eligible for unreduced benefits and balance would continue to normal retirement age.

Normal Retirement: As soon as eligible.

\*Salary Increase—5% annually to age 30, graduated to 4½% at age 40 and 4½% annually thereafter.

ILLUSTRATION OF ANNUAL TURNOVER AND DISABILITY RATES ASSUMED

Age	Turnover Rate	Disability Rate
27	.107	.00030
32	.088	.00035
37	.066	.00055
42	.044	.00110
47	.024	.00215
52	.011	.00445
57	.005	.00805
62	.002	.01400
65	.000	.00000

(2) State Police Retirement System, Kentucky Employes Retirement System and County Employes Retirement System hazardous members:

ACTUARIAL ASSUMPTIONS

Interest—6%.

Valuation of Investments—Book value except that unrealized appreciation of investments is capitalized but only to the extent required to result in a total yield of 6% for the year from dividends and capitalized appreciation.

Mortality—Pre-retirement—1951 Group Annuity Mortality Table Projected to 1960, by Scale C, plus a duty death rate of 5 deaths per 10,000 per year.

Post-retirement—1951 Group Annuity Mortality Table Projected to 1960. Mortality of members receiving disability allowances, 1965 Disabled Annuities Mortality Table of Railroad Retirement Board.

Turnover—Annual rates varying by age as illustrated below.

Disability—Annual rates varying by age as illustrated below.

Retirement Rates—SPRS Normal Retirement as soon as eligible.

CERS Hazardous—Assumed 50% will retire as soon as eligible for unreduced benefits and balance would continue until age 60.

KERS Hazardous—Assumed 50% will retire as soon as eligible for unreduced benefits and balance would continue until age 65.

\*Salary Increases—5% annually to age 30, graduated to 4½% at age 40 and 4½% annually thereafter.

\*The actuarial assumptions for salary increases is based on analysis of retirement system accounts for the period ended June 30, 1972 and is not to be construed as a policy of the Commonwealth of Kentucky or local government as to the rate of salary increases an employee may expect to receive.

#### ILLUSTRATION OF ANNUAL TURNOVER AND DISABILITY RATES ASSUMED

Age	Turnover Rate	Disability Rate	
		Non Duty	Duty
22	.0405	.00025	.00025
27	.0423	.00030	.00030
32	.0400	.00035	.00035
37	.0275	.00055	.00055
42	.0160	.00110	.00110
47	.0060	.00215	.00215
52	.0000	.00445	.00445

GEORGE R. ARVIN, General Manager

ADOPTED: November 19, 1975

APPROVED: WILLIAM E. SCENT, Secretary

RECEIVED BY LRC: November 26, 1975 at 11:55 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING

TO: General Manager, Kentucky Retirement Systems, 226 West Second Street, Frankfort, Kentucky 40601.

(The following regulation, published originally in the October issue [2 Ky.R.180], was amended by the issuing agency to meet objections of the Administrative Regulation Review Subcommittee. It was approved for filing by the Subcommittee at its December 10 meeting and became effective on that date.)

#### EXECUTIVE DEPARTMENT FOR FINANCE AND ADMINISTRATION

Board of Dentistry  
As Amended

**201 KAR 8:015. Registration of dental laboratories and technicians with board.**

RELATES TO: KRS 313.010(4)

PURSUANT TO: KRS 313.220

EFFECTIVE: December 10, 1975

NECESSITY AND FUNCTION: Establishes guidelines for registration of dental laboratories and dental laboratory technicians with the Board of Dentistry.

[Section 1. No licensed practicing dentist shall own,

operate, manage, control, directly or indirectly, all or any part of a commercial dental laboratory.]

Section 1. [2.] Each commercial dental laboratory and dental laboratory technician already currently engaged in dental laboratory technology on March 1, 1975, shall be granted a certificate of authority upon proper application and upon payment of the proper fee to the board as required by KRS Chapter 313, and these regulations.

Section 2. [3.] After March 1, 1976, the board shall not issue a certificate of authority to any new commercial dental laboratory unless the applying dental laboratory employs, or is operated under the supervision of one or more certified dental technicians. A certified dental technician is an individual recognized as such by the "National Board for Certification" (official name of certifying agency).

Section 3. [4.] Any individual having completed two (2) years of training or having acquired two (2) years of practical experience in dental laboratory technology by employment in either a licensed dentist's office or in a commercial dental laboratory, or an individual having a degree in dental laboratory technology from an accredited school upon the completion of a two (2) year course of study shall be classified as a dental laboratory technician and is required to obtain a certificate of authority from the board in order to practice dental laboratory technology. Nothing herein shall be construed to mean that any employee, other than a dental laboratory technician, is required to obtain a certificate of authority from the board.

Section 4. [5.] Each commercial dental laboratory shall pay a fee of fifty dollars (\$50) and each dental laboratory technician shall pay a fee of ten dollars (\$10) to the board before a certificate of authority shall be issued to the applicant.

[Section 6. An annual convention shall be held by the Kentucky Dental Laboratory Association. All registered commercial dental laboratory owners, operators or managers and dental laboratory technicians shall be eligible to attend. The first annual convention shall be held at such time and at such place within this state, as the commission shall designate at its first meeting after the effective date of this regulation. The time and the date of the next subsequent annual convention shall be determined at each annual convention. At each annual convention nominations of qualified members shall be selected to fill vacancies on the commission and shall be thereafter submitted to the board.]

Section 5. [7.] Upon the granting of a certificate of authority to perform as a dental laboratory, the board shall assign to that laboratory a registration number. The laboratory registration number shall appear on all invoices of said laboratory.

Section 6. [8.] A dentist may use only the services of a commercial dental laboratory which is duly registered with the board as required by KRS Chapter 313, and these regulations.

Section 7. [9.] All commercial dental laboratories operating, doing business or intending to operate or do business within this state shall be required to register with the board and pay a fee as required by the board. A dental

laboratory shall be considered as operating or doing business in this state if its work product is prepared pursuant to a written authorization originating within this state.

WILLIAM H. FIELDS, D.M.D., Secretary-Treasurer  
ADOPTED: June 22, 1975  
APPROVED: WILLIAM E. SCENT, Commissioner  
RECEIVED BY LRC: December 3, 1975 at 3 p.m.

**DEVELOPMENT CABINET**  
Department of Fish and Wildlife Resources  
(Proposed Amendment)

**301 KAR 1:145. Gear allowed for commercial fishing.**

RELATES TO: KRS 150.010, 150.025, 150.120,  
150.170, 150.175, 150.445, 150.450

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: It is necessary to accurately describe the gear allowed in commercial fishing so that the limitations and susceptibilities of the gear will permit the harvesting of the proper size and species of fishes, and so that the sport harvest is not affected and the fishery resources perpetuation is assured. This third amendment is necessary to substitute commercial gear tags for the variously named tags.

Section 1. The following gear is the only commercial gear that can be used in commercial waters designated in 301 KAR 1:150 and under conditions described in 301 KAR 1:155 by appropriately licensed commercial fishermen.

Section 2. Legal Commercial Gear. (1) All lines and mesh must be made of linen, cotton, or flexible synthetic fiber only.

(2) All mesh is measured by bar measure. This measure is the length of one (1) side of the square, or as measured between two (2) knots on the same line.

(3) *The functions of the various commercial fishing tags authorized under KRS 150.175 are consolidated into one (1) tag called "commercial gear tag" which shall serve as they each were designated in KRS 150.175, sections (5), (6), (7), and (8).*

(4) [(3)] Gear:

(a) Hoop net, wing net, straight lead net, heart lead net:

1. Must have a minimum mesh size of three (3) inches.
2. Hoops may be any size or shape or material.
3. Maximum length of any lead or wing is thirty (30) feet.

4. One (1) *commercial gear* [hoop net] tag must be attached to the first hoop of each net.

(b) Gill net or trammel net:

[a. Must have a minimum mesh size of four (4) inches, except gill or trammel nets fished only in the Mississippi River which may have a minimum mesh size of three (3) inches. (Effective until January 1, 1976.)]

1. [b.] Are legal gear only in Ohio and Mississippi Rivers and overflow lakes directly connected with each river. Minimum mesh size is three (3) inches in the Mississippi and overflow lakes and four (4) inches in the Ohio River and its overflow lakes. [(Effective January 1, 1976 and thereafter until amended.)]

2. May be fished weighted or as a flag net.

3. Must have one (1) *commercial gear* tag [(seine, gill net and trammel net tag)] attached to each 100 feet or part thereof.

(c) Commercial trotline:

1. Must have *more than fifty (50)* hooks placed no closer than eighteen (18) inches apart. [(more than fifty (50) hooks).]

2. Must have one (1) *commercial gear* [trotline] tag attached.

(d) Seine:

1. Must have a minimum mesh size of two (2) inches.

2. Must have both float and lead lines.

3. Must have wood, fiberglass or metal poles or brails attached at each end.

4. When seine is in the water, it must be attended by persons for pulling the seine through the water for the entrapment of fish.

5. At no time may a seine be left unattended to act as a set net or other purpose.

6. Must have one (1) *commercial gear* tag [(seine, gill net and trammel net tag)] attached to each 100 feet or part thereof.

(e) Slat trap or wood basket:

1. Must be constructed entirely of wood and nails or similar fastenings. No wire or other mesh may be added to any part of trap.

2. There must be at least two (2) openings left between slats no smaller than one and one-fourth (1-¼) inches wide in the catch portion of the trap. These openings may not be restricted by cross-bracings to a length shorter than eight (8) inches.

3. The trap may be no larger than two (2) feet in diameter or square end measure.

4. Must have one (1) *commercial gear* tag attached to opening ring or square. [(hoop net, seine, trotline tag).]

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

ARNOLD L. MITCHELL, Commissioner  
ADOPTED: December 14, 1975  
APPROVED: WILLIAM L. SHORT, Secretary  
RECEIVED BY LRC: December 15, 1975 at 2:30 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 Agriculture  
(Proposed Amendment)

**302 KAR 20:070. Stockyards.**

RELATES TO: KRS Chapter 257

PURSUANT TO: KRS Chapter 257, 13.082

NECESSITY AND FUNCTION: To designate sanitary requirements and operational procedures in all stockyards, sales barns, public stockyards and livestock markets relative to disease control.

Section 1. Operating Sale Requirement. (1) The owner or manager operating a stockyard, sales barn, public

stockyard or livestock market shall arrange for an accredited, licensed veterinarian approved by the Department of Agriculture to be present in said sales point to carry out the provisions of this regulation.

(2) The person operating a public sale shall provide separate pens or a yarded division for isolating animals classed as reactors to brucellosis or any infectious, contagious or communicable disease.

(3) The owner operating a public sale shall provide adequate space, utilities, hot water and assistance for the accredited, licensed veterinarian to officially carry out the provisions of this regulation.

(4) The owner or operator shall furnish and maintain one or more cattle chutes suitable for restraining animals for inspection of any infectious, contagious or parasitic condition, testing, tagging, branding and other procedures routinely required in providing livestock sanitary services at stockyards.

(5) The owner or operator shall maintain records of the seller and purchaser of all livestock for one (1) year. These records to be made available to Department of Agriculture representatives for inspection upon request during regular business hours.

(6) The owner or operator shall provide adequate facilities and service at a nominal cost, if not available at or near the yards, for cleaning and disinfecting cars, trucks or other vehicles which have transported to the stockyards animals known to be infected with or exposed to a contagious, infectious, communicable or parasitic disease with a disinfectant approved by chief livestock sanitary official.

Section 2. General Requirements. (1) All stockyards and sales barns shall be routinely cleaned and disinfected and maintained in workable sanitary condition. Stockyards and sale barns shall be inspected as required by a representative of the board.

(2) After an occurrence of any infectious, contagious, parasitic or communicable disease of livestock in a stockyard, sales barn or public stockyard it shall be cleaned and disinfected with approved disinfectants in a manner approved by the chief livestock sanitary official before livestock shall be permitted to enter or leave said stockyard, sales barn or public stockyard.

(3) Livestock found to be infected and showing clinical or diagnostic symptoms of an infectious, contagious, parasitic or communicable disease shall upon recommendation of stockyard veterinarian or authorized representative of the chief livestock sanitary official be quarantined in an isolated portion of the yards for treatment, additional diagnostic laboratory procedures, disposition to slaughter or other disposition pursuant to accepted methods of disease prevention and control.

(4) All livestock originating from a quarantined herd or premises shall be sold under permit for immediate slaughter.

(5) The card test shall be the official test for brucellosis at stockyards. All swine, cattle and dairy goats over six (6) months of age must be tested. All animals showing positive reaction must be sold for immediate slaughter only.

(6) Upon disclosure of a reactor(s) by the stockyard veterinarian, all cattle in the consignment from the same herd must be sold for slaughter or returned to the farm of origin under quarantine for retesting. *Assembled cattle are*

*considered to be a herd.* [Cattle that have been assembled for twenty-four (24) hours or more are considered to be a herd.]

Section 3. Veterinary Compensation. Accredited veterinarians shall receive for services rendered a fee that has been agreed on by the stockyard operators, the accredited veterinarians and approved by the chief livestock sanitary official. Such fees shall be deducted from the seller's or buyer's check, depending upon conditions of sale and shall be paid to the accredited veterinarian at the close of the day's business.

Section 4. Veterinary Duties. The contract stockyard veterinarian shall: (1) Examine and validate certificates pertinent to the movement of livestock to be sold.

(2) Conduct required tests of livestock.

(3) Inspect all livestock in cooperation with assigned livestock inspector for clinical evidence of infectious, contagious, or parasitic diseases.

(4) Vaccinate all livestock for the prevention of disease as required.

(5) Obtain blood samples and conduct associated laboratory tests. Submit such specimens to state-federal laboratory for confirmation. Such specimens shall be posted by mail or delivered directly to state-federal laboratory within twenty-four (24) hours.

(6) Compile and present such reports as are routinely required to the chief livestock sanitary official.

(7) Report the presence of any infectious or contagious disease condition to chief livestock sanitary official on forms provided by the department.

Section 5. Cattle Requirements. (1) Tuberculosis:

(a) Imports: cattle six (6) months of age or older for dairy and breeding purposes shall be negative to an official tuberculin test within thirty (30) days of date of entry or originate directly and immediately from an accredited herd or eradicated free state.

(b) Cattle classified as suspects or those originating from a quarantined herd shall not be imported.

(c) Reciprocal agreements with adjoining states may be effective in lieu of specific requirements.

(d) Kentucky cattle: no tuberculosis requirements if to a Kentucky destination.

(2) Brucellosis:

(a) Cattle six (6) months of age or over which are offered for sale or are consigned to the stockyard for breeding and dairy purposes shall be separated from all other cattle in stockyard pens maintained for this consignment.

(b) Cattle six (6) months of age or older, except for the following, shall be negative to an official brucellosis test within last *eight (8)* [thirty (30)] days of date of sale:

1. Official vaccinates identified by official tattoo twenty-four (24) months of age and under provided heavy springers and females post partum shall be negative regardless of age at time of sale.

2. Steers.

3. Cattle from certified herd.

4. Cattle consigned directly to a recognized slaughtering center with no diversion enroute except to another approved stockyard for reconsignment direct to slaughter within ten (10) days.

5. Feeder cattle consigned directly to a feed lot holding a valid feeding permit.



6. Calves under six (6) months of age.

(c) Backtagged cattle:

1. All cattle, except steers and spayed heifers eighteen (18) months of age or older consigned to any stockyard, sales barn or public stockyard or purchased direct by any slaughtering establishment shall be backtagged in a routine manner prescribed by the department unless negative to a brucellosis test within *eight (8)*[thirty (30)] days.

2. Backtags placed on slaughter cattle shall not be removed at any time or by any person only under specific instructions from the chief livestock sanitary official.

3. Backtagged cattle shall proceed directly to a recognized slaughtering center with no diversion whatever enroute except to another approved stockyard or public stockyard for reconsignment to slaughter. Proof of slaughter or a brucellosis test shall be verified within ten (10) days of date of backtagging.

4. Materials for the backtagging program shall be furnished by the department and/or Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture.

Section 6. Swine Requirements. (1) As prescribed in 302 KAR 20:080.

(2) Effective January 1, 1971, all serum requirements for swine moving into or through the Commonwealth of Kentucky were rescinded.

(3) Breeding swine: All breeding swine six (6) months of age or older shall in addition be negative to an official blood test for brucellosis at time of sale or have originated directly from a validated herd.

(4) Livestock markets, buying stations, and concentration points handling all classes of swine:

(a) All swine, including slaughter swine, to be inspected by an accredited veterinarian prior to leaving market.

(b) Swine moving interstate from markets to be in compliance with Title 9, Part 76, CFR, herein filed by reference, including health certification by the accredited veterinarian authorized by the state to furnish such services.

(c) Slaughter swine leaving premises to be consigned only for immediate slaughter to a recognized slaughtering establishment approved for this purpose in accordance with federal and state regulations.

(d) Markets to maintain well-constructed pens and swine-handling facilities that are clean and in good repair.

(e) Markets to provide pens surfaced with impervious material for holding and handling feeder pigs and breeding swine.

(f) Markets to provide satisfactory, well-lighted facilities for inspection and proper restraint.

(g) Clean and disinfect holding and handling pens, alleys and other facilities used in selling swine after use by each lot of swine under procedures specified by state and federal agencies to guard against spread of disease.

(h) Maintain records of origin and destination for all swine entering market and grant federal and state inspectors access to such records. Identification as to farm where farrowed shall be maintained for all feeder pigs and breeding stock and all slaughter swine which may be diverted for purposes other than slaughter. Records shall be maintained for one (1) year.

(i) Feeding and breeding swine must be placed in pens separate and apart from slaughter swine. All swine

designated for slaughter must be delivered directly to an approved slaughter establishment with no diversion enroute.

(j) Permit no cull pigs to enter market unless provisions are made to pen such pigs separate and apart from all other swine so contact with healthy swine does not occur. Facilities used by these swine will not be used by other swine until cleaning and disinfecting have been accomplished. Further, cull swine to be permanently identified by an ear tag in the right ear, quarantined to the purchaser, and released from said quarantine by consignment to slaughter only. A cull pig is defined as one which does not pass veterinary inspection for health.

(k) Permit no garbage fed swine to enter market unless provisions are made to handle and pen such swine separate and apart from all other swine to avoid contact with other marketable swine.

(l) Permit no swine to be moved into or from the market unless a state or federal inspector releases such swine.

(m) Require all buyers of swine to determine the purpose of their movement. If for slaughter and there is any reason to believe the swine might be diverted (underweight swine, thin sows, etc.) the inspector may require that such swine be identified by ear tag and consigned to slaughter on a special permit. Further, any swine with which these swine mingle shall cause the entire lot to be ineligible for movement except to slaughter.

(n) Permit no feeder pigs or breeding swine to remain in the market more than seventy-two (72) hours.

(o) No feeding or breeding swine are to be allowed in any market for resale within thirty (30) days from prior sale date.

(5) Livestock markets, buying stations and concentration points handling slaughter swine only:

(a) Swine moving interstate to be in compliance with Title 9, Part 76, CFR, herein filed by reference, and applicable state regulations.

(b) Accept swine only for slaughter and to permit no swine to leave market except for slaughter only.

(c) Markets to maintain well-constructed pens and swine-handling facilities that are clean and in good repair.

(d) Maintain records of origin and destination for all swine entering market and grant federal and state inspectors access to such records. Records shall be maintained one (1) year.

(e) Isolate all swine suspected of being affected with or exposed to infectious disease, promptly notify the state or federal agency, and hold such swine in isolation pending instructions on disposition.

(f) Clean and disinfect holding and handling pens, alleys, and other facilities used in selling swine under procedures specified by state and federal agencies to guard against spread of disease.

Section 7. Sheep and Goat Requirements. (1) As prescribed in 302 KAR 20:040.

(2) Before the beginning of a sale all sheep and goats to be sold for breeding purposes that are free from evidence of infectious, contagious or parasitic disease shall be separated from all other sheep and goats in a part of the yard provided for this purpose.

(3) All sheep and goats that as individuals or any part of an assembled group show evidence of any infectious, contagious, communicable or parasitic disease



must be sold for immediate slaughter or otherwise disposed of under permit issued by chief livestock sanitary official.

(4) Goats for dairy or breeding purposes if free from evidences of any infectious, contagious or parasitic disease shall originate directly and immediately from a brucellosis certified free herd or if six (6) months of age or over be negative to an official brucellosis test within thirty (30) days of date of sale.

DR. TOM S. MADDOX, State Veterinarian  
ADOPTED: November 24, 1975

APPROVED: WILLIAM L. SHORT, Secretary  
RECEIVED BY LRC: November 25, 1975 at 2:45 p.m.  
SUBMIT COMMENT OR REQUEST FOR HEARING  
TO: Dr. Tom S. Maddox, State Veterinarian, Division of Livestock Sanitation, 635 Comanche Trail, Frankfort, Kentucky 40601.

DEPARTMENT OF JUSTICE  
Kentucky Crime Commission  
(Proposed Amendment)

500 KAR 5:005. Commission's meeting dates.

RELATES TO: KRS 15A.040

PURSUANT TO: KRS 15A.140, 15A.160

NECESSITY AND FUNCTION: KRS 15A.140 and 15A.160 provide that the Secretary of the Department of Justice may adopt such regulations consistent with the provisions of 1974 Acts Chapter 74. KRS 15A.040 vests supervisory authority of federal and state grant programs with the Kentucky Crime Commission. This regulation establishes meeting dates for the Kentucky Crime Commission.

Section 1. The Kentucky Crime Commission shall conduct at least *four (4)* [six (6)] regular meetings each year to be held on the second Thursday and Friday of *February, May, August, and November* [each odd numbered month] at such time and place designated by the chairman.

Section 2. Special meetings of the Kentucky Crime Commission may be conducted on call of the Secretary of the Department of Justice.

Section 3. Special meetings of committees of the Kentucky Crime Commission may be conducted on call of the committee chairman or by a majority of the membership of the committee.

APPROVED: HENRI L. MANGEOT, Secretary  
ADOPTED: November 14, 1975  
RECEIVED BY LRC: November 25, 1975 at 10:45 a.m.  
SUBMIT COMMENT OR REQUEST FOR HEARING  
TO: The Secretary, Department of Justice, 213 St. Clair Street, Frankfort, Kentucky 40601.

DEPARTMENT OF JUSTICE  
Kentucky Crime Commission  
(Proposed Amendment)

500 KAR 5:015. Filing period for grant application.

RELATES TO: KRS 15A.040

PURSUANT TO: KRS 15A.140, 15A.160

NECESSITY AND FUNCTION: KRS 15A.140 and 15A.160 provide that the Secretary of the Department of Justice may adopt such regulations consistent with the provisions of 1974 Acts Chapter 74. KRS 15A.040 vests supervisory authority of federal and state grant programs with the Kentucky Crime Commission. The Crime Control Act of 1973, 42 USC 3701, provides that the Kentucky Crime Commission shall approve or disapprove all grant applications within ninety (90) days of receipt thereof. This regulation establishes the filing period for grant applications, *budget revisions, or concept papers* to insure proper administrative review within this ninety (90) day period.

Section 1. Applications for grants, *budget revisions, or concept papers involving* [for] funds administered by the Department of Justice as the state planning agency shall be filed with the Executive Office of Staff Services of the Department of Justice. A *grant* [An] application, *budget revision, or concept paper* shall be considered as officially received and eligible for staff review by the Executive Office of Staff Services and action by the Kentucky Crime Commission at its next regular meeting if the *grant application, budget revision, or concept paper* is *physically received by* [in the physical possession of] the Executive Office of Staff Services *during the period commencing sixty (60) calendar days prior to and terminating at 4:30 p.m., local time, forty-five (45)* [not later than thirty (30)] calendar days prior to the next regular stated meeting of the Kentucky Crime Commission. *Grant a* [A] pplications *budget revisions, or concept papers not delivered to the Executive Office of Staff Services during any such filing period* [received at least thirty (30) calendar days prior to the next regular stated meeting of the Kentucky Crime Commission] shall not be considered received and shall be returned to the applicant [.] *in which case t* [T]he applicant shall be advised of the filing deadline for subsequent consideration of the grant application, [.] *budget revision, or concept paper.*

APPROVED: HENRI L. MANGEOT, Secretary

ADOPTED: November 14, 1975

RECEIVED BY LRC: November 25, 1975 at 10:45 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING  
TO: The Secretary, Department of Justice, 213 St. Clair Street, Frankfort, Kentucky 40601.

**PUBLIC PROTECTION AND REGULATION CABINET**  
**Department of Labor**  
**Occupational Safety and Health**  
**(Proposed Amendment)**

**803 KAR 2:020: Adoption of 29 CFR Part 1910.**

RELATES TO: KRS Chapter 338

PURSUANT TO: KRS 13.082

**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 general industry.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1910, the Occupational Safety and Health Standards, published in the Federal Register June 27, 1974 edition, Volume 39, Number 125, Government Printing Office, Washington, D. C. 20402. These standards are hereby adopted by reference with the following additions, exceptions, and deletions:

(1) 29 CFR Part 1910.1 shall read as follows:

The provisions of this regulation adopt and extend the applicability of established federal standards contained in 29 CFR Part 1910 to all employers, employees, and places of employment throughout the Commonwealth except those excluded in KRS 338.021.

(2) 29 CFR Part 1910.2 shall read as follows: As used in this part, unless the context clearly requires otherwise:

(a) "Act" means KRS Chapter 338.

(b) "Assistant Secretary of Labor" means the Commissioner of Labor, Commonwealth of Kentucky.

(c) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(d) "Employee" means any person employed except those employees excluded in KRS 338.021.

(e) "Standard" means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule."

(f) "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.

(g) "Established Federal Standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(h) *An employer required under these standards to report information to the United States Department of Labor, or any subsidiary thereof, shall, instead report such information to the Kentucky Department of Labor, Capital Plaza Tower, Frankfort, Kentucky.*

(3) 29 CFR Part 1910.13 through 1910.16 relating to ship repairing, shipbuilding, shipbreaking, and longshoring, and 1910.267a relating to pesticides, as well as paragraph (a)(6) in Section 1910.267 which refers to Section 1910.267a, are excluded and deleted in their entirety.

(4) 29 CFR Part 1910.141(c)(2)(i) shall read as follows:

(i) Each water closet shall occupy a separate compart-

ment with walls or partitions between fixtures sufficiently high to assure privacy.

(5) The changes which have been adopted by the U. S. Department of Labor relating to 29 CFR Part 1910.211 and 1910.217, mechanical power presses, and published in the Federal Register, Volume 39, Number 233, December 3, 1974, copy of which is attached hereto, are hereby adopted by reference.

(6) The changes and additions which have been adopted by the U. S. Department of Labor relating to Telecommunications which are contained in 29 CFR Part 1910.67, 1910.70, 1910.183, 1910.189, 1910.190, 1910.268, 1910.274, and 1910.275, published in the Federal Register, Volume 40, Number 59, March 26, 1975, a copy of which is attached hereto, are hereby adopted by reference.

(7) 29 CFR Part 1910.93q, the Occupational Safety and Health Standard covering vinyl chloride which was published in the Federal Register, Volume 39, Number 194, October 4, 1974, a copy of which is attached hereto, is hereby adopted by reference.

(8) 29 CFR Part 1910.309(c) (National Electrical Code) shall read as follows:

"(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, 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 circuit protection for personnel shall not be applicable."

(9) 29 CFR Part 1910.106(d)(2)(iii) of the Federal Register, Volume 39, Number 125, June 27, 1974, shall be amended by adding Table H-12 [11-12] of the Federal Register, Volume 40, Number 18, p. 3982, January 27, 1975, a copy of which is attached hereto, is adopted by reference.

(10) 29 CFR Part 1910.151 relating to medical services and first aid shall be changed to read as follows:

(a) The employer shall ensure the ready availability of medical personnel for advice and consultation on matters of occupational health.

(b) Employers with eight (8) or more employees within the establishment shall have persons adequately trained to render first-aid, and first-aid supplies approved by a consulting physician, along with a signed list of these supplies, shall be readily available. Outside salesmen, truck drivers, seasonal labor, and others who while performing their duties are away from the premises more than fifty (50) percent of the time are not to be included in determining the number of employees.

(c) All other employers shall, in the absence of an infirmary, clinic, or hospital in near proximity to the workplace which is used for the treatment of all injured employees, have a person or persons adequately trained to render first-aid. First-aid supplies approved by the consulting physician shall be readily available.

(d) Where the eyes or body of any person may be exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use.

(11) Recodification of 29 CFR Part 1910.93 through 1910.93q as 1910.1000 through 1910.1017 respectively, as published in the Federal Register, Volume 40, Number 103, May 28, 1975, a copy of which is attached hereto, is hereby adopted by reference.

(12) 29 CFR Part 1910.141(d)(2)(i) of the Federal Register, Volume 40, Number 82, April 28, 1975, amended by deleting the last half of Table J-2, a copy of which is attached hereto, is hereby adopted by reference.

(13) The new Standard, adopted by the United States Department of Labor relating to Industrial Slings contained in 29 CFR Part 1910.184, published in the Federal Register, Volume 40, Number 125, June 27, 1975, a copy of which is attached hereto, is hereby adopted by reference.

(14) 29 CFR Part 1910.94 which was amended by revoking paragraphs (b)(2)(i) and (b)(2)(ii) and by revising paragraph (b)(2), as published in the Federal Register, Volume 40, Number 111, June 9, 1975, a copy of which is attached hereto, is hereby adopted by reference.

(15) 29 CFR 1910.217(b)(7)(xii) relating to machines using part revolution clutches shall be amended by adding the following:

*This provision will not prevent the employer from utilizing a reversing means of the drive motor with the clutch-brake control in the "inch" position.*

(16) 29 CFR 1910.94(d)(4)(i) Table G-14, Page 23594, published in the Federal Register, Volume 39, Number 125, Thursday, June 27, 1974, as adopted by 803 KAR 2:020 contains a typographical error and is hereby revoked. The corrected version, published in the Federal Register, Volume 37, Number 202, Wednesday, October 18, 1972, Table G-14, Page 22155, a copy of which is attached hereto, is hereby adopted by reference.

JAMES R. YOCOM, Commissioner

ADOPTED: November 20, 1975

APPROVED: ELIJAH M. HOGGE, Secretary

RECEIVED BY LRC: December 12, 1975 at 1:35 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING

TO: Executive Director, Kentucky Department of Labor, Occupational Safety and Health Program, Capital Plaza Office Tower, Frankfort, Kentucky 40601.

**KENTUCKY OCCUPATIONAL SAFETY AND HEALTH  
REVIEW COMMISSION  
(Proposed Amendment)**

803 KAR 50:010. Hearings; procedure, disposition.

RELATES TO: KRS Chapter 338

PURSUANT TO: KRS 338.071, 338.081

NECESSITY AND FUNCTION: The Kentucky Occupational Safety and Health Review Commission is authorized by KRS 338.071 and 338.081 to hear and rule on appeals from citations, notifications, and variances and adopt and promulgate rules and regulations with respect to the procedural aspect of its hearings. This regulation is to provide for these hearings and their proper disposition.

Section 1. Definitions. As used herein: (1) "Act" means the Occupational Safety and Health Act of 1972, KRS Chapter 338.

(2) "Commission" means the Kentucky Occupational Safety and Health Review Commission.

(3) "Commissioner" means the Commissioner of the Department of Labor of Kentucky.

(4) "Executive Director" means the Executive Director of the Review Commission.

(5) "Hearing Officer" means a hearing officer appointed by the commission pursuant to KRS 338.071 and 338.081.

(6) "Affected employee" or "employee" means an employee of a cited employer who is exposed to the alleged hazard described in the citation, as a result of his assigned duties.

(7) "Authorized employee representative" means a labor organization which has a collective bargaining relationship with a cited employer and which represents affected employees.

(8) "Representative" means any person, including an authorized employee representative, authorized by a party or intervenor to represent him in a proceeding.

(9) "Citation" means a written communication issued by the commissioner to an employer pursuant to KRS 338.141.

(10) "Notification of proposed penalty" means a written communication issued by the commissioner to an employer pursuant to KRS 338.141(1).

(11) "Day" means a calendar day.

(12) "Working day" means all days except Saturdays, Sundays, or federal or state holidays.

(13) "Proceeding" means any proceeding before the commission or before a hearing officer.

(14) Unless otherwise specified, definitions set forth in KRS 338.015 are hereby adopted by this review commission.

Section 2. Meetings. (1) Regular meetings of the commission shall be held in its offices at Capital Plaza Tower, Frankfort, Kentucky, on the first Tuesday of each month at 11 a.m. unless changed to another date, place, or time by commission action.

(2) Special meetings may be called by the chairman or by two (2) members of the commission, and shall be held at such times and places as the call directs.

(3) The commission shall be considered as in continuous session for the performance of administrative duties.

(4) Two (2) members of the commission shall constitute a quorum.

Section 3. Assignment of Hearings--Filings. (1) Pursuant to KRS 338.081, cases coming before the commission may be assigned to a hearing officer within the discretion of the commission for a hearing and a finding of facts, conclusions of law, and recommended order. Cases may be withdrawn by agreement, dismissed for cause, or otherwise disposed of before hearing in the discretion and judgment of the commission. Further, the commission may, upon its own motion or on motion of any party, if granted, hold hearings, as provided under KRS 338.071, in which case provisions of this regulation relating to hearing officers and hearings shall apply where applicable. [will be assigned to a hearing officer for adjudication, unless withdrawn by agreement or otherwise dismissed.]

(2) A recommended order or adjudication by the hearing officer or the initial order of the Review Commission, if dismissed or disposed of as provided in subsection (1) of this section or if the commission sits for a hearing, shall become the final order of the commission, under the provisions of KRS 338.091, appealable to the Franklin Circuit Court, forty (40) days from date of issue, unless called for further review pursuant to Section 48 of this regulation. In the event of review by the commission, an order of the commission determinative of issues before it



shall become a final order as defined in KRS 338.091 upon date of issue.

(3) [(2)] Prior to the assignment of a case to a hearing officer, all papers shall be filed with the executive director at the commission offices, Capital Plaza Tower, Frankfort, Kentucky 40601. Subsequent to the assignment of the case to a hearing officer, and before the issuance of his decision, all papers shall be filed with the hearing officer at the address given in the notice informing of such assignment. Subsequent to a decision of the hearing officer, all papers shall be filed with the executive director.

(4) [(3)] Unless otherwise ordered, all filing may be accomplished by first-class mail.

(5) [(4)] Filing is deemed effected at the time of mailing. [filing.]

**Section 4. Scope of rules; applicability of Kentucky Rules of Civil Procedure.** (1) These rules shall govern all proceedings before the commission and its hearing officers.

(2) In the absence of a specific provision, procedure shall be in accordance with the Kentucky Rules of Civil Procedure.

**Section 5. Words denoting number or gender.** (1) Words importing the singular number may extend and be applied to the plural and vice versa.

(2) Words importing masculine gender may be applied to feminine or neuter gender and vice versa.

**Section 6. Computation of Time.** (1) In computing any period of time prescribed or allowed in these rules, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or federal or state holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or federal or state holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and federal or state holidays shall be excluded in the computation.

(2) Where service of a pleading or document is by mail pursuant to Section 3 of these rules, three (3) days shall be added to the time allowed by these rules for the filing of a responsive pleading.

**Section 7. Extensions of Time.** Requests for extensions of time for the filing of any pleading or document must be received in advance of the date on which the pleading or document is due to be filed.

**Section 8. Record address.** The initial pleading filed by any person shall contain his name, address, and telephone number. Any change in such information must be communicated promptly to the hearing officer or the commission, as the case may be, and to all other parties and intervenors. A party or intervenor who fails to furnish such information shall be deemed to have waived his right to notice and service under these rules.

**Section 9. Service and Notice.** (1) At the time of filing pleadings or other documents a copy thereof shall be

served by the filing party or intervenor on every other party or intervenor.

(2) Service upon a party or intervenor who has appeared through a representative shall be made only upon such representative.

(3) Unless otherwise ordered, service may be accomplished by postage prepaid first-class mail or by personal delivery. Service is deemed effected at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery).

(4) Proof of service shall be accomplished by a written statement of the same which sets forth the date and manner of service. Such statement shall be filed with the pleading or document.

(5) Where service is accomplished by posting, proof of such posting shall be filed not later than the first working day following the posting.

(6) Service and notice to employees represented by an authorized employee representative shall be deemed accomplished by serving the representative in the manner prescribed in subsection (3) of this section.

(7) In the event that there are any affected employees who are not represented by an authorized employee representative, the employer shall, immediately upon receipt of notice of contest or petition for modification of the abatement period, post, where the citation is required to be posted, a copy of the notice of contest and a notice informing such affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable times. A notice in the following form shall be deemed to comply with this paragraph:

(Name of employer)

Your employer has been cited by the Commissioner of Labor for violation of the Occupational Safety and Health Act of 1972. The citation has been contested and will be the subject of a hearing before the Occupational Safety and Health Review Commission. Affected employees are entitled to participate in this hearing as parties under terms and conditions established by the Occupational Safety and Health Review Commission in its rules of procedure. Notice of intent to participate should be sent to: Kentucky Occupational Safety and Health Review Commission, Capital Plaza Tower, Frankfort, Kentucky 40601. All papers relevant to this matter may be inspected at:

(Place reasonably convenient to employees, preferably at or near work place.)

(8) Where appropriate, the second sentence of the above notice will be deleted and the following sentence will be substituted: The reasonableness of the period prescribed by the Commissioner of the Department of Labor for abatement of the violation has been contested and will be the subject of a hearing before the Occupational Safety and Health Review Commission.

(9) The authorized employee representative, if any, shall be served with the notice set forth above and with a copy of the notice of contest.

(10) A copy of the notice of the hearing to be held before the hearing officer shall be served by the employer on affected employees who are not represented by an authorized employee representative by posting a

copy of the notice of such hearing at or near the place where the citation is required to be posted.

(11) A copy of the notice of the hearing to be held before the hearing officer shall be served by the employer on the authorized employee representative or affected employees in the manner prescribed in subsection (3) of this section, if the employer has not been informed that the authorized employee representative has entered an appearance as of the date such notice is received by the employer.

[(12) Where a notice of contest is filed by an affected employee who is not represented by an authorized employee representative and there are other affected employees who are represented by an authorized employee representative, the unrepresented employee shall, upon receipt of the statement filed in conformance with Section 20 serve a copy thereof on such authorized employee representative in the manner prescribed in subsection (3) of this section and shall file proof of such service.]

(12)[(13)] Where a notice of contest is filed by an affected employee or an authorized employee representative, a copy of the notice of contest [and response filed in support thereof] shall be provided to the employer for posting in the manner prescribed in subsection (7) of this section.

(13) [(14)] An authorized employee representative who files a notice of contest shall be responsible for serving any other authorized employee representative whose members are affected employees.

(14) [(15)] Where posting is required by this section, such posting shall be maintained until the commencement of the hearing or until earlier disposition.

**Section 10. Consolidation.** Cases may be consolidated on the motion of any party, on the hearing officer's own motion, or on the commission's own motion, where there exist common parties, common questions of law or fact, or both, or in such other circumstances as justice and the administration of the Act require.

**Section 11. Severance.** Upon its own motion, or upon motion of any party or intervenor, the commission or the hearing officer may, for good cause, order any proceeding severed with respect to some or all issues or parties.

**Section 12. Protection of trade secrets and other confidential information.** (1) Upon application by any person, in a proceeding where trade secrets or other matters may be divulged, the confidentiality of which is protected by law, the hearing officer shall issue such orders as may be appropriate to protect the confidentiality of such matters.

(2) Interlocutory appeal from an adverse ruling under this section shall be granted as a matter of right.

**Section 13. Employer or Employee Contests.** [Party status: Intervention.] (1) Where a notice of contest is filed by an employer contesting a citation or notification issued pursuant to KRS 338.131, 338.141 or 338.153, an employee or an authorized employee representative may elect party status by a request for intervention at any time before commencement of the hearing or if no hearing is

held, within the time period a motion for dismissal is required to be posted. [employee or by an authorized employee representative with respect to the reasonableness of the period for abatement of a violation, the employer charged with the responsibility of abating the violation may elect party status at any time before the commencement of the hearing before the hearing officer.]

(2) Where a notice of contest is filed by an employee or by an authorized employee representative contesting a citation or notification issued pursuant to KRS 338.131, 338.141 or 338.153, the employer may elect party status at any time before commencement of the hearing, or if no hearing is held, within the time period a motion for dismissal is required to be posted. [A petition for leave to intervene may be filed at any stage of a proceeding before commencement of the hearing before the hearing officer.]

[(3) The petition shall set forth the interest of the petitioner in the proceeding and show that the participation of the petitioner will assist in the determination of the issues in question, and that the intervention will not unnecessarily delay the proceeding.]

[(4) The commission or the hearing officer may grant a petition for intervention to such an extent and upon such terms as the commission or the hearing officer shall determine.]

**Section 14. Intervention.** (1) A petition for leave to intervene may be filed at any stage of a proceeding before commencement of the hearing, or in the event of a settlement or dismissal before issuance of a recommended order.

(2) The petition shall set forth the interest of the petitioner in the proceeding and show that participation of the petitioner will assist in the determination of the issues in question and that the intervention will not unnecessarily delay the proceeding.

(3) The commission or the hearing officer may grant a petition for intervention to such an extent and upon such terms as the commission or the hearing officer shall determine.

(4) The caption of all cases where intervention is allowed shall reflect such intervention by adding to the caption after the name of the respondent the name of the intervenor, followed by the designation "intervenor."

**Section 15. [14.] Representatives of parties and intervenors.** (1) Any party or intervenor may appear in person or through a representative.

(2) A representative of a party or intervenor shall be deemed to control all matters respecting the interest of such party or intervenor in the proceeding.

(3) Affected employees who are represented by an authorized employee representative may appear only through such authorized employee representative.

(4) Nothing contained herein shall be construed to require any representative to be an attorney at law.

(5) Withdrawal of appearance of any representative may be effected by filing a written notice of withdrawal and by serving a copy thereof on all parties and intervenors.

**Section 16. Variance Contests.** (1) An employer, employee or authorized employee representative who receives notification of an adverse ruling to an application for a variance made pursuant to KRS 338.153 may, within fifteen (15) working days of issuance of such ruling file a notice of contest with the Commissioner of Labor. The Commissioner of Labor shall transmit such notice, together

with the complete record in the matter as compiled before the Commissioner of Labor, to the commission within seven (7) days of receipt, under authority of KRS 338.071(4).

(2) The commission may on its own order or on motion of any party, if granted, consider the matter on the record or may require further hearing or filings of information in the matter.

(3) All pertinent provisions relating to contests of citations, where applicable, shall apply.

**Section 17. Petition for Modification of Abatement.**

(1) Any party adversely affected by a ruling of the Commissioner of Labor on any application for modification of an abatement period may file an appeal from such notification with the Commissioner of Labor, provided such appeal is filed within seven (7) days of receipt of such notice in the event the ruling of the Commissioner of Labor is issued after the abatement date, or no later than the close of the next working day following the date on which abatement is required.

(2) The Commissioner of Labor shall transmit such petition to the commission within three (3) working days after its receipt, together with all pertinent and relevant records considered by the Commissioner of Labor in making his ruling.

(3) The Commissioner of Labor shall file a response to such appeal within ten (10) days of receipt of notice of receipt of such appeal.

(4) The commission may on its own order or on motion of any party, if granted, consider the matter on the record or may require further hearing, pleadings or information in the matter.

**Section 18. [15.] Form.** (1) Except as provided herein, there are no specific requirements as to the form of any pleading. A pleading is simply required to contain a caption sufficient to identify the parties in accordance with Section 19, which shall include the commission's docket number, if assigned, and a clear and plain statement of the relief that is sought, together with the grounds therefor.

(2) Pleadings and other documents (other than exhibits) shall be typewritten, double spaced.

(3) Pleadings shall be signed by the party filing or by his representative. Such signing constitutes a representation by the signer that he has read the document or pleading, that to the best of his knowledge, information and belief the statements made therein are true, and that it is not interposed for delay.

(4) The commission may refuse for filing any pleading or document which does not comply with the requirements of subsections (1), (2) and (3) of this section.

**Section 19. [16.] Captions. [Titles of cases.]** (1) Cases initiated by a notice of contest shall be titled: Commissioner of the Department of Labor, Complainant v. (Name of Contestant), Respondent.

(2) Cases initiated from an adverse ruling of the Commissioner of Labor relative to a variance or by a petition for modification of the abatement period shall be titled: (Name of Petitioner), Petitioner v. Commissioner of the Department of Labor, Respondent.

(3) The titles listed in subsections (1) and (2) of this section shall appear at the left upper portion of the initial page of any pleading or document (other than exhibits) filed.

(4) The initial page of any pleading or document (other

than exhibits) shall show, at the upper right of the page, opposite the title, the docket number, if known, assigned by the commission.

**Section 20. [17.] Notices of contest of citations.** (1) Any employer, employee or authorized employee representative may contest any citation issued pursuant to KRS 338.141.

(2) When a notice of contest is received by the commissioner the original and one (1) copy of the notification of contest shall be transmitted to the commission together with copies of all relevant documents, within seven (7) days of receipt of notice by the commissioner. [The commissioner shall, within seven (7) days of receipt of a notice of contest, transmit the original to the commission, together with copies of all relevant documents.]

[Section 18. Employer contests.] (3) [(1)] Complaint:

(a) The commissioner shall file a complaint with the commission no later than twenty (20) days after his receipt of the notice of contest.

(b) The complaint shall set forth all alleged violations and proposed penalties which are contested, stating with particularity: 1. The basis for jurisdiction; 2. The time, location, place, and circumstances of each such alleged violation; and 3. The considerations upon which the period for abatement and the proposed penalty on each alleged violation is based.

(c) Where the commissioner seeks in his complaint to amend his citation or proposed penalty, he shall set forth the reasons for amendment and shall state with particularity the change sought.

(4) [(2)] Answer:

(a) Within fifteen (15) days after service of the complaint, the party against whom the complaint was issued shall file an answer with the commission.

(b) The answer shall contain a short and plain statement denying those allegations in the complaint which the party intends to contest. Any allegation not denied shall be deemed admitted.

[Section 19. Petitions for modification of abatement period.] (1) An employer may file with the commission a petition for modification of an abatement period no later than the close of the next working day following the date on which abatement is required.]

[(2) The commissioner shall transmit such petition to the commission within three (3) days after its receipt.]

[(3) The commissioner shall file a response within ten (10) days of receipt of the petition.]

[(4) The burden of proving the need for modification of the abatement period shall rest with the petitioner.]

[Section 20. Employee contests.] (1) Where an affected employee or authorized employee representative files a notice of contest with respect to the abatement period the commissioner shall, within ten (10) days from his receipt of the notice of contest, file a clear and concise statement of the reasons the abatement period prescribed by him is not unreasonable.]

[(2) Not later than ten (10) days after receipt of the statement referred to in subsection (1) of this section, the contestant shall file a response.]

**Section 21. Statement of position.** At any time prior to the commencement of the hearing before the hearing officer, any person entitled to appear as a party, or any

person who has been granted leave to intervene, may file a statement of position with respect to any or all issues to be heard.

Section 22. Response to motions. Any party or intervenor upon whom a motion is served shall have ten (10) days from service of the motion to file a response.

Section 23. Failure to file. Failure to file any pleading pursuant to these rules when due, may, in the discretion of the commission or the hearing officer, constitute a waiver of right to further participation in the proceedings.

Section 24. Withdrawal of notice of contest. At any stage of a proceeding, a party may withdraw his notice of contest, subject to the approval of the commission.

Section 25. Prehearing conference. (1) At any time before a hearing, the commission or the hearing officer, on their own motion or on motion of a party, may direct the parties or their representatives to exchange information or to participate in a prehearing conference for the purpose of considering matters which will tend to simplify the issues or expedite the proceedings.

(2) The commission or the hearing officer may issue a prehearing order which includes the agreements reached by the parties. Such order shall be served on all parties and shall be a part of the record.

Section 26. Requests for admissions. (1) At any time after the filing of responsive pleadings, any party may request of any other party admissions of facts to be made under oath. Each admission requested shall be set forth separately. The matter shall be deemed admitted unless, within fifteen (15) days after service of the request, or within such shorter or longer time as the commission or the hearing officer may prescribe, the party to whom the request is directed serves upon the party requesting the admission of a specific written response.

(2) Copies of all requests and responses shall be served on all parties in accordance with the provisions of these rules and filed with the commission within the time allotted and shall be a part of the record.

Section 27. Discovery depositions and interrogatories. (1) Except by special order of the commission or the hearing officer, discovery depositions of parties, intervenors, or witnesses, and interrogatories directed to parties, intervenors, or witnesses shall not be allowed.

(2) In the event the commission or the hearing officer grants an application for the conduct of such discovery proceedings, the order granting the same shall set forth appropriate time limits governing the discovery.

Section 28. Failure to comply with orders for discovery. If any party or intervenor fails to comply with an order of the commission or the hearing officer to permit discovery in accordance with the provisions of these rules, the commission or the hearing officer may issue appropriate orders.

Section 29. Issuance of subpoenas; petitions to revoke or

modify subpoenas; right to inspect or copy date. (1) Any member of the commission shall, on the application of any party directed to the commission, forthwith issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including relevant books, records, correspondence, or documents, in his possession or under his control. Applications for subpoenas, if filed subsequent to the assignment of the case to a hearing officer, *may* [shall] be filed with the hearing officer. A hearing officer shall grant the application on behalf of any member of the commission. Applications for subpoenas may be made *ex parte*. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.

(2) Any person served with a subpoena, whether *ad testificandum* or *duces tecum*, shall, within five (5) days after the date of service of the subpoena upon him, move in writing to revoke or modify the subpoena if he does not intend to comply. All motions to revoke or modify shall be served on the party at whose request the subpoena was issued. The hearing officer or the commission, as the case may be, shall revoke or modify the subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid. The hearing officer or the commission, as the case may be, shall make a simple statement of procedural or other grounds for the ruling on the motion to revoke or modify. The motion to revoke or modify, any answer filed thereto, and ruling thereon shall become a part of the record.

(3) Persons compelled to submit data or evidence at a public proceeding are entitled to retain, or on payments of lawfully prescribed costs, to procure copies of transcripts of the data or evidence submitted by them.

(4) Upon the failure of any person to comply with a subpoena issued upon the request of a party, the commission by its counsel shall initiate proceedings in the Franklin Circuit Court or appropriate circuit court for the enforcement thereof, if in its judgment the enforcement of such subpoena would be consistent with law and with policies of the Act. Neither the commission nor its counsel shall be deemed thereby to have assumed responsibility for the effective prosecution of the same before the court.

Section 30. Notice of hearing. (1) Notice of the time, place, and nature of a hearing shall be given to the parties and intervenors at least ten (10) days in advance of such hearing, except as otherwise provided in Section 52.

(2) *Copy of notice of hearing shall be served by the employer on affected employees and/or the affected employees' representative as provided in Section 9, subsection (9) and (10) of this regulation, if no information has been received by the employer as to employee intervention in the case before the commission. Notice of hearing will be given by the commission to any party-intervenor.*

(3) The executive director shall secure or cause to be secured a location for such hearing, in the discretion of the commission, and secure a reporter for the taking of proof at



any hearing [before a hearing officer].

Section 31. Postponement of hearing. (1) Postponement of a hearing ordinarily will not be allowed.

(2) Except in the case of an extreme emergency or in unusual circumstances, no such request will be considered unless received in writing at least three (3) days in advance of the time set for the hearing.

(3) *Postponement of hearing not in excess of thirty (30) days may be granted in the discretion of the hearing officer. One additional postponement not in excess of thirty (30) days may be granted by the hearing officer in extreme emergency or under unusual circumstances. No additional postponement may be granted without commission approval.* [No postponement in excess of thirty (30) days shall be allowed without commission approval.]

Section 32. Failure to appear. (1) Subject to the provisions of subsection (3) of this section, the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the rights to be served with a copy of the decision of the hearing officer and to request commission review pursuant to Section 48.

(2) Requests for reinstatement must be made, in the absence of extraordinary circumstances, within five (5) days after the scheduled hearing date.

(3) The commission or the hearing officer, upon a showing of good cause, may excuse such failure to appear. In such event, the hearing will be rescheduled.

Section 33. Payment of witness fees and mileage; fees of persons taking depositions. Witnesses summoned before the commission or the hearing officer shall be paid the same fees and mileage that are paid witnesses in the courts of the Commonwealth of Kentucky and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the Commonwealth of Kentucky. Witness fees and mileage shall be paid by the party at whose instance the witness appears, and the person taking a deposition shall be paid by the party at whose instance the deposition is taken.

Section 34. Reporter's fees. Reporter's fees shall be borne by the commission, except as provided in Section 33.

Section 35. Transcript of testimony. Hearings shall be transcribed verbatim. A copy of the transcript of testimony taken at the hearing, duly certified by the reporter, shall be filed with the hearing officer before whom the matter was heard. The hearing officer shall promptly serve notice upon each of the parties and intervenors of such filing. Participants desiring copies of such transcripts may obtain the same from the official reporter upon payment of fees fixed therefor.

Section 36. Duties and powers of hearing officers. It shall be the duty of the hearing officer to conduct a fair and impartial hearing, to assure that the facts are fully elicited, to adjudicate all issues and avoid delay. The hearing officer shall have authority with respect to cases

assigned to him, between the time he is designated and the time he issues his decision, subject to the rules and regulations of the commission to:

- (1) Administer oaths and affirmations;
- (2) Issue authorized subpoenas;
- (3) Rule upon petitions to revoke subpoenas;
- (4) Rule upon offers of proof and receive relevant evidence;
- (5) Take or cause depositions to be taken whenever the needs of justice would be served;
- (6) Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;
- (7) Hold conferences for the settlement or simplification of the issues;
- (8) Dispose of procedural requests or similar matters including motions referred to the hearing officer by the commission and motions to amend pleadings; also to dismiss complaints or portions thereof, and to order hearings reopened or, upon motion, consolidated prior to issuance of his decision;
- (9) Call and examine witnesses and to introduce into the record documentary or other evidence;
- (10) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;
- (11) Adjourn the hearing as the needs of justice and good administration require;
- (12) Take any other action necessary under the foregoing and authorized by the published rules and regulations of the commission.

Section 37. Disqualification of hearing officer. (1) A hearing officer may withdraw from a proceeding whenever he deems himself disqualified.

(2) Any party may request the hearing officer at any time following his designation and before the filing of his decision, to withdraw on ground of personal bias or disqualification, by filing with him promptly upon the discovery of the alleged facts an affidavit setting forth in detail the matters alleged to constitute grounds for disqualification.

(3) If, in the opinion of the hearing officer the affidavit referred to in subsection (2) of this section is filed with due diligence and is sufficient on its face, the hearing officer shall forthwith disqualify himself and withdraw from the proceeding.

(4) If the hearing officer does not disqualify himself and withdraw from the proceedings, he shall so rule upon the record, stating the grounds for his ruling and shall proceed with the hearing, or, if the hearing has closed, he shall proceed with the issuance of his decision and the provisions of Section 47 shall thereupon apply.

Section 38. Examination of witnesses. Witnesses shall be examined orally under oath. Opposing parties shall have the right to cross-examine any witness whose testimony is introduced by an adverse party.

Section 39. Affidavits. An affidavit may be admitted as evidence in lieu of oral testimony if the matters

therein contained are otherwise admissible and the parties agree to its admission.

Section 40. Deposition in lieu of oral testimony; application; procedures, form; rulings. (1) An application to take the deposition of a witness in lieu of oral testimony shall be in writing and shall set forth the reasons such deposition should be taken, the name and address of the witness, the matters concerning which it is expected he will testify and the time and place proposed for the taking of the deposition, together with the name and address of the person before whom it is desired that the deposition be taken (for purposes of this section, hereinafter referred to as "the officer." Such application shall be filed with the commission or the hearing officer, as the case may be, and shall be served on all other parties and intervenors not less than seven (7) days (when the deposition is to be taken elsewhere) prior to the time when it is desired that the deposition be taken. Where good cause has been shown, the commission or the hearing officer shall make and serve on the parties and intervenors an order which specifies the name of the witness whose deposition is to be taken and the time, place, and designation of the officer before whom the witness is to testify. Such officer may or may not be the officer specified in the application.

(2) Such deposition may be taken before any officer authorized to administer oaths by the laws of Kentucky or of the place where the examination is held. If the examination is held in a foreign country, it may be taken before any secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States.

(3) At the time and place specified in the order, the officer designated to take such deposition shall permit the witness to be examined and cross-examined under oath by all parties appearing, and the testimony of the witness shall be reduced to typewriting by the officer or under his direction. All objections to questions or evidence shall be deemed waived unless made at the examination. The officer shall not have power to rule upon any objection, but he shall note them upon the deposition. The testimony shall be subscribed by the witness in the presence of the officer who shall attach his certificate stating that the witness was duly sworn by him, that the deposition is a true record of the testimony and exhibits given by the witness, and that the officer is not of counsel or attorney to any of the parties nor interested in the proceeding. If the deposition is not signed by the witness because he is ill, dead, cannot be found, or refuses to sign it, *or will be unavailable to sign the typed deposition and it is so stated by agreement*, such fact shall be included in the certificate of the officer and the deposition may be used as fully as though signed. The officer shall immediately deliver an original and *three (3)* [four (4)] copies of the transcript together with his certificate, in person or by registered mail to the executive director, Kentucky Occupational Safety and Health Review Commission, Capital Plaza Tower, Frankfort, Kentucky 40601.

(4) The hearing officer shall rule upon the admissibility of the deposition or any part thereof.

(5) All errors or irregularities in compliance with the provision of this section shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is or with due diligence might have been discovered.

(6) If the parties so stipulate in writing, depositions may be taken before any person at any time or place, upon any notice and in any manner, and when so taken may be used as other depositions.

Section 41. Exhibits. (1) All exhibits offered in evidence shall be numbered and marked with a designation identifying the party or intervenor by whom the exhibit is offered.

(2) In the absence of objection by another party or intervenor, exhibits shall be admitted into evidence as a part of the record, unless excluded by the hearing officer pursuant to Section 42.

(3) Unless the hearing officer finds it impractical, a copy of each such exhibit shall be given to the other parties and intervenors.

(4) All exhibits offered, but denied admission into evidence, shall be identified as in subsection (1) of this section and shall be placed in a separate file designated for rejected exhibits.

Section 42. Rules of evidence. Hearings before the commission and its hearing officers insofar as practicable shall be governed by the rules of evidence applicable in the courts of the Commonwealth of Kentucky.

Section 43. Burden of proof. (1) In all proceedings commenced by the filing of a notice of contest, the burden of proof shall rest with the commissioner.

(2) In proceedings commenced by a petition for modification of the abatement period, the burden of establishing the necessity for such modification shall rest with the petitioner.

*(3) In all proceedings commenced by appealing from an adverse ruling on a variance application, the burden of proving the inequity of the ruling of the Commissioner of Labor shall rest on the petitioner-complainant.*

Section 44. Objections. (1) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence or a ruling of the hearing officer, may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the record. No such objection shall be deemed waived by further participation in the hearing.

(2) Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record of the proceeding.

Section 45. Interlocutory appeals; special; as of right. (1) Unless expressly authorized by these rules, rulings by the hearing officer may not be appealed directly to the commission except by its special permission. Unless otherwise provided by these rules, all such rulings shall become a part of the record.

(2) Request to the commission for special permission to appeal from such ruling shall be filed in writing within five (5) days following receipt of the ruling and shall state briefly the grounds relied on.

(3) Interlocutory appeal from a ruling of the hearing

officer shall be allowed as of right where the hearing officer certifies that:

(a) The ruling involves an important question of law concerning which there is substantial ground for difference of opinion; and

(b) An immediate appeal from the ruling will materially expedite the proceedings. Such appeal shall also be allowed in the circumstances set forth in Section 12.

(4) Neither the filing of a petition for interlocutory appeal, nor the granting thereof as provided in subsections (2) and (3) of this section shall stay the proceedings before the hearing officer unless such stay is specifically ordered by the commission.

Section 46. Filing of briefs and proposed findings with the hearing officer; oral argument at the hearing. (1) Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. Any party shall be entitled, upon request made before the close of the hearing, to file a brief, proposed findings of fact and conclusions of law, or both, with the hearing officer. The hearing officer may fix a reasonable period of time for such filing, *but the initial period shall not exceed thirty (30) days from the receipt by the party of the transcript of the hearing or the date the hearing officer designates by order of his receipt. The complainant shall have fifteen (15) days to file, the respondent ten (10) days and the complainant five (5) days for reply, unless a shorter period is agreed on by all parties. Intervenors shall have until the 25th day of the thirty (30-) day period in which to file briefs.* [but such initial period may not exceed twenty (20) days from the receipt by the party of the transcript of the hearing. All briefs must be filed within the time fixed, and the commission may refuse to consider any brief filed thereafter. Application for extensions of time to file briefs must be made to the commission. Briefs must be accompanied with notice, showing service upon all other parties, and in addition to the original filed, two (2) copies of each such document shall be furnished for use of the commission.]

(2) *All briefs must be filed within the time fixed and the hearing officer or the commission may refuse to consider any brief filed thereafter. Application for extension of time to file briefs must be made to the hearing officer or commission before whom hearing was held.*

(3) *Briefs must be accompanied with notice, showing service upon all other parties, and in addition to the original filed, three (3) copies of each such document shall be furnished to the commission.*

Section 47. Decisions of Hearing Officers. (1) The decision of the hearing officer shall include findings of fact, conclusions of law, and a *recommended order disposing of all issues before him.* [an order.]

(2) The hearing officer shall sign [and date] the decision[,] and forward to the executive director. The executive director shall then date and issue such decision, sending a copy to all parties of record and to each commission member. Upon issuance of the recommended order, [decision] jurisdiction shall rest solely in the commission, and all motions, petitions and other pleadings filed subsequent to such issuance shall be addressed to the commission.

(3) *The recommended order of the hearing officer may be called for further review by any commission member or by the commission as a whole at any time within a forty (40) day period. If the recommended order is not ordered for further review, it shall become the final order of this commission forty (40) days after date of issuance. If a recommended order is called for review by a commissioner or the commission on its own order, parties will be advised in order that briefs may be submitted if desired. The commission will set the briefing time.*

Section 48. Discretionary review; petition. (1) A party aggrieved by the decision of a hearing officer may submit a petition for discretionary review.

(2) The petition must be received by the commission at its offices in Frankfort, Kentucky on or before the 25th day following receipt by the commission of the hearing officer's decision.

(3) A petition should contain a concise statement of each portion of the decision and order to which exception is taken and may be accompanied by a brief of points and authorities relied upon. The original and three (3) copies shall be filed with the commission.

[(4) Failure to act on such petition within the review period shall be deemed a denial thereof.]

(4) *Statements in opposition to petitions for discretionary review may be filed at any time during the review period, if received by the commission on or before the 35th day from date of the issuance of the recommended order. Such statement shall contain a concise statement on each portion of the petition for discretionary review to which it is addressed.*

(5) *The commission while reviewing a case may request briefs on any point, and shall set the time for such filings.*

(6) *The original and three (3) copies of all briefs or statements provided for under this section and Section 47 shall be furnished for use of the commission.*

(7) *Failure to act on any petition for discretionary review in the review period shall be deemed a denial thereof.*

Section 49. Stay of final order. (1) Any party aggrieved by a final order of the commission may, while the matter is within the jurisdiction of the commission, file a motion for a stay.

(2) Such motion shall set forth the reasons a stay is sought and the length of the stay requested.

(3) The commission may order such stay for the period requested or for such longer or shorter period as it deems appropriate.

Section 50. Oral argument before the Commission. (1) Oral argument before the commission ordinarily will not be allowed.

(2) In the event the commission desires to hear oral argument with respect to any matter it will advise all parties to the proceeding of the date, hour, place, time allotted, and scope of such argument at least ten (10) days prior to the date set.

Section 51. Settlement or Dismissals. (1) Settlement is encouraged at any stage of the proceedings where such

settlement is consistent with the provisions and objectives of the Act.

(2) Settlement agreements submitted by the parties shall be accompanied by an appropriate proposed order. *Such settlement agreement shall detail the basis for such settlement, either by order or a stipulated agreement properly signed by all parties.*

(3) Where parties to settlement agree upon a proposal, it shall be served upon represented and unrepresented affected employees in the manner set forth in Section 9. Proof of such service shall accompany the proposed settlement when submitted to the commission or the hearing officer *showing such notice to such employees or authorized employee representative ten (10) days before submission to the hearing officer or the commission.*

(4) *In any action on a citation on motion of either party for dismissal, the motion shall state the reason for such dismissal, and show posting for ten (10) days as required for settlement agreements. In cases where dismissal is moved by the respondent, respondent shall also show abatement of cited violation and payment of any penalty, if applicable.*

Section 52. Expedited proceeding. (1) Upon application of any party or intervenor, or upon his own motion, any commission member may order an expedited proceeding.

(2) When such proceeding is ordered, the executive director shall notify all parties and intervenors.

(3) The hearing officer assigned in an expedited proceeding shall make necessary rulings, with respect to time for filing of pleadings and with respect to all other matters, without reference to times set forth in these rules, shall order daily transcripts of the hearing, and shall do all other things necessary to complete the proceeding in the minimum time consistent with fairness.

Section 53. Standards of conduct. All persons appearing in any proceeding shall conform to the standards of ethical conduct required in the courts of the Commonwealth of Kentucky.

Section 54. Ex parte communication. (1) There shall be no ex parte communication, with respect to the merits of any case not concluded, between the commission, including any member, officer, employee, or agent of the commission who is employed in the decisional process, and any of the parties or intervenors.

(2) In the event such ex parte communication occurs, the commission or the hearing officer may make such orders or take such action as fairness requires. Upon notice and hearing, the commission may take such disciplinary action as is appropriate in the circumstances against any person who knowingly and willfully makes or solicits the making of a prohibited ex parte communication.

Section 55. Restrictions as to participation by investigative or prosecuting officers. In any proceeding noticed pursuant to the rules in this part, the commissioner shall not participate or advise with respect to the report of the hearing officer or the commission decision.

Section 56. Inspection and reproduction of documents. (1) Subject to the provisions of law restricting

public disclosure of information, any person may, at the offices of the commission, inspect and copy any document filed in any proceeding.

(2) Costs shall be borne by such person.

Section 57. Restrictions with respect to former employees. (1) No former employee of the commission or the commissioner (including a member of the commission or the executive director) shall appear before the commission as an attorney or other representative for any party in any proceeding or other matter, formal or informal, in which he participated personally and substantially during the period of his employment.

(2) No former employee of the commission or the commissioner (including a member of the commission or the executive director) shall appear before the commission as an attorney or other representative for any party in any proceeding or other matter, formal or informal, for which he was personally responsible during the period of his employment, unless one (1) year has elapsed since the termination of such employment.

Section 58. Amendments to rules. The commission may at any time upon its own motion or initiative, or upon written suggestion of any interested person setting forth reasonable grounds therefor, amend or revoke any of the rules contained herein, in compliance with KRS Chapter 13.

Section 59. Special circumstances, waiver of rules. In special circumstances not contemplated by the provisions of these rules, or for good cause shown, the commission may, upon application by any party or intervenor, or on its own motion, after three (3) days notice to all parties and intervenors, waive any rule or make such orders as justice or the administration of the Act requires.

Section 60. Penalties. All penalties assessed by the commission are civil.

H. L. STOWERS, Chairman

ADOPTED: November 6, 1974

RECEIVED BY LRC: December 12, 1975 at 3:15 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING  
TO: Executive Director, Kentucky Occupational Safety and Health Review Commission, 101 Bridge Street, Frankfort, Kentucky 40601.



## Proposed Regulations

### DEVELOPMENT CABINET Department of Fish and Wildlife Resources

#### 301 KAR 3:051. Wild turkey; gun and archery season.

RELATES TO: KRS 150.175, 150.176, 150.305, 150.310, 150.360, 150.390

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: This regulation pertains to the spring gun and archery season and limits for wild turkey. In accordance with KRS 150.015, this regulation is necessary for the continued protection and conservation of wild turkey populations and to insure a permanent and continued supply for present and future residents of the state. The function of this regulation is to provide for the prudent taking of wild turkeys within reasonable limits based upon an adequate supply.

Section 1. Counties and/or Areas Designated Open to Turkey Hunting and Season Dates. (1) Turkeys may be taken in the following counties or portions of counties: Jackson, Owsley, Bath, Rockcastle, Lee, Rowan; that portion of Menifee County north of U. S. Highway 460, and only that portion of Pike County located between State Highway 197 and the Kentucky-Virginia border. Season: April 24-25 and May 1-2, 1976.

(2) Fort Knox Wildlife Management Area located in Hardin, Bullitt and Meade Counties. Season: April 10-11 and April 17-18, 1976, with April 3-4 and April 24-25, 1976 available as alternate weekends because of training priorities.

(3) Land Between the Lakes Wildlife Management Area located in Lyon and Trigg Counties. Season: April 15, 16, 17, 22, 23, 24, 29, 30 and May 1, 1976.

(4) Pioneer Weapons Wildlife Management Area in Bath and Menifee Counties. Season: April 24-25 and May 1-2, 1976.

(5) All other counties, portions of counties and other Wildlife Management Areas are closed to turkey hunting.

Section 2. Requirements and Restrictions for Gun and Archery Turkey Hunting in All Designated Counties and Special Areas. (1) Only one (1) turkey gobbler with visible beard per hunter for the season (either with gun, longbow or crossbow) shall be taken. A successful hunter cannot assist any other hunter in taking turkey.

(2) The use of dogs in turkey hunting is prohibited.

(3) Any person hunting turkey must have in his or her possession a valid Kentucky hunting license.

(4) Residents of states that do not allow residents of Kentucky to hunt turkey during open seasons in those states are prohibited from hunting turkey in Kentucky.

(5) Turkey may be taken from daylight until 12:00 noon (prevailing time).

(6) Turkey may be taken with the aid of hand or mouth operated calls, or both. Electronic calls are prohibited.

(7) Permitted weapons. (See exceptions under special area regulations.)

(a) Guns. Turkey may be taken with breech-loading shotgun, muzzle-loading shotgun, breech-loading rifles and muzzle-loading rifles. Shotguns must not be larger than 12-gauge nor smaller than 20-gauge. Only shot shells are permitted. Shotgun slugs are prohibited. No sidearms are permitted except for muzzle-loading handguns on Pioneer Weapons Wildlife Management Area.

(b) Bows and Arrows. Turkey may be taken with a longbow. Arrows must be barbless with broadhead points at least seven-eighths (7/8) inch wide.

(c) Crossbows. Crossbows are legal only on the Pioneer Weapons Wildlife Management Area in Bath and Menifee Counties. Crossbows must be of eighty (80) pounds pull. Arrows must be barbless with broadhead points at least seven-eighths (7/8) inch wide.

Section 3. Special Area Regulations. (1) Land Between the Lakes Wildlife Management Area in Lyon and Trigg Counties. Turkey gobblers with visible beards may be taken on the Kentucky portion of Land Between the Lakes except closed areas as designated by signs. Permits for the hunt are required and may be obtained free of charge after March 1, 1976, at the Information Office at Golden Pond, Kentucky, 7:00 a.m. to 5:00 p.m. weekdays and 9:00 a.m. to 5:00 p.m. Saturday and Sunday; at Center Station and North Information Station from 9:00 a.m. to 5:00 p.m. daily. Firearms transported in vehicles during authorized hunts must be unloaded. Target practice is prohibited. Turkey may be taken with shotguns, including muzzle-loaders, not larger than 12-gauge nor smaller than 20-gauge; only No. 2 shot or smaller is permitted. Longbows and arrows are permitted if arrows are barbless with broadhead points at least seven-eighths (7/8) inch wide. Rifles, crossbows and sidearms are prohibited. Hunters are not required to check in, but must check out daily by 12:00 noon prevailing time. All turkey taken must be checked out and must be tagged with area tags provided at the check station at no charge. Check stations will be located near the junction of The Trace and U. S. Highway 68, and on The Trace about one (1) mile south of Barkley Canal.

(2) Fort Knox Wildlife Management Area in Hardin, Bullitt and Meade Counties. Turkey hunting is restricted to military and civilian personnel assigned to or working on the post, except a limited number of off post civilians will be allowed to hunt. Mailed applications will be accepted starting March 1, 1976, on a first come first served basis until all allocated spaces are filled. Hunting dates will be assigned and cannot be selected. Mail applications no earlier than March 1, 1976, to Turkey Hunt, Recreation Services, Directorate of Personnel and Community Activities, P. O. Box 1052, Fort Knox, Kentucky 40121. Turkey may be taken with shotgun only, no larger than 12-gauge nor smaller than 20-gauge. Only shot shells are permitted.

(3) Pioneer Weapons Wildlife Management Area in Bath and Menifee Counties. Turkey may be taken with all legal weapons listed under Section 2, subsection (7) permitted weapons, with the exception of breech-loading rifles and breech-loading shotguns. Crossbows are permitted.

Section 4. This regulation will not be valid after May 2, 1976.

DR. ROBERT C. WEBB, Chairman  
 Department of Fish and Wildlife Resources Commission  
 ARNOLD L. MITCHELL, Commissioner  
 ADOPTED: December 14, 1975  
 APPROVED: WILLIAM L. SHORT, Secretary  
 RECEIVED BY LRC: December 15, 1975 at 2:30 p.m.  
 SUBMIT COMMENT OR REQUEST FOR HEARING  
 TO: The Commissioner, Department of Fish and Wildlife  
 Resources, Capital Plaza Tower, Frankfort, Kentucky  
 40601.

**PUBLIC PROTECTION AND REGULATION CABINET**  
**Department of Labor, Occupational Safety and Health**

**803 KAR 2:161. Repeal.**

RELATES TO: KRS Chapter 338  
 PURSUANT TO: KRS 13.082  
 NECESSITY AND FUNCTION: The Kentucky  
 Occupational Safety and Health Standards contained in 803  
 KAR 2:020 require employers using carcinogens to report  
 such use to the Kentucky Department of Labor. 803 KAR  
 2:160 also requires employers to report carcinogen use to  
 the Kentucky Department of Labor. Therefore, to avoid  
 duplication, 803 KAR 2:160 shall be revoked.

Section 1. 803 KAR 2:160 is hereby repealed.

JAMES R. YOCOM, Commissioner  
 ADOPTED: November 20, 1975  
 APPROVED: ELIJAH M. HOGGE, Secretary  
 RECEIVED BY LRC: December 12, 1975 at 1:35 p.m.  
 SUBMIT COMMENT OR REQUEST FOR HEARING  
 TO: Executive Director, Kentucky Department of Labor,  
 Occupational Safety and Health Program, Capital Plaza  
 Office Tower, Frankfort, Kentucky 40601.

## Reprinted Regulation

(The following regulation, published originally in the June, 1975 issue [1 Ky.R. 1246], was rejected by the Administrative Regulation Review Subcommittee at its July 2, 1975 meeting on the ground that standards set forth in the regulation exceed those provided by statute. The issuing agency resubmitted the regulation unchanged, and it became effective on December 3, 1975 in lieu of action by an Interim Joint Committee. The unchanged regulation will be transmitted to the Senate and House of Representatives of the General Assembly on January 6, 1976 for any subsequent action, pursuant to KRS 13.087.)

**EXECUTIVE DEPARTMENT FOR FINANCE  
 AND ADMINISTRATION**  
**Board of Examiners and Registration of Architects**

**201 KAR 19:090. Obligations of practice.**

RELATES TO: KRS 323.120  
 PURSUANT TO: KRS 323.210  
 SUPERSEDES: BERA:R 2  
 EFFECTIVE: December 3, 1975  
 NECESSITY AND FUNCTION: This regulation is  
 necessary to define the obligations and responsibility of the  
 architect to the health, safety, and welfare of the public.

Section 1. Obligations of Practice: The profession of  
 architecture requires persons of the highest integrity,  
 judgment, business capacity and artistic and technical

ability. An architect's honesty of purpose must be above  
 suspicion; he acts as professional advisor to his client and  
 his advice must be unprejudiced; he is charged with the  
 exercise of judicial functions as between client and  
 contractors and must act with entire impartiality; he has  
 moral responsibilities to his professional associates and  
 subordinates; he is in a profession which carries with it  
 grave responsibilities to the public. These duties and  
 responsibilities cannot be properly disciplined unless his  
 motives, conduct and ability are such as to command  
 respect and confidence. He shall conduct himself  
 accordingly.

L. WAYNE TUNE, Executive Director  
 ADOPTED: August 8, 1975  
 APPROVED: WILLIAM E. SCENT, Commissioner  
 RECEIVED BY LRC: November 3, 1975 at 11:15 a.m.

## ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

## Minutes of December 10, 1975 Meeting

(Subject to Subcommittee approval at its next meeting on January 14, 1975.)

The Administrative Regulation Review Subcommittee held its eighteenth meeting on Wednesday, December 10, 1975, at 10 a.m. in Room 327 of the Capitol. Present were:

Members: Senator Michael R. Moloney; Representatives James A. Davis and Bobby H. Richardson.

LRC Staff: William H. Raines, E. Hugh Morris, Mabel D. Robertson, Paula Lay and Garnett Evins.

Guests: Julius Rather, Jo Ann Gorham and Kathryn Hanley, Kentucky Society of Radiologic Technologists; W. O. Hubbard, Don Hughes and Charles Hardin, Department for Human Resources; Robert H. Harrison, Department of Labor; James E. Shafer and O. Leslie Greeman, Kentucky Hospital Association.

The following regulations from the Department for Human Resources, Bureau for Health Services, were rejected for the reason that they do not comply with legislative intent in that the regulations establish certain standards which do not protect the health and safety of the general public as mandated by KRS 211:870:

902 KAR 105:010. Radiation Operators' Certification, Definitions. (Amended)

902 KAR 105:020. Radiation Operators' Certification, General requirements.

902 KAR 105:030. Radiation Operators' Certification, Teaching institution's curricula. (Amended)

902 KAR 105:040. Radiation Operators' Certification, Medical or osteopathic physician supervision. (Amended)

902 KAR 105:050. Radiation Operators' Certification, Chiropractor supervision.

902 KAR 105:060. Radiation Operators' Certification, Podiatrist supervision.

902 KAR 105:070. Radiation Operators' Certification, Violations and enforcement

The following regulations were approved and ordered filed:

**EXECUTIVE DEPARTMENT FOR FINANCE  
AND ADMINISTRATION**

**Board of Dentistry**

201 KAR 8:015. Registration of dental laboratories and technicians with board. (Amended)

**Board of Registration for Professional**

**Engineers and Land Surveyors**

201 KAR 18:010. Classes of applicants. (Amended)

**DEPARTMENT OF TRANSPORTATION**

**Division of Aeronautics and Airport Zoning**

**Airport Development**

602 KAR 15:010. Airport development loans.

**Airport Safety Standards**

602 KAR 20:025. Airport safety bulletin.

**Bureau of Highways**

**Traffic**

603 KAR 5:070. Truck dimension limits. (Amended)

603 KAR 5:095. Truckway classifications. (Amended)

**DEPARTMENT OF EDUCATION**

**Bureau of Finance and Administration**

**Buildings and Grounds**

702 KAR 4:100. Emergency school loan construction fund; repayments.

**Bureau of Pupil Personnel Services**

**School Terms, Attendance and Operation**

703 KAR 2:060. Saturday teaching in emergency.

**Bureau of Instruction**

**Elementary and Secondary Education Act**

704 KAR 10:010. State Plan. (Amended)

**Bureau of Vocational Education**

**Administration**

704 KAR 1:010. State plan. (Amended)

**Management of State-Operated Schools**

705 KAR 5:040. Steering committee. (Amended)

**Adult Education**

705 KAR 7:050. Adult program plan. (Amended)

**Student Financial Aid**

705 KAR 8:010. Administration. (Amended)

**PUBLIC PROTECTION AND REGULATION**

**Department of Labor**

**Occupational Safety and Health**

803 KAR 2:020. Adoption of 29 CFR Part 1910. (Amended)

803 KAR 2:032. Adoption of 29 CFR Part 1928.

**DEPARTMENT FOR HUMAN RESOURCES**

**Bureau for Health Services**

**Drug Formulary**

902 KAR 1:060. Soduim Pentobarbital. (Amended)

902 KAR 1:070. Sodium Secobarbital. (Amended)

902 KAR 1:080. Acetaminophen. (Amended)

902 KAR 1:140. Sulfisoxazole. (Amended)

902 KAR 1:200. Phenazopyridine Hydrochloride Tablet.

902 KAR 1:210. Nitroglycerin Tablet.

902 KAR 1:220. Propantheline Bromide Tablet.

902 KAR 1:230. Dimenhydrinate Tablet.

902 KAR 1:240. Aminosalicic Acid Tablet.

902 KAR 1:250. Dextroamphetamine Sulfate Tablet.

902 KAR 1:260. Isoniazid Tablet.

902 KAR 1:270. Pseudoephedrine Hydrochloride Tablet.

902 KAR 1:280. Chloral Hydrate Capsules.

902 KAR 1:290. Ferrous Sulfate Tablet.

902 KAR 1:300. Diocetyl Sodium Sulfosuccinate Capsules.

**Alcohol, Drugs and Occupational Programs**

902 KAR 3:005. Definitions; alcohol programs. (Amended)

902 KAR 3:010. Licensing procedures. (Amended)

902 KAR 3:015. General program operation. (Amended)

902 KAR 3:050. Specific program standards. (Amended)

902 KAR 3:200. Drug abuse treatment and education (DATE) centers.

**Radiology**

902 KAR 100:075. Group Classifications. (Amended)

**Bureau for Social Insurance**

**Public Assistance**

904 KAR 2:012. Unemployed fathers' program.

The meeting adjourned at 11 a.m. to meet again on Wednesday, January 14, 1976, at 10 a.m. (EST) in the State Capitol.





*Administrative Register* <sup>*of*</sup> *kentucky*

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 Secondary; 705 KAR 4:060  
 Management, State-Operated Schools  
 Steering committee; 705 KAR 5:040  
 Student Financial Aid  
 Administration; 705 KAR 8:010

**WAGES AND HOURS**  
 (See: Labor)

**WORKMEN'S COMPENSATION**  
 Average weekly wage certification; 803 KAR 25:040  
 Compensation payment; 803 KAR 25:050  
 Procedure; 803 KAR 25:010  
 Self insurers; 803 KAR 25:020  
 Special fund; joint liability; 803 KAR 25:030

