Administrative Register of Kentucky

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

VOLUME 9, NUMBER 3
WEDNESDAY, SEPTEMBER 1, 1982

IN THIS ISSUE

NOTE: The September meeting of the Administrative Regulation Review Subcommittee will be a ONE-DAY meeting—WEDNESDAY, September 22, 1982, at 10 a.m., in Room 103, Capitol Annex.

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 Chapter 13.

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

The *Administrative Register of Kentucky* is the monthly advance sheets service for the 1983 Edition of KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.

HOW TO CITE: Cite all material in the *Administrative Register of Kentucky* by Volume number and Page number. Example: Volume 2, Kentucky Register, page 318 (short form: 2 Ky.R. 318).

KENTUCKY ADMINISTRATIVE REGULATIONS are codified according to the following system and are to be cited by Title, Chapter and Regulation number, as follows:

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

---

Administrative Register of Kentucky

(ISSN 0096-1493)

The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: $36 per volume of 12 issues, beginning in July and ending with the June issue of the subsequent year.

Second class postage paid at Frankfort, Kentucky.

POSTMASTER: Send address changes to Administrative Register of Kentucky, Room 300, State Capitol, Frankfort, Kentucky 40601.

Emergency Regulations Now In Effect

(NOTE: Emergency regulations expire upon being repealed or replaced.)

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-550
July 15, 1982

EMERGENCY REGULATIONS
Department of Personnel
Personnel Board

WHEREAS, in order to implement statutory amendments enacted by the 1982 General Assembly relating to the restructuring of the Personnel Board (HB 415) and to the compensation of state employees (HB 681), changes are necessary in various administrative regulations relating to the classified service; and

WHEREAS, in order to implement legislation enacted by the 1982 General Assembly relating to incentive programs for state employees, a new administrative regulation is necessary; and

WHEREAS, in order to provide unclassified employees benefits comparable to those provided classified service employees, changes are necessary in the administrative regulation relating to the unclassified service; and

WHEREAS, the Department of Personnel has determined and finds that an emergency exists and that there is a necessity to provide by regulation for the implementation of these legislative amendments and enactments; and

WHEREAS, the Commissioner of Personnel and the Personnel Board have prepared, approved and submitted proposed regulation amendments and a proposed regulation, pursuant to KRS 18A.075, KRS 18A.110, and KRS 18A.115 to make these changes; and

WHEREAS, the Department of Personnel is desirous, pursuant to KRS 13.088(1), to begin the administrative regulation review process as soon as possible;

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, pursuant to the authority vested in me by Section 13.088(1) of the Kentucky Revised Statutes, hereby acknowledge the findings of the Department of Personnel that an emergency exists and direct that the attached regulations be filed in the Office of the Legislative Research Commission to be effective July 15, 1982.

JOHN Y. BROWN, JR., Governor
FRANCES JONES MILLS, Secretary of State

FINANCE AND ADMINISTRATION CABINET
Department of Personnel

101 KAR 1:030E. Personnel board procedures.

RELATES TO: KRS *18A.045, 18A.070* [18.160]
PURSUANT TO: KRS 13.082, *18A.045,* [18.160,] *18A.070, 18A.075* [18.170]
EFFECTIVE: July 16, 1982
NECESSITY AND FUNCTION: KRS *18A.045* [18.160] establishes the State Personnel Board and *KRS 18A.070* sets forth the procedures for operation of the board. KRS *18A.075* [18.170] further expands the duties of the board. This rule is to assure compliance with these statutes and to define specific methods of compliance.

Section 1. Regular Meetings. Regular meetings of the board shall be held on the second Friday of each month. The chairman or the *executive director* [commissioner] may provide the time, date, and place of any meeting when deemed necessary and give due notice in writing of the change to the board members, the commissioner, and the several appointing authorities. *Notice shall be given in writing to each member of the board by the executive director at least seven (7) days in advance of the meeting.*

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

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

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

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

(1) Any new or revised job specification or grade change for each administrative, professional, or supervisory position;

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

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

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

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

DEE MAYNARD, Commissioner
ADOPTED: June 11, 1982
RECEIVED BY LRC: July 16, 1982 at 1:30 p.m.

FINANCE AND ADMINISTRATION CABINET
Department of Personnel

101 KAR 1:055E. Compensation plan, pay for performance.

RELATES TO: KRS *18A.030, 18A.075, 18A.110, 18A.165* [18.170, 18.190, 18.210, 18.240]
PURSUANT TO: KRS 13.082, *18A.075, 18A.110* [18.170, 18.210]
EFFECTIVE: July 16, 1982
NECESSITY AND FUNCTION: KRS *18A.110* [18.210] requires the Commissioner of Personnel to prepare and submit to the board rules which provide for a pay plan for all employees in the classified service, taking into account such factors as the relative level of duties and responsibilities of various classes, rates paid for comparable positions elsewhere, and the state's financial resources. This rule is to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements.

Section 1. Preparation, Approval, and Maintenance of the Plan. (1) After consultation with appointing authorities and the Secretary of the Finance and Administration Cabinet, and after conducting an annual wage and salary survey of relevant labor markets, the Commissioner shall prepare a compensation plan for all classes of positions based on the concepts of internal job equity, external market competitiveness, and individual employee merit. The plan shall provide salary grades or specific salary rates as appropriate for the various classes. Each job class shall be assigned an appropriate pay grade or rate with consideration given to internal job evaluation data and external market conditions. All rates of pay for classes shall be consistent with the functions outlined in the classification plan. The compensation plan shall reward individual employee work performance in accordance with a performance increase chart to be developed by the Commissioner.

(2) When the Commissioner determines through relevant salary surveys that the state's overall compensation position is inadequate in relation to that of other employers, he may authorize a general adjustment of all salary grades in the pay structure to a position which is comparable to the external market. Additional surveys may be conducted as necessary to determine market conditions for specific classes.

(3) The Commissioner shall submit the plan to the board for its approval. The board shall present the plan, through the Secretary of the Finance and Administration Cabinet, to the Governor for his final approval. The Commissioner shall review the plan annually.

Section 2. Appointments. Initial appointments to state service shall be made at the minimum rate of the pay range established for the class unless the Commissioner authorizes appointment of a highly qualified applicant at a rate above the minimum, not to exceed the middle rate of the range. Such exception shall be based on the outstanding and unusual nature of the applicant's education, experience or ability over and above the minimum requirements set for the class. Such additional qualifications must be in the same or related area to that of the job duties of the class to which the appointment is to be made. Employees possessing similar qualifications employed in the same class, by the same agency, in the same locality shall have their salaries adjusted to the same rate granted in the in-range appointment if that rate is higher than their current salaries.

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

(1) Reinstatement to *a class having* the same [pay grade] or lower *pay grade that is currently assigned to the employee's former class*:

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

(b) Request a salary higher than that paid at the time of separation due to salary structure or grade adjustments occurring pursuant to Section 8 or Section 9.

(c) Request a lower salary than that earned at the time of separation if such a salary is within the current pay grade.

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

(2) Re-employment or probationary appointment of former employees to the same, lower, or higher pay grade:

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

(b) Request a salary higher than that paid at the time of separation due to salary structure or grade adjustments occurring pursuant to Section 8 or Section 9.

(c) Request a lower salary than that earned at the time of separation if such salary is within the current pay grade.

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

(3) Employees re-employed *or reinstated or former employees probationarily appointed to a salary below the mid-point of the grade* [in the same class series, or employees reinstated to the same class or a lower class in the same series, at the same or higher salary earned prior to separation] shall be considered for a performance increase *in accordance with Section 5(1) below* [when they have completed twelve (12) months service since the date they last received a performance increase. A maximum of six (6) months of that twelve (12) months of service may have been earned during the last period of service in which they held status]. Employees re-employed, *reinstated, or former employees probationarily appointed to a salary which equals or exceeds the mid-point of the grade at the time of completion of the probationary period may* [in the same class series at a lower rate of pay than that earned at the time of separation shall] be considered for a *performance* [probationary] increase in accordance with Section 5(1) below. *If such employee is not considered for a performance increase in accordance with Section 5(1), he shall be considered for a performance increase at the beginning of the month following completion of twelve (12) months*

service from the date of re-employment, reinstatement or appointment. [Employees re-employed or reinstated to a class in a different series shall be considered for a probationary performance increase in accordance with Section 5(1) below. Former employees probationarily appointed shall be considered for probationary performance increases in accordance with Section 5(1) below.]

Section 4. Salary Adjustments. (1) Promotion. An employee who is promoted *may* [shall] receive a salary increase of five percent (5%) *upon promotion, or after successful completion of the probationary period following promotion, or both,* except that in no case shall the employee's salary after such increase be below the minimum or above the maximum of the higher grade. If the promotion is to a classification which constitutes an unusual increase in the level of responsibility, the appointing authority, with the prior written approval of the Commissioner, may grant *upon promotion* a ten percent (10%) or fifteen percent (15%) salary increase over the employee's previous salary, provided the proposed salary is within the salary grade for the position. *In those cases where the full amount of promotional increase cannot be granted due to the proximity of the grade maximum, only the portion needed to bring the employee's salary to that maximum rate shall be granted. A promotional increase shall not change the employee's regular performance increase date.*

(2) Demotion. An employee who is demoted shall have his salary reduced to a rate which is in the grade for the new class; this rate shall not exceed the rate which the employee was receiving prior to the demotion.

(3) Transfer. An employee who is transferred to a job class having the same pay grade shall be paid the same salary that he received prior to transfer.

(4) Reclassification. An employee who is advanced to a higher pay grade through a reclassification of his position shall receive a salary increase of five percent (5%) except that in no case shall the employee's salary after such increase be below the minimum or above the maximum of the higher grade. *In those cases where the full amount of increase cannot be granted due to the proximity of the grade maximum, only the portion needed to raise the employee's salary to that maximum rate shall be granted.* An employee who is reduced to a lower pay grade through a reclassification of his position shall receive the same salary he was receiving prior to reclassification, even if that salary is above the maximum of the lower pay grade. An employee whose salary is [at or] above the maximum of the lower grade shall not receive additional performance increases until such time the salary falls within the grade due to an adjustment pursuant to Section 8 or Section 9. [The employee shall return to his original increase date upon return of his salary to the grade.] An employee in a position which has been reclassified to a lower pay grade *on or* after *June 16, 1983* [July 1, 1983], shall have his salary reduced to a rate within the grade applicable to the new class of position.

(5) Reallocation. An employee who is advanced to a higher pay grade through a reallocation of his position may receive a salary increase of five percent (5%) except that in no case shall the employee's salary after such increase be below the minimum or above the maximum of the higher grade. *In those cases where the full amount of increase cannot be granted due to the proximity of the grade maximum, only the portion needed to raise the employee's salary to that maximum shall be granted.* An employee whose current salary exceeds the grade maximum assigned to his class due to the *June 16, 1982* [July 1, 1982] salary schedule adjustment shall retain that current salary following reallocation of his class to a higher grade. An employee who is reduced to a lower pay grade through a reallocation of his position shall receive the same salary received prior to reallocation, even if that salary is above the maximum of the lower grade. An employee whose salary is [at or] above the maximum of the new grade shall not receive additional performance increases until such time the salary falls within the grade due to an adjustment pursuant to Section 8 or Section 9. [The employee shall return to his original increase date upon return of his salary to the grade.] An employee in a position which has been reallocated to a lower [or higher] pay grade *on or* after *June 16, 1983* [July 1, 1983], shall have his salary reduced to a rate within the grade applicable to the new class of position.

(6) Detail to special duty. An employee who is approved for detail to special duty as provided by 101 KAR 1:110, Section 4, may receive a five percent (5%) increase upon detail to a higher class except that in no case shall the employee's salary after such increase be below minimum or above the maximum of the higher grade. *In cases where the full amount of such increase cannot be granted due to the proximity of the grade maximum, only the portion needed to raise the employee's salary to that maximum rate shall be granted.* Annual performance increases shall not be permitted while an employee is on detail to special duty to a class in a higher pay grade.

(7) Reversion.

(a) An employee who is returned to his former class after failure to complete the probationary period following promotion, or following detail assignment to a higher class, shall have his salary reduced to a salary rate received prior to such promotion or detail assignment and is entitled to all salary advancements and adjustments, pursuant to Section 8 or Section 9, he would have received had he not left the class *even if these advancements place his salary above the maximum of the grade applicable to the class to which the employee is returning.*

(b) *An employee* [Employees] who *is* [are] returned to *a position* [their former class] in the classified service following transfer or promotion to the unclassified service shall have *his* [their] salary reduced to the rate received prior to the promotion or transfer and *is* [are] entitled to all salary advancements and adjustments *he* [they] would have received had *he* [they] not left the class *even if these advancements place his salary above the maximum of the grade applicable to the class to which the employee is returning.*

Section 5. Salary Advancements. (1) Probationary performance increases. The amount of an employee's probationary performance increase shall be based upon individual employee work performance as evidenced through systematic performance appraisal conducted in accordance with 101 KAR 1:140, Section 10, and other guidelines which the Commissioner shall develop. Full-time employees, and [those] part-time employees [who work at least 100 hours a month] who complete their probationary period with at least a satisfactory performance level shall be granted a performance increase at the beginning of the month following such completion of the probationary period. The service may be provisional or probationary. *Employees completing a probationary period following promotion shall not be eligible for a probationary performance increase under this section.* [Employees completing the probationary period with below standard or un-

satisfactory performance levels shall be considered for an annual performance increase in accordance with Section 5(2)(d) below.]

(2) Annual performance increases.

(a) The amount of an employees annual performance increase shall be based upon individual employee work performance as evidenced through systematic performance appraisal conducted in accordance with 101 KAR 1:140, Section 10, and other guidelines which the Commissioner shall develop. Performance increases shall be limited to *permanent* full-time [status] employees and [those] part-time [status] employees [who work at least 100 hours a month]. Employees who are on educational leave with pay shall *not* receive performance-based increases [in accordance with Section 7(1) below]. Employees in classes assigned specific salary rates shall not be eligible to receive performance increases. Employees whose salaries are above grade maximum[s] *rates* pursuant to Sections *3(3), 4(1), 4(3),* 4(4), *4(5), 4(7), 5(2)(b), 5(7) and 9(2)* [and 9(3)] shall not be eligible to receive performance increases until such time the salary falls within the grade due to an adjustment pursuant to Section 8 or Section 9.

(b) An employee having at least a satisfactory performance level shall receive a performance increase at the beginning of the month following completion of twelve (12) months service since last receiving a performance or probationary increase. An employee *whose combined annual increment payment, required under Section 5(7), and* [receiving a] performance increase [which] would place his salary above the maximum of the *grade* [range] shall *receive the full amount of increase due* [have his salary adjusted to the maximum of the range with the excess of the performance increase amount awarded as a lump sum payment]. *Thereafter,* such employee shall not receive additional performance increases until such time the salary falls within the grade due to an adjustment pursuant to Section 8 or Section 9. [The employee shall return to his original increase date upon return of his salary to the grade.] Employees having below *satisfactory* [standard or unsatisfactory] performance levels shall be considered for annual performance increases in accordance with *Section 5(2)(c)* [paragraphs (c) or (d) of this subsection].

(c) An employee whose below standard performance level does not warrant a performance increase on his regularly scheduled increase date *shall be considered for such increase twelve (12) months following his regularly scheduled date* [may be eligible to receive a performance increase three (3) months following his regularly scheduled date. A three (3) month re-evaluation period, beginning immediately following the determination of the employee's performance level, shall be used for the purpose of improving the employee's performance at least to a satisfactory level. An employee whose performance remains below standard following this re-evaluation period shall be considered for an increase twelve (12) months following his regularly scheduled date].

[(d) An employee whose unsatisfactory performance level does not warrant an increase on his regularly scheduled increase date shall be considered for an increase twelve (12) months following his regularly scheduled date.]

(3) Service computation. [In computing service for the purpose of determining annual performance increase eligibility for full-time employees, only those months for which an employee earned annual leave or was on educational or military leave with pay shall be used except as provided under Section 7(1).] In those cases where an employee is changed from part-time to full-time, part-time service [which would be counted in determining increase eligibility for a part-time employee] shall be counted in determining increase eligibility for a full-time employee. In those cases where an employee is changed from full-time to part-time, full-time service [which would be counted in determining increase eligibility for a full-time employee] shall be counted in determining increase eligibility for a part-time employee.

(4) Performance increase dates will be established [or changed:]

[(a)] Following completion of probation, *except probation following promotion,* with at least a satisfactory performance level, *or following completion of twelve (12) months service from the date of appointment, reinstatement, or re-employment, pursuant to Section 3(3)* [due to appointment, reinstatement, re-employment, or promotion].

[(b) Following completion of a three (3) month re-evaluation period with at least a satisfactory performance level, described in Section 5(2) above.]

[(c) When an employee is on leave without pay for more than one-half (½) the scheduled work days in any month.]

[(d) When the employee returns from leave with pay where an absence of six (6) months or more in the performance cycle is involved as described in Section 7(1) below.]

(5) Performance increase dates will not change when an employee:

(a) Is in a position in a job class which is assigned a new or different salary grade.

(b) Receives a salary adjustment as a result of his position being reallocated or reclassified.

(c) Is transferred.

(d) Receives a demotion.

(e) Is approved for detail to special duty as provided by 101 KAR 1:110, Section 4.

(f) Receives an educational achievement *increase* [salary advancement] under Section 6.

(g) Returns from military leave.

(h) *Has his salary advanced above the maximum of the grade or has his salary returned to the grade pursuant to Section 8 or Section 9.* [Returns from leave with pay involving less than six (6) months absence in the performance cycle.]

(i) Is promoted or receives a promotional increase after completion of probation following promotion.

(6) No employee shall have his salary advanced to a rate above the maximum of the salary grade applicable to the class of his position *except as provided in Sections 3(3), 4(1), 4(7), 5(2)(b) and 5(7).* An employee may retain a rate of pay above the maximum of the range as provided in Section *4(3),*4(4) [and (5)] *4(5), 4(7)* and Section *9(2)* [9(3)] of these rules.

(7) Annual increment. All employees shall receive statutory annual increment of five (5) percent on the employee's regularly scheduled performance increase date. The commissioner shall assign increase dates to employees not having performance increase dates.

(8) [(7)] Transition provisions.

(a) All provisions in Section *5(8)* [(7)] shall be superseded by provisions described in Section 5(1) through *(7)* [(6)], January 1, 1983.

(b) Probationary increments. Full-time employees and [those] part-time employees [who work at least 100 hours a month] who were probationarily appointed, or former employees probationarily appointed or re-employed or reinstated prior to *July 16, 1982* [July 1, 1982], *to a salary that is below the mid-point salary of the grade shall receive an increment limited to a five (5) percent salary advance-*

ment at the beginning of the month following successful completion of the probationary period. Full-time employees and part-time employees who were probationarily appointed, or former employees probationarily appointed or re-employed or reinstated prior to June 16, 1982, to a salary that equals or exceeds the mid-point salary of the grade at the time of completion of probation may receive an increase limited to a five (5) percent salary increment following completion of the probationary period or twelve (12) months service from the date of appointment, reinstatement, or re-employment [shall be eligible and may be given consideration by the appointing authority for a five percent (5%) salary advancement at the beginning of any month following successful completion of the probationary period; however, in no case shall a five percent (5%) salary advancement be awarded under this section after December 31, 1982. The service may be provisional or probationary. A former employee who was reinstated or re-employed at the same or higher salary prior to July 1, 1982 may be considered for a five percent (5%) salawry advancement when he has completed twelve (12) months service since the date he received a probationary or annual increment; however in no case shall a five percent (5%) increase be awarded under this section after December 31, 1982. A maximum of six (6) months of that twelve (12) months service may have been earned during the last period of service in which he held status]. *This five (5) percent limitation is in effect until December 31, 1982. Service may be provisional or probationary.*

(c) Annual increments. *Permanent full-time and part-time employees who have assigned annual increment dates which occur prior to December 31, 1982, shall receive an increase limited to the statutory five (5) percent salary increment on that date.* [Annual increments shall be based upon length of service until December 31, 1982. Full-time employees having status, and those part-time employees who work at least 100 hours a month whose annual increment date occurs prior to December 31, 1982 shall be given a five percent (5%) salary advancement at the beginning of the month following completion of twelve (12) months service since last receiving an annual or probationary increment. Employees who are on educational leave with pay shall receive such annual increments until December 31, 1982. For the purpose of determining annual increment eligiblity, service computation shall be done in accordance with Section 5(3) above. Employees whose salaries are at or above range maximums due to salary schedule adjustment July 1, 1982 shall receive their five percent (5%) annual increments if they would have received such increment has not this salary schedule adjustment occurred. Employees whose salaries are within five percent (5%) of the range maximum following such schedule adjustment shall receive the full benefit of their annual increment even if such increase places their salary above the range maximum.]

(d) Outstanding merit increment. *Unless otherwise noted,* any permanent full-time employee who has served for one (1) year immediately preceding the recommendation and who has not received an outstanding merit advancement within twelve (12) months is eligible for a five percent (5%) outstanding merit advancement in his present grade in addition to any other salary advancements to which he might be entitled if:

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

2. His job performance is outstanding. The appointing agency must submit written justification to the Commissioner and the personnel action form must be approved by the agency head and the Commissioner to be effective. In a fiscal year, an agency with sufficient budgeted funds may grant as many outstanding merit salary advancements as thirty percent (30%) of the number of its employees at the close of the prior fiscal year. This provision expires December 31, 1982.

This provision expires December 31, 1982.

[(e) Continuous service award. An employee who has served (12) months at or above the maximum of the salary grade applicable to his class prior to December 31, 1982 shall be given a continuous service award of five percent (5%) of his current annual salary rate. Service at the maximum rate of the grade applicable to the class of position held by the employee prior to July 1, 1982 adjustment shall be counted toward his twelve (12) month period. Employees whose salaries were at the maximum of the salary range prior to July 1, 1982 but whose salaries are returned to the range following the July 1, 1982 schedule adjustment, shall receive their regular annual increments in accordance with Section 5(7)(c). This continuous service award shall be given as a lump sum payment. The service shall be computed in accordance with Section 5(3).]

Section 6. Educational Achievement Increase. Subject to the approval of the Commissioner, any permanent, full-time employee who, after completion of his initial probationary period, satisfactorily completes 260 classroom hours (or the equivalent as determined by the Commissioner) of job related instruction is eligible for a lump-sum educational achievement increase of five percent (5%) of his annual base salary the first of the month following the approval of the increase.

Section 7. Return from Leave. *(1) Leave with pay. The appointing authority shall grant an employee on leave with pay or returning to duty from leave with pay a performance increase on the employee's regularly scheduled increase date if such increase is warranted and the employee's performance level can be properly documented.* [Following January 1, 1983, an employee returning to duty from leave with pay where an absence of six (6) months or more in the performance cycle is involved shall have his performance increase date established four (4) months following his regularly scheduled increase date. Where an employee's increase date occurs while the employee is on leave with pay, and an absence of six (6) months or more in the perfromance cycle is involved, the employee shall have his increase date established four (4) months following the date of his return. Where an absence of less than six (6) months in the performance cycle is involved, the employee shall be considered for his performance increase on his regularly scheduled increase date.]

(2) Leave without pay. Employees returning to duty from leave without pay lasting less than one (1) year shall have their increase dates established in accordance with Section 5(3) above. Employees returning to duty from leave without pay in excess of one (1) year shall *be considered for a performance increase when they have completed twelve (12) months service since the date they last received an annual increase. A maximum of six (6) months of that twelve (12) months of service may have been earned during the last period of service in which they held status prior to the leave period* [have their increase dates established in accordance with Section 3(3)].

(3) Military Leave. An employee returning to duty from

military leave without pay, or from military service in accordance with KRS 61.373, shall receive the same or similar pay (same salary plus grade changes) and all other increases he would have received. Satisfactory performance shall be assumed when computing the amount of performance increase(s) due.

Section 8. General Schedule Adjustment. When the Commissioner authorizes a general adjustment of all grades in the pay structure, employees shall have their salaries adjusted at least to the minimum rates of grades in all cases. All salary adjustments shall be made in accordance with standards established by the Commissioner.

Section 9. Class Re-evaluation and Grade Adjustment. (1) Class re-evaluation is the assignment of a different salary grade to a class based upon a change in relation to other classes or to labor market conditions.

(2) Change in salary grade. Whenever it becomes necessary to assign a class in different salary grade due to changes defined in Section 9(1) above, the Commissioner may make a new or different salary grade applicable to a class of position. Persons employed in positions of that class at the effective date of the change in salary grade shall have their salary placed at least at the minimum salary of the higher grade. In no event shall an employee's salary be placed at a rate which provides a salary rate less than the employee received prior to the change in the salary grade. Employees whose salaries are already within the higher grade shall retain their current salaries following the adjustment. Employees in a class or classes assigned to a lower pay grade through class re-evaluation shall retain their current salary even if that salary is above the maximum rate of the lower grade. Such employees shall not be eligible to earn [annual] performance increases until such time as the employee's salary falls within the grade. [The employee shall return to his original increase date upon return of his salary to the grade.] The Commissioner shall review the use of this provision for retaining employees' salaries above grade maximums and report to the Board July 1, 1984, to determine the need for continuing such provision.

(3) Recruitment difficulties. Whenever the Commissioner determines that it is not possible to recruit qualified employees at the established entrance salary in a specific area or for a specific class, he may at the request of the appointing authority, authorize the recruitment for a class of position at a higher rate in the pay grade, provided that all other employees in the same class of position in the same agency in the same locality are adjusted in salary to the same rate. When the Commissioner determines that it is not possible to relieve salary inadequacies using this provision, Section 9(2) shall apply.

(4) Increases resulting from this section shall not affect an employee's [annual] performance increase date.

Section 10. Paid Overtime. Overtime for which pay is authorized shall have the approval of the Commissioner of Personnel and the Secretary of the Finance and Administration Cabinet.

Section 11. Maintenance and Maintenance Allowance. In each case where an employee or the employee and his family are provided with full or part maintenance, consisting of one (1) or more meals per day, lodging or living quarters, and domestic or other personal services, such compensation in kind shall be treated as part payment and its value shall be deducted from the appropriate salary rate in accordance with the schedule promulgated by the Commissioner after consultation with appointing authorities and the Secretary of the Finance and Administration Cabinet.

Section 12. Supplemental Shift Premium. Upon request of the appointing authority, the Commissioner may authorize the payment of a supplemental shift premium for those employees directed to work an evening or night shift. However, no employee shall receive a supplemental shift premium subsequent to a transfer to a position that is ineligible for a shift differential premium payment. The employee's loss of shift differential pay shall not be a basis for an appeal to the Personnel Board.

DEE MAYNARD, Commissioner
ADOPTED: June 11, 1982
RECEIVED BY LRC: July 16, 1982 at 1:30 p.m.

FINANCE AND ADMINISTRATION CABINET
Department of Personnel

101 KAR 1:110E. Promotion, transfer, demotion and detail to special duty.

RELATES TO: KRS *18A.005, 18A.030, 18A.095, 18A.110, 18A.115* [18.110, 18.190, 18.210, 18.220, 18.270]
PURSUANT TO: KRS 13.082, *18A.030, 18A.075, 18A.110, 18A.210* [18.170, 18.190, 18.210]
EFFECTIVE: July 16, 1982
NECESSITY AND FUNCTION: KRS *18A.075* [18.190] requires the personnel board to adopt comprehensive rules consistent with KRS Chapter 18A. KRS *18A.030* [18.190] requires the commissioner of personnel to prepare and recommend to the board rules which provide for the manner of completing appointments and promotions. KRS *18A.110* [18.210] requires the commissioner to prepare and submit to the board rules which provide for promotions and transfers; and for discharge and reduction in rank. This rule is necessary to comply with these statutory requirements.

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

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

(3) To fill a vacancy by competitive promotion, the commissioner of personnel shall examine all qualified, applying, status employees. The commissioner shall prepare a

register in the same manner as for open competitive appointments. 101 KAR 1:080 shall govern the selection and appointment.

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

(5) Any employee promoted from a classified to an unclassified position retains his status in the classified service. On separation from the unclassified service, he reverts to a position in that class which he had status in the agency from which he was terminated if a vacancy in that class exists. If no such vacancy exists, he shall be considered for employment in any vacant position [in that agency] for which he is qualified pursuant to reemployment procedures and KRS *18A.130 and 18A.135* [18.217].

Section 2. Transfer. (1) The movement of an employee from one position to another of the same grade having the same salary ranges and the same level of responsibility within the classified service shall be deemed a transfer. A transfer may be an inter-agency or intra-agency action. If the employee requests a transfer in writing, such transfer will be deemed to have been made on a voluntary basis and from which there shall be no appeal. If the employe has not requested the transfer in writing, such transfer will be deemed to have been made on an involuntary basis, and the employee shall have the right to appeal such transfer in accordance with 101 KAR 1:130. The employee must meet the minimum requirements of the job class to which transferred.

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

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

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

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

[(6) Following notification of a transfer, an employee must report for work, or make himself known to be available for work, at either his old work station or the new one to which assigned.]

(6) [(7)] If the transfer is on an involuntary basis, the employee shall be notified of his transfer in writing *at least thirty (30) calendar days* prior to the effective date of such transfer. *Following notification of a transfer, an employee must report for work at his new work station on the effective date of the transfer. The appointing authority shall pay the employee's travel expenses following transfer for up to thirty (30) calendar days following the effective date of the transfer and shall pay the employee's moving expenses, if any.* The notice shall include the reason for the transfer, the employee's obligation to report to *his new work station* [one of his work stations in accordance with subsection (6) of this section], *the appointing authority's obligation to pay travel and moving expenses,* and the employees right of appeal under 101 KAR 1:130. *Agencies shall establish a reasonable basis for selecting an employee for transfer.*

(7) Nothing in this section shall preclude the temporary assignment of an employee to a different work station for a period of up to sixty (60) calendar days, provided that such employees are reimbursed for their travel expenses in accordance with regulatory provisions.

Section 3. Demotion. (1) "Demotion" means a change in the rank of an employee from a position in one (1) class to a position in another class having a lower minimum salary range and less discretion or responsibility.

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

(3) If, for personal or other reasons, an employee requests in writing that he be assigned to a position of a lower class, the appointing authority may make such a voluntary demotion. Voluntary demotions may be intra-agency, or inter-agency; involuntary demotions shall be intra-agency only. If the action is intra-agency, approval of the appointing authority and the commissioner is required; if inter-agency the prior approval of both appointing authorities and the commissioner is required. There shall be no appeal from demotions made on a voluntary basis.

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

DEE MAYNARD, Commissioner
ADOPTED: June 11, 1982
RECEIVED BY LRC: July 16, 1982 at 1:30 p.m.

FINANCE AND ADMINISTRATION CABINET
Department of Personnel

101 KAR 1:130E. Appeals.

RELATES TO: KRS *18A.075, 18A.095, 18A.100* [18.170, 18.270, 18.272]
PURSUANT TO: KRS 13.082, *18A.075, 18A.095, 18A.110* [18.170, 18.210, 18.270]
EFFECTIVE: July 16, 1982
NECESSITY AND FUNCTION: KRS *18A.075* [18.170] requires the Personnel Board to adopt comprehensive rules consistent with KRS Chapter 18A. KRS *18A.095* [18.270] provides that any classified employee who is dismissed, demoted, suspended or otherwise

penalized after completing his probationary period may appeal to the Personnel Board within thirty (30) days of the action taken against him. This rule is necessary to assure a uniform and effective procedure for scheduling, hearing, and acting upon such appeals.

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

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

(2) Applicants may be conditionally admitted to an examination by the commissioner pending a consideration of an appeal. Admission to a written examination under such circumstances, however, shall not constitute the assurance of a passing grade in training and experience.

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

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

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

Section 5. Appeal Procedure for Applicants or Eligibles. The appeal to the board by applicants or eligibles under Sections 1, 2, 3, 4, must be filed in writing with the *executive director* [commissioner] not later than fifteen (15) calendar days after the notification of the action in question was mailed. The applicant or eligible shall have the right to appear before the board and to be heard.

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

(2) An employee may appeal a transfer which he considers to be a penalization *in accordance with 101 KAR 1:110, Section 2.* [Following notification of a transfer, an employee must report for work, or make himself known to be available for work, at either his old work station or the new one to which assigned.]

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

(2) The board shall designate an appropriate time and place to conduct the hearing. Such hearing shall be held within *sixty (60)* [thirty (30)] calendar days after receipt of the appeal [unless circumstances intervene which, in the opinion of the board, would cause undue hardship on either party to the hearing or unless, due to the number of appeals, it is impractical to schedule such hearing within said thirty (30) day period]. The appellant and the appointing authority shall be notified in writing at least five (5) working days in advance of the time and place designated for the hearing. *The board shall, within ninety (90) days after an appeal is filed, issue a final order for the disposition thereof.*

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

(4) If the board finds that the action complained of was taken by the appointing authority for any political, religious, or ethnic reason, or due to sex, race, age (between forty (40) and seventy (70)), or handicap, the employee shall be reinstated to his former position or a position of like status and pay, without loss of pay for the period of his penalization, and without penalization, or shall otherwise be made whole.

(5) If the board finds that the action complained of was taken by the appointing authority without just cause, the board shall order the employee reinstated to his former position or a position of like status and pay, without loss of pay for the period of his penalization, or otherwise make the employee whole. In all other cases, if the board finds that the action taken by the appointing authority was excessive or erroneous in view of all the surrounding circumstances, the board shall alter, modify or rescind the disciplinary action.

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

Section 8. Hearing of Appeals. (1) Evidentiary hearings in appeals filed pursuant to KRS *18A.095* [18.270] and this regulation *may* [shall] be conducted by the full board or quorum thereof, *or by individual members of the board, by its executive director or by a hearing examiner of the board* [except as otherwise provided in this rule. The board may adopt a rotating schedule for the attendance of members at evidentiary hearings to be conducted by the board in order to assure the presence of a quorum, but notwithstanding any such schedule any member of the board may attend and participate in any such hearing].

(2) The board may designate one (1) or more hearing examiners to assist the board in appeal proceedings. All such hearing examiners shall be attorneys authorized to practice law in Kentucky and shall be selected solely on their knowledge, ability and experience in the trial of administrative and/or judicial proceedings.

(3) [(2)] The chairman of the board or a majority of the

board [, by written order,] may designate a [single] member of the board, *the executive director or a hearing examiner* to conduct any evidentiary hearing *as hearing officer* [on behalf of the board] or may request the *executive director* [commissioner] to establish a calendar designating [single] members of the board, *the executive director and/or hearing examiners* to conduct evidentiary hearings *as hearing officers* [on behalf of the board]. A stenographic record shall be made of the evidence presented at such hearing. In all such cases, upon the conclusion of the hearing, the *hearing officer* [presiding member-hearing examiner] shall submit to the board a transcript of the evidence presented, his findings of fact, and dispositive recommendations in the case before him, and the *executive director* [commissioner] shall transmit by certified mail *unless such transmission is waived in writing,* to both parties a copy of the findings of fact and dispositive recommendations. The board upon review of the findings of fact, the transcript of the evidence presented, and dispositive recommendations of the *hearing officer* [presiding member-hearing examiner], who shall be present during such review, and after consideration of such written or oral arguments or exceptions as the parties have presented as a matter of right or may present with leave or upon request of the board, shall make a final determination of the appeal by either:

(a) Adopting as submitted the findings and recommendations of the *hearing officer* [presiding member-hearing examiner];

(b) Altering before adoption, in any manner deemed proper, either or both the findings and recommendations of the *hearing officer* [presiding member-hearing examiner];

(c) If felt necessary by a majority of the board, remanding the case or any part thereof for rehearing by the same *hearing officer* [presiding member-hearing examiner], with such hearing *officer* [examiner] to prepare and submit to the parties and the board such additional findings of fact and dispositive recommendations as he feels are necessary upon the conclusion of the rehearing. A stenographic record shall be taken of this additional testimony and the *hearing officer* [presiding member-hearing examiner] shall submit to the board a transcript of the evidence presented. The board shall then consider the findings of fact, transcript of the evidence presented, and dispositive recommendations from the original hearing and any additional rehearings ordered, and shall, upon request of any member of the board, instruct the *executive director* [commissioner] to prepare a complete or partial record. The board, upon consideration of these items and such additional written or oral arguments or exceptions as the parties have presented as a matter of right or may present with leave or upon request of the board, shall render its final decision in the case.

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

(4) *Any appeal heard by less than the full board shall be subject to review by the full board upon petition for such review by either party to the appeal. Petition for review by the full board shall be filed with the board within thirty (30) days of the recommended order issued by a member, the executive director, or a hearing examiner.* [Hearing examiners selected by the board, but who are not themselves members of the board, shall conduct evidentiary hearings in the same manner as board member hearing examiners. In all cases, upon the conclusion of the hearing, the hearing examiner shall submit to the board a transcript of the evidence presented, his findings of fact, and dispositive recommendations in the case before him, and the commissioner shall transmit by certified mail to both parties a copy of the findings of fact and dispositive recommendations. In the presence of the hearing examiner and with his advice, the board shall review these documents, and after consideration of such written or oral arguments or exceptions as the parties have presented as a matter of right or may present with leave or upon request of the board, shall make a final determination of the appeal by either:]

[(a) Adopting as submitted the findings and recommendations of the hearing examiner;]

[(b) Altering before adoption, in any manner deemed proper, either or both the findings and recommendations of the hearing examiner;]

[(c) If felt necessary by a majority of the board, remanding the case or any part thereof for rehearing by the same hearing examiner, with such hearing examiner to prepare and submit to the parties and the board such additional findings of fact and dispositive recommendations as he feels are necessary upon the conclusion of the rehearing. A stenographic record shall be taken of this additional testimony and the hearing examiner shall submit to the board a transcript of the evidence presented. The board shall then consider the findings of fact, transcript of the evidence presented, and dispositive recommendations from the original hearing and any additional rehearings ordered, and shall, upon request of any member of the board instruct the commissioner to prepare a complete or partial record. The board, upon consideration of these items and such additional written or oral arguments or exceptions as the parties have presented as a matter of right or may present with leave or upon request of the board, shall render its final decision in the case.]

(5) At any time after a hearing but prior to a final order of the Personnel Board, either party may request a copy of the transcript of the evidence presented at the hearing. Such request shall be in writing to the board. Any party requesting such transcript shall bear the expense of preparing the copy of the transcript at the rate of ten (10) cents per page unless otherwise ordered by the Personnel Board. Payment for the transcript copy shall be tendered by certified check or money order prior to the preparation of said copy, and, in the case of an appointing authority, may be tendered by interaccount voucher.

(6) In all appeals pending before the personnel board, the taking of depositions for proof, either prior to or subsequent to the hearing, shall not be permitted except where the deponent is a licensed physician or a nonresident of the State of Kentucky, or where the taking of said deposition for purposes of proof is agreed to by the opposing party, or where other extenuating circumstances of such magnitude exist that the hearing officer by order authorizes the taking of such deposition. All hearings of appeals shall be held in Frankfort, Kentucky, unless otherwise designated by the board for good cause. The duly appointed hearing officer shall have the power to issue all intermediate orders concerning said appeal, prior to the final decision of the board; upon request of the hearing officer, such orders shall be issued by the *executive director* [commissioner] acting as secretary to the board.

DEE MAYNARD, Commissioner

ADOPTED: June 11, 1982
RECEIVED BY LRC: July 16, 1982 at 1:30 p.m.

FINANCE AND ADMINISTRATION CABINET
Department of Personnel

101 KAR 1:140E. Service regulations.

RELATES TO: KRS *18A.030, 18A.075, 18A.110* [18.170, 18.190, 18.210]
PURSUANT TO: KRS 13.082, *18A.030, 18A.075, 18A.110* [18.170, 18.190, 18.210]
EFFECTIVE: July 16, 1982
NECESSITY AND FUNCTION: KRS *18A.075* [18.170] requires the Personnel Board to adopt comprehensive rules consistent with KRS Chapter 18A. KRS *18A.030 and 18A.110* [18.190 and 18.210] require the Commissioner of Personnel to prepare and submit to the board rules which provide for annual leave, sick leave, special leaves of absence, and for other conditions of employment. This rule is necessary to comply with these statutory requirements.

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

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

Years of Service	Annual Leave Days
0—5 years	1 leave day per month; 12 per year
5—10 years	1¼ leave days per month; 15 per year
10—15 years	1½ leave days per month; 18 per year
15 years and over	1¾ leave days per month; 21 per year

An employee must have worked more than half of the work days in a month to qualify for annual leave. In computing years of total service for the purpose of allowing annual leave, only those months for which an employee earned annual leave shall be used. *In those cases where an employee is changed from part-time to full-time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing years of total service.* Former employees who have been rehired and who had been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from a violation of KRS *18A.140, 18.145, or 18A.990* [18.310, 18.320, or 18.990]. Employees serving on a part-time basis who work at least 100 hours a month shall be allowed annual leave with pay at the following rate:

Years of Service	Annual Leave Hours
0—5 years	4 leave hours per month; 48 per year
5—10 years	5 leave hours per month; 60 per year
10—15 years	6 leave hours per month; 72 per year
15 years and over	7 leave hours per month; 84 per year

In computing years of total service for the purpose of allowing annual leave for part-time employees, only those months in which the employee worked at least 100 hours shall be used. *In those cases where an employee is changed from full-time to part-time, those months for which the employee earned annual leave as a full-time employee shall be counted in computing years of total service.* Employees serving on a part-time basis who work less than 100 hours a month or on a per diem basis shall not be entitled to annual leave.

(2) Annual leave for full-time employees may be accumulated and carried forward from one calendar year to the next not to exceed the following maximum amounts:

Years of Service	Maximum Amount
0—5 years	Thirty (30) work days
5—10 years	Thirty-seven (37) work days
10—15 years	Forty-five (45) work days
15—20 years	Fifty-two (52) work days
Over 20 years	Sixty (60) work days

Annual leave for part-time employees who work at least 100 hours a month may be accumulated and carried forward from one (1) calendar year to the next not to exceed the following maximum amounts:

Years of Service	Maximum Amount
0—5 years	120 hours
5—10 years	148 hours
10—15 years	180 hours
15—20 years	208 hours
Over 20 years	240 hours

However, leave in excess of the above maximum amounts may be carried forward for a period of six (6) months if the appointing authority justifies in writing the reasons which made it impossible to allow an employee to take accumulated annual leave in a timely manner. *Years of service for the purpose of determining the maximum amount of annual leave which may be accumulated and carried forward shall be computed as provided in subsection (1) of this section.* Annual leave shall not be granted in excess of that earned prior to the starting date of leave.

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

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

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

(6) Annual leave shall accrue only when an employee is working or on authorized leave with pay. Annual leave shall not accrue when an employee is on educational leave with pay.

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

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

(9) Employees shall be paid in a lump sum for accumulated annual leave, not to exceed the maximum amounts as set forth in Section 2(2) above, when separated

by proper resignation, layoff, retirement or when granted leave without pay in excess of thirty (30) working days. The effective date of the separation shall be the last work day and the employee's amount of accumulated annual leave shall be listed in the remarks section of the advice effecting the separation. A supplemental pay voucher shall be submitted on accumulated annual leave.

(10) An employee who has been dismissed for cause or who has failed to give proper notice of resignation may, at the discretion of the appointing authority, be paid in a lump sum for accumulated annual leave not to exceed the maximum amounts as set forth in Section 2(2) above.

(11) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave not to exceed the maximum amounts as set forth in Section 2(2) above.

(12) Absence for a fraction or part of a day that is charged to annual leave shall be charged in hours or one-half (½) hours.

Section 3. Sick Leave. (1) Each employee in the state service, except an emergency, part-time, or per-diem employee, shall be allowed sick leave with pay at the rate of one (1) working day for each month of service. An employee must have worked more than half of the work of the work days in a month to qualify for sick leave with pay. Employees serving on a part-time basis who work at least 100 hours a month shall be allowed four (4) hours sick leave for each month of service. Employees serving on a part-time basis who work less than 100 hours a month or on a per-diem basis shall not be entitled to sick leave.

(2) Full-time employees completing ten (10) years of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of ten (10) years of service. In computing years of total service for the purpose of crediting ten (10) additional days of sick leave, only those months for which an employee earned sick leave shall be used. *In those cases where an employee is changed from part-time to full-time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing years of total service.* Part-time employees who work at least 100 hours a month completing ten (10) years of total service with the state shall be credited with forty (40) additional hours of sick leave upon the first day of the month following the completion of ten (10) years of service. In computing years of total service for part-time employees who work at least 100 hours a month for the purpose of crediting forty (40) additional hours of sick leave, only those months in which the employee worked at least 100 hours shall be used. *In those cases where an employee is changed from full-time to part-time, those months for which the employee earned annual leave as a full-time employee shall be counted in computing years of total service.* The total service must be verified [in writing] before the leave is credited to the employee's record. Former employees who have been rehired and who had been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from the violation of KRS *18A.140, 18A.145, or 18A.990* [18.310, 18.320, or 18.990].

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

(4) Sick leave shall accrue only when an employee is working or on authorized leave with pay. Sick leave shall not accrue when an employee is on educational leave with pay.

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

(a) Receives medical, dental or optical examination or treatment;

(b) Is disabled by sickness or injury;

(c) Is disabled by pregnancy and/or confinement;

(d) Is required to care for a sick or injured member of his immediate family for a reasonable period of time;

(e) Would jeopardize the health of others at his duty post, because of exposure to a contagious disease;

(f) Has lost by death a parent, child, brother or sister, or the spouse of any of them, or any persons related by blood or affinity with a similarly close association. Leave under this paragraph is limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(6) At the termination of sick leave with pay not exceeding six (6) months, the appointing authority shall return the employee to his former position. At the termination of sick leave with pay exceeding six (6) months, the appointing authority shall return the employee to a position for which he is qualified, and which resembles his former position as closely as circumstances permit.

(7) An appointing authority shall grant sick leave without pay for so long as an employee is disabled by sickness, or illness, or pregnancy and confinement, and the total continuous leave does not exceed two (2) years. When the employee has given notice of his ability to resume his duties, the appointing authority shall return the employee to a position for which he is qualified, and which resembles his former position as closely as circumstances permit; if there is no such position available, the rules pertaining to lay-off apply. An employee who is unable to return to work at the end of two (2) years of sick leave without pay, after being requested to return to work at least ten (10) days prior to the expiration of such sick leave, shall be terminated by the appointing authority. An employee granted sick leave without pay may, upon request, retain up to ten (10) days of accumulated sick leave.

(8) Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in hours or one-half (½) hours.

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

(10) Employees shall be credited for accumulated sick leave when separated by proper resignation, layoff, retirement, or when granted leave without pay in excess of thirty (30) working days. The employee's amount of accumulated sick leave shall be listed in the remarks section of the advice effecting the separation. Former employees who are reinstated or re-employed may have up to ten (10) days of their accumulated and unused sick leave balances revived upon appointment and placed to their credit upon request of the appointing authority and approval of the commissioner. Any additional balance may be revived after sixty (60) days of work upon similar request.

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

(12) Application for sick leave. An employee shall file a written application for sick leave with pay within a reasonable time. Except in cases of emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examination, and for sick leave without pay. In all cases of illness, an employee is

obligated to notify his immediate supervisor or other designated person. Failure to do so in a reasonable period of time may be cause for denial of sick leave for the period of absence.

(13) Supporting evidence:

(a) An appointing authority may require an employee to supply supporting evidence in order to receive sick leave. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required, signed by a licensed practitioner and certifying to the incapacity, examination, or treatment. An appointing authority shall grant sick leave when the application is supported by acceptable evidence.

(b) An appointing authority may place on sick leave an employee whose health might be jeopardized by job duties or whose health might jeopardize others, and who, on request, fails to produce a satisfactory medical certificate.

Section 4. Court Leave. An employee shall be entitled to leave of absence from duties, without loss of time or pay for that amount of time necessary to comply with subpoenaes by any court, federal, state, or political subdivision thereof, to serve as a juror or a witness except in cases where the employee himself or a member of his family is a party plaintiff in court action. This leave shall include necessary travel time. If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work.

Section 5. Compensatory Leave. *(1) An employee who is authorized to work in excess of the prescribed hours of duty shall be granted compensatory leave on an hour-for-hour basis. Compensatory leave may be accumulated or taken off in one-half (½) hour increments. The maximum amount of compensatory leave that may be accumulated shall be 200 hours.*

(2) An employee shall accumulate compensatory leave for hours worked in excess of his normal prescribed hours of duty only when such work is expressly authorized by the appointing authority.

(3) Accumulated compensatory time shall be granted by the appointing authority in accordance with agency needs and requirements and, insofar as practicable, in accordance with the employee's request. To maintain a manageable level of accumulated compensatory time and for the specific purpose of reducing the employee's compensatory time balance, an appointing authority may direct an employee to take accumulated compensatory time off from work.

(4) An employee who is transferred or otherwise changed from the jurisdiction of one (1) agency to another shall retain his compensatory leave in the receiving agency.

(5) Upon separation from state service, employees shall be paid for all unused accumulated compensatory leave at their regular hourly rate of pay.

(6) Former employees who are reinstated, re-employed, or probationarly appointed and who were credited for unused compensatory leave upon separation shall have their compensatory leave balance revived and placed to their credit upon re-entry into state service.

(7) When an employee has accumulated the maximum amount of compensatory leave, the appointing authority shall pay the employee for fifty (50) hours of his accumulated compensatory leave at his regular hourly rate of pay and reduce the employee's compensatory leave balance accordingly or the appointing authority shall direct the employee to take accumulated compensatory leave time off from work.

(8) Employees who were previously covered by the application of the state wage and hour law and who would be covered by the state wage and hour law if that law was still applicable to state employees shall accumulate compensatory leave or be paid overtime in accordance with the following provisions:

(a) A "covered" employee whose prescribed hours of duty are normally less than forty (40) per week and who has not accumulated the maximum amount of compensatory leave shall receive compensatory leave for the hours worked in excess of his normal prescribed hours of duty until the total hours worked in that week reaches forty (40).

(b) A "covered" employee shall be paid at one and one-half (1½) times his regular hourly rate of pay for all hours worked in excess of forty (40) per week, except that an employee who has not accumulated the maximum amount of compensatory leave may request in writing that he accumulate compensatory leave on an hour-for-hour basis for all hours worked in excess of forty (40) per week in lieu of the overtime payment. Compensatory leave earned and used during the same workweek does not constitute "hours worked" for computing overtime pay.

(c) After a "covered" employee has accumulated at least 151 hours of compensatory leave but before the employee has accumulated 200 hours of compensatory leave, the employee may request in writing that he be paid for fifty (50) hours of compensatory leave at his regular hourly rate of pay. If the employee is so paid, his accumulated compensatory leave balance shall be reduced accordingly.

(d) A "covered" employee who has had his compensatory leave balance reduced in accordance with paragraph (c) of this subsection shall be eligible to accumulate compensatory leave in accordance with this section.

(e) A "covered" employee shall accumulate compensatory leave or be paid for overtime for hours worked in excess of his normal prescribed hours of duty only when such work is expressly authorized by the appointing authority and when such payment has received the approval of the Commissioner of Personnel and the Secretary of the Finance and Administration Cabinet in accordance with 101 KAR 1:055.

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

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

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

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

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

(4) An appointing authority, with approval of the commissioner, may place an employee on leave without pay for a period not to exceed thirty (30) working days in a calendar year pending an investigation into allegations of employee misconduct, provided that, if such investigation reveals no misconduct on behalf of the employee, he shall be made whole for the period of such leave and all copies of correspondence will be purged from agency files.

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

Section 10. Performance Appraisal. Quality and quantity of work shall be considered in determining salary advancements, in promotions, in determining the order of layoff, in re-employment, and as a means of identifying employees who should be promoted, demoted, or dismissed. *Ratings of the employee's work performance shall correspond to five (5) levels of performance as defined below:*

Outstanding—The employee exceeds performance standards for objectives with such consistency or to such a substantial degree that performance on the job is outstanding.

Above Standard—The employee consistently meets all performance standards for objectives and frequently exceeds one (1) or more of the standards on several objectives such that performance is above that required and expected of the normal employee.

Satisfactory—The employee consistently meets the performance standards for objectives identified for the position.

Below Standard—Performance on the job is below the standard expected of a satisfactory employee. The employee consistently does not meet one (1) or more of the performance standards for the objectives.

Not Satisfactory—There are serious deficiencies in the employee's performance on the job. The employee consistently fails to meet all the performance measures for some objectives or fails to meet one (1) or more of them to such a degree that performance is far below the standard expected of a normal employee.

Any status employee who believes he has been unfairly rated shall have the right to have his rating reviewed through a procedure developed by the Commissioner which shall contain the following components:

(1) A written request by the employee shall be submitted to the second line supervisor within three (3) working days of the receipt of the rating and the immediate and second line supervisor must then review the employee's comments and documentation, and determine whether the rating should be changed and respond in writing within three (3) working days from the receipt of the request; and

(2) If the employee is not satisfied with the results in the first step, he/she shall have the right to request in writing to the appointing authority that within three (3) working days a review committee be established. This committee shall consist of three (3) members, one (1) chosen by the employee, one (1) chosen by the supervisor, and one (1) by the appointing authority who is approved by the employee and the supervisor. The review committee must then review the rating and documentation and determine if the rating is valid and respond in writing within ten (10) working days of the receipt of the request. If the procedure indicated in this section is not followed, then the employee may appeal this lack of correct review procedure to the Personnel Board; this right of appeal is in addition to any other right of appeal the employee may have.

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

(2) Leave records: Each appointing authority shall install and maintain a leave record showing for each employee:

(a) Annual leave earned, used and unused;

(b) Sick leave earned, used and unused; and

(c) Special leave or any other leave with or without pay.

Such record shall be documentary evidence to support and justify authorized leave of absence with pay. Each appointing authority shall notify his employees of their annual and sick leave balances as of January 1; a summary of which shall be sent to the department by February 1.

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

Section 12. Confidentiality of Records. [(1) Except as otherwise provided by law or in the rules,] All records of the department *and the board* shall be [considered] public records and *open to public inspection as provided in KRS 61.870 to 61.884* [may be inspected, when in the public interest, upon proper application made to the commissioner during normal working hours].

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

Section 13. Dual Employment. No employee holding a full-time position with the Commonwealth may hold another state position except upon recommendation of the appointing authority and the written approval of the Commissioner of Personnel. A copy of such written approval and a statement of the reasons therefor shall be transmitted to the Governor and the Director of the Legislative Research Commission. A complete list of all employees holding more than one (1) state position shall be furnished to the Legislative Research Commission quarterly by the commissioner.

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

Section 15. Maximum Hiring Age. (1) The maximum hiring age for permanent employment subject to these rules is seventy (70).

(2) Agencies may request that individuals over seventy (70) be tested and/or employed. The request must be justified in writing by the appointing authority, stating the reasons why it serves the public interest, and must have the prior approval of the Commissioner of Personnel. Applicants so approved shall be certified only to those agencies requesting such waivers.

Section 16. Retirement. (1) The normal retirement age for employees subject to these rules shall be seventy (70).

(2) Employees over seventy (70) may be allowed to continue employment from year to year with prior approval of the Commissioner of Personnel when it serves the public interest. Such requests must be justified in writing by the appointing authority.

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

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

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

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

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

DEE MAYNARD, Commissioner
ADOPTED: June 11, 1982
RECEIVED BY LRC: July 16, 1982 at 1:30 p.m.

FINANCE AND ADMINISTRATION CABINET
Department of Personnel

101 KAR 1:150E. Incentive programs.

RELATES TO: KRS 18A.110, 18A.202
PURSUANT TO: KRS 13.082, 18A.075, 18A.202
EFFECTIVE: July 16, 1982
NECESSITY AND FUNCTION: KRS 18A.075 requires the personnel board to adopt comprehensive rules consistent with KRS Chapter 18A. KRS 18A.202 authorizes the Commissioner of Personnel, subject to the approval of the personnel board, to implement, by regulation, work related incentive programs for state employees. This rule is necessary to comply with these statutory provisions.

Section 1. Employee Suggestion System. (1) Employees in the classified service may be recognized and rewarded for submitting suggestions that result in the improvement of state service or in the realization of financial savings by the state.

(2) An employee suggestion system board, which shall consist of designated cabinet/agency suggestion system coordinators and which shall be chaired by a designee of the Commissioner of Personnel, shall ensure proper evaluation of each suggestion, approve and process awards for suggestions which are or will be implemented, and hear appeals from suggesters. The employee suggestion system board shall prepare an annual report documenting the number of suggestions received and disposition.

(3) Each cabinet/agency shall designate an employee suggestion system coordinator who shall serve on the employee suggestion system board and who shall receive, determine eligibility, and evaluate suggestions made in his cabinet/agency. The coordinator shall report approved suggestions to the employee suggestion system board and shall provide the board with projected savings that each suggestion will generate.

(4) Disapproved suggestions must state a reason for disapproval. Employees may appeal suggestions not receiving awards to the cabinet/agency coordinator; if the issue is not resolved, the employee may appeal to the employee suggestion system board.

(5) Each agency implementing an approved suggestion shall maintain records documenting the savings resulting from the suggestion for one (1) year. Awards shall be processed promptly after documentation of first year savings produced by the suggestion. Awards for suggestions must be paid from funds of the agency employing the employee who made the suggestion; an agency may inter-account another agency for savings realized by that agency. Awards shall be a cash bonus of ten (10) percent of the documented savings, not to exceed $2,500.

DEE MAYNARD, Commissioner
ADOPTED: June 11, 1982
RECEIVED BY LRC: July 16, 1982 at 1:30 p.m.

FINANCE AND ADMINISTRATION CABINET
Department of Personnel

101 KAR 1:200E. Rules for unclassified service.

RELATES TO: KRS *18A.155* [18.220]
PURSUANT TO: KRS 13.082, *18A.155* [18.220]
EFFECTIVE: July 16, 1982
NECESSITY AND FUNCTION: KRS *18A.155* [18.220] requires the Commissioner of Personnel to submit to the Governor proposed rules for the unclassified service persons in positions enumerated in KRS *18A.155* [18.140](1)(f), (g), (h), (i), (j), (o), (t), and (u). KRS *18A.155* [18.220] further provides that these rules shall be approved by the Governor and promulgated according to KRS Chapters 12 and 13. In practice, the rules which apply to Merit System employees in the following specific areas have also been applied to the aforementioned categories of employees in the unclassified service.

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

Years of Service	Annual Leave Days
0—5 years	1 leave day per month; 12 per year
5—10 years	1¼ leave days per month; 15 per year
10—15 years	1½ leave days per month; 18 per year
15 years and over	1¾ leave days per month; 21 per year

An employee must have worked more than half of the work days in a month to qualify for annual leave. In computing years of total service for the purpose of allowing annual leave, only those months for which an employee earned annual leave shall be used. *In those cases where an employee is changed from part-time to full-time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing years of total service.* Former employees who have been rehired and who had been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from a violation of KRS *18A.140, 18A.145, or 18A.990* [18.310, 18.320, or 18.990]. Employees serving on a part-time basis who work more than 100 hours a month shall be allowed annual leave with pay at the following rate:

Years of Service	Annual Leave Hours
0-5 years	4 leave hours per month; 48 per year
5-10 years	5 leave hours per month; 60 per year
10-15 years	6 leave hours per month; 72 per year
15 years and over	7 leave hours per month; 84 per year

In computing years of total service for the purpose of allowing annual leave for part-time employees, only those months in which the employee worked at least 100 hours shall be used. *In those cases where an employee is changed from full-time to part-time, those months for which the employee earned annual leave as a full-time employee shall be counted in computing years of total service.* Employees serving on a part-time basis who work less than 100 hours a month or on a per diem basis shall not be entitled to annual leave.

(2) Annual leave for full-time employees may be accumulated and carried forward from one (1) calendar year to the next not to exceed the following maximum amounts:

Years of Service	Maximum Amount
0—5 years	Thirty (30) work days
5—10 years	Thirty-seven (37) work days
10—15 years	Forty-five (45) work days
15—20 years	Fifty-two (52) work days
Over 20 years	Sixty (60) work days

Annual leave for part-time employees who work at least 100 hours a month may be accumulated and carried forward from one (1) calendar year to the next not exceed the following maximum amounts:

Years of Service	Maximum Amount
0-5 years	120 hours
5-10 years	148 hours
10-15 years	180 hours
15-20 years	208 hours
Over 20 years	240 hours

However, leave in excess of the above maximum amounts may be carried forward for a period of six (6) months if the appointing authority justifies in writing the reasons which made it impossible to allow an employee to take accumulated annual leave in a timely manner. *Years of service for the purpose of determining the maximum amount of annual leave which may be accumulated and carried forward shall be computed as provided in subsection (1) of this section.* Annual leave shall not be granted in excess of that earned prior to the starting date of leave.

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

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

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

(6) Annual leave shall accrue only when an employee is working or on authorized leave with pay. Annual leave shall not accrue when an employee is on educational leave with pay.

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

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

(9) Employees shall be paid in a lump sum for accumulated annual leave, not to exceed the maximum amounts as set forth in Section 1(2) above, when separated by proper resignation, layoff, retirement or when granted leave without pay in excess of thirty (30) working days. The effective date of the separation shall be the last work day and the employee's amount of accumulated annual leave shall be listed in the remarks section of the advice effecting the separation. A supplemental pay voucher shall be submitted on accumulated annual leave.

(10) An employee who has been dismissed for cause or who has failed to give proper notice of resignation may, at the discretion of the appointing authority, be paid in a lump sum for accumulated annual leave not to exceed the maximum amounts as set forth in Section 1(2) above.

(11) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave not to exceed the maximum amounts as set forth in Section 1(2) above.

(12) Absence for a fraction or part of a day that is charged to annual leave shall be charged in hours or one-half (½) hours.

Section 2. Sick Leave. (1) Each employee in the state service, except an emergency, part-time, or per-diem employee, shall be allowed sick leave with pay at the rate of one (1) working day for each month of service. An employee must have worked more than half of the work days in a month to qualify for sick leave with pay. Employees serving on a part-time basis who work more than 100 hours a month shall be allowed four (4) hours sick leave for each month of service. Employees serving on a part-time basis who work less than 100 hours a month or on a per-diem basis shall not be entitled to sick leave.

(2) Full-time employees completing ten (10) years of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the

month following the completion of ten (10) years of service. In computing years of total service for the purpose of crediting ten (10) additional days of sick leave, only those months for which an employee earned sick leave shall be used. *In those cases where an employee is changed from part-time to full-time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing years of total service.* Part-time employees who work at least 100 hours a month completing ten (10) years of total service with the state shall be credited with forty (40) additional hours of sick leave upon the first day of the month following the completion of ten (10) years of service. In computing years of total service for part-time employees who work at least 100 hours a month for the purpose of crediting forty (40) additional hours of sick leave, only those months in which the employee worked at least 100 hours shall be used. *In those cases where an employee is changed from full-time to part-time, those months for which the employee earned annual leave as a full-time employee shall be counted in computing years of total service.* The total service must be verified [in writing] before the leave is credited to the employee's record. Former employees who have been rehired and who had been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from a violation of KRS *18A.140, 18A.145, or 18A.990* [18.310, 18.320, or 18.990].

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

(4) Sick leave shall accrue only when an employee is working or on authorized leave with pay. Sick leave shall not accrue when an employee is on educational leave with pay.

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

(a) Receives medical, dental or optical examination or treatment;

(b) Is disabled by sickness or injury;

(c) Is disabled by pregnancy and/or confinement;

(d) Is required to care for a sick or injured member of his immediate family for a reasonable period of time;

(e) Would jeopardize the health of others at his duty post, because of exposure to a contagious disease;

(f) Has lost by death a parent, child, brother or sister, or the spouse of any of them, or any persons related by blood or affinity with a similarly close association. Leave under this paragraph is limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(6) At the termination of sick leave with pay not exceeding six (6) months, the appointing authority may return the employee to his former position. At the termination of sick leave with pay exceeding six (6) months, the appointing authority may return the employee to a position for which he is qualified, and which resembles his former position as closely as circumstances permit.

(7) An appointing authority shall grant sick leave without pay for so long as an employee is disabled by sickness, or illness, or pregnancy and confinement, and the total continuous leave does not exceed two (2) years. When the employee has given notice of his ability to resume his duties, the appointing authority may return the employee to a position for which he is qualified, and which resembles his former position as closely as circumstances permit. An employee who is unable to return to work at the end of two (2) years of sick leave without pay, after being requested to return to work at least ten (10) days prior to the expiration of such sick leave, shall be terminated by the appointing authority. An employee granted sick leave without pay may, upon request, retain up to ten (10) days of accumulated sick leave.

(8) Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in hours or one-half (½) hours.

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

(10) Employees shall be credited for accumulated sick leave when separated by proper resignation, layoff, retirement, or when granted leave without pay in excess of thirty (30) working days. The employee's amount of accumulated sick leave shall be listed in the remarks section of the advice effecting the separation. Former employees who are reinstated or re-employed may have up to ten (10) days of their accumulated and unused sick leave balances revived upon appointment and placed to their credit upon request of the appointing authority and approval of the commissioner. Any additional balance may be revived after sixty (60) days of work upon similar request.

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

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

(13) Supporting evidence:

(a) An appointing authority may require an employee to supply supporting evidence in order to receive sick leave. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required, signed by a licensed practitioner and certifying to the incapacity, examination, or treatment. An appointing authority shall grant sick leave when the application is supported by acceptable evidence.

(b) An appointing authority may place on sick leave an employee whose health might be jeopardized by job duties or whose health might jeopardize others and who, on request, fails to produce a satisfactory medical certificate.

Section 3. Court Leave. An employee shall be entitled to leave of absence from duties, without loss of time or pay for that amount of time necessary to comply with subpoenaes by any court, federal, state, or political subdivision thereof, to serve as a juror or a witness except in cases where the employee himself or a member of his family is a party plaintiff in court action. This leave shall include necessary travel time. If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work.

Section 4. Compensatory Leave. *(1) An employee who is authorized to work in excess of the prescribed hours of duty shall be granted compensatory leave on an hour-for-hour basis. Compensatory leave may be accumulated or taken off in one-half (½) hour increments. The maximum*

amount of compensatory leave that may be accumulated shall be 200 hours.

(2) An employee shall accumulate compensatory leave for hours worked in excess of his normal prescribed hours of duty only when such work is expressly authorized by the appointing authority.

(3) Accumulated compensatory time shall be granted by the appointing authority in accordance with agency needs and requirements and, insofar as practicable, in accordance with the employee's request. To maintain a manageable level of accumulated compensatory time and for the specific purpose of reducing the employee's compensatory time balance, an appointing authority may direct an employee to take accumulated compensatory time off from work.

(4) An employee who is transferred or otherwise changed from the jurisdiction of one (1) agency to another shall retain his compensatory leave in the receiving agency.

(5) Upon separation from state service, employees shall be paid for all unused accumulated compensatory leave at their regular hourly rate of pay.

(6) Former employees who are reinstated, re-employed, or probationarily appointed and who were credited for unused compensatory leave upon separation shall have their compensatory leave balance revived and placed to their credit upon re-entry into state service.

(7) Employees who were previously covered by the application of the state wage and hour law and who would be covered by the state wage and hour law if that law was still applicable to state employees shall accumulate compensatory leave or be paid overtime in accordance with the following provisions:

(a) A "covered" employee whose prescribed hours of duty are normally less than forty (40) per week and who has not accumulated the maximum amount of compensatory leave shall receive compensatory leave for the hours worked in excess of his normal prescribed hours of duty until the total hours worked in that week reaches forty (40).

(b) A "covered" employee shall be paid at one and one-half (1½) times his regular hourly rate of pay for all hours worked in excess of forty (40) per week, except that an employee who has not accumulated the maximum amount of compensatory leave may request in writing that he accumulate compensatory leave on an hour-for-hour basis for all hours worked in excess of forty (40) per week in lieu of the overtime payment. Compensatory leave earned and used during the same workweek does not constitute "hours worked" for computing overtime pay.

(c) After a "covered" employee has accumulated at least 151 hours of compensatory leave but before the employee has accumulated 200 hours of compensatory leave, the employee may request in writing that he be paid for fifty (50) hours of compensatory leave at his regular hourly rate of pay. If the employee is so paid, his accumulated compensatory leave balance shall be reduced accordingly.

(d) When a "covered" employee has accumulated the maximum amount of compensatory leave, the appointing authority shall pay the employee for fifty (50) hours of his accumulated compensatory leave at his regular hourly rate of pay and reduce the employee's compensatory leave balance accordingly or the appointing authority shall direct the employee to take accumulated compensatory leave time off from work.

(e) A "covered" employee who has had his compensatory leave balance reduced in accordance with paragraph (c) of this subsection shall be eligible to accumulate compensatory leave in accordance with this section.

(f) A "covered" employee shall accumulate compensatory leave or be paid for overtime for hours worked in excess of his normal prescribed hours of duty only when such work is expressly authorized by the appointing authority and when such payment has received the approval of the Commissioner of Personnel and the Secretary of the Finance and Administration Cabinet in accordance with 101 KAR 1:055.

Section 5. Military Leave. Any employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from civil duties upon request therefor, to serve under orders on training duty without loss of regular compensation for a period not to exceed ten (10) working days in any one (1) calendar year, and any such absence shall not be charged to leave. Absence in excess of this amount will be charged as annual leave or leave without pay. The appointing authority may require a copy of the orders requiring the attendance of an employee before granting military leave.

Section 6. Voting Leave. Appointing authorities shall allow all employees ample time to vote. Such absence shall not be charged against leave.

Section 7. Special Leave of Absence. (1) In addition to leaves as above provided, an appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in any calendar year.

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

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

(4) An appointing authority, with approval of the commissioner, may place an employee on leave without pay for a period not to exceed thirty (30) working days in a calendar year pending an investigation into allegations of employee misconduct, provided that, if such investigation reveals no misconduct on behalf of the employee, he shall be made whole for the period of such leave and all copies of correspondence will be purged from agency files.

Section 8. Absence Without Leave. An employee who is absent from duty without approval shall report the reason therefore to his supervisor immediately. Unauthorized and/or unreported absence shall be considered absence without leave and deduction of pay may be made for each period of such absence. Such absence may constitute grounds for disciplinary action.

Section 9. Performance Appraisal. Quality and quantity of work shall be considered in determining salary ad-

vancements, in promotions, and as a means of identifying employees who should be promoted, demoted, or dismissed. Ratings of the employee's work performance shall correspond to five (5) levels of performance as defined below:

Outstanding—The employee exceeds performance standards for objectives with such consistency or to such a substantial degree that performance on the job is outstanding.

Above Standard—The employee consistently meets all performance standards for objectives and frequently exceeds one (1) or more of the standards on several objectives such that performance is above that required and expected of the normal employee.

Satisfactory—The employee consistently meets the performance standards for objectives identified for the position.

Below Standard—Performance on the job is below the standard expected of a satisfactory employee. The employee consistently does not meet one (1) or more of the performance standards for the objectives.

Not Satisfactory—There are serious deficiencies in the employee's performance on the job. The employee consistently fails to meet all the performance measures for some objectives or fails to meet one (1) or more of them to such a degree that performance is far below the standard expected of a normal employee.

Any employee who believes he has been unfairly rated shall have the right to have his rating reviewed through a procedure developed by the Commissioner which shall contain the following components:

(1) A written request by the employee shall be submitted to the second line supervisor within three (3) working days of the receipt of the rating and the immediate and second line supervisor must then review the employee's comments and documentation, and determine whether the rating should be changed and respond in writing within three (3) working days from the receipt of the request; and

(2) If the employee is not satisfied with the results in the first step, he/she shall have the right to request in writing to the appointing authority that within three (3) working days a review committee be established. This committee shall consist of three (3) members, one (1) chosen by the employee, one (1) chosen by the supervisor, and one (1) by the appointing authority who is approved by the employee and the supervisor. The review committee must then review the rating and documentation and determine if the rating is valid and respond in writing within ten (10) working days of the receipt of the request. If the procedure indicated above is not followed, then the employee may appeal this lack of correct review procedure to the Personnel Board; this right of appeal is in addition to any other right of appeal the employee may have.

DEE MAYNARD, Commissioner
ADOPTED: June 11, 1982
RECEIVED BY LRC: July 16, 1982 at 1:30 p.m.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-632
July 30, 1982

EMERGENCY REGULATION
Revenue Cabinet

WHEREAS, the Secretary of Revenue is responsible under the provisions of KRS 131.130 for promulgating, by regulation, the policies of the Revenue Cabinet with regard to the administration and enforcement of all tax laws of this state; and

WHEREAS, the General Assembly in the 1982 regular session enacted a 9% wholesale sales tax on alcoholic beverages which has been codified as KRS 243.884; and

WHEREAS, the Secretary of Revenue has found that, in order to resolve an ambiguity in the Cabinet's past policy of assessing and collecting the case sales and gallonage taxes imposed pursuant to KRS 243.710 and 243.720 respectively and any ambiguity in the assessment and collection of the wholesale sales tax pursuant to KRS 243.884 which might adversely affect the state's economy or the competitiveness of resident wholesalers and distributors or the state's revenue, it is necessary to implement a new regulation governing the application of these taxes to alcoholic beverage sales to agencies and instrumentalities of the federal government, including sales which occur on federal military reservations; and

WHEREAS, the Secretary of Revenue has determined in a letter dated July 28, 1982, that an emergency exists with respect to said regulation and that, therefore, said regulation should, pursuant to the provisions of KRS 13.088(1), become effective upon filing with the Legislative Research Commission:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by KRS 13.088(1), do hereby acknowledge the finding of an emergency by the Secretary of Revenue which requires the filing of said regulation and hereby direct that said regulation shall become effective upon being filed with the Legislative Research Commission, as provided in KRS 13.088(1).

JOHN Y. BROWN, JR., Governor
FRANCES JONES MILLS, Secretary of State

REVENUE CABINET

103 KAR 40:035E. Alcoholic beverages; tax exemptions.

RELATES TO: KRS 243.710, 243.720, 243.884
PURSUANT TO: KRS 13.082, 131.130
EFFECTIVE: July 30, 1982
NECESSITY AND FUNCTION: To clarify the application of taxes imposed pursuant to KRS Chapter 243 to alcoholic beverage sales to federal agencies and instrumentalities, including sales which occur on federal military reservations.

Section 1. Sales of alcoholic beverages to agencies and instrumentalities of the federal government, including the military, are not subject to the case sales tax, the gallonage tax or the wholesale sales tax levied under KRS Chapter 243.

Section 2. 103 KAR 40:030, Malt beverage tax, is hereby repealed.

RONALD G. GEARY, Secretary of Revenue
ADOPTED: July 28, 1982
RECEIVED BY LRC: July 30, 1982 at 3 p.m.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-554
July 15, 1982

EMERGENCY REGULATION
Kentucky State Board of Medical Licensure

WHEREAS, the Kentucky State Board of Medical Licensure is responsible under the provisions of KRS 311.555 and KRS 311.565 for promulgating, by regulation, the policies of the Board with regard to the educational and professional requirements of applicants for licenses or permits to practice medicine and osteopathy; and

WHEREAS, the purpose of this regulation is to assure uniformity of requirements to all applicants for licensure to practice medicine or osteopathy; and

WHEREAS, the policy of the General Assembly with regard to medicine and osteopathy is to protect the health and safety of the public; and

WHEREAS, the Board has determined that the examination taken by graduates of foreign medical schools for certification by the Educational Commission for Foreign Medical Graduates (ECFMG) is no longer sufficient for the adequate screening of said graduates; and

WHEREAS, the Board has promulgated an amended regulation providing for an individualized review of the qualification of those graduates of foreign medical schools who are applying for medical licensure in the Commonwealth; and

WHEREAS, the Board has found that an emergency exists with respect to said regulation and that, therefore, said regulation should, pursuant to the provisions of KRS 13.088, become effective upon filing with the Legislative Research Commission:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by KRS 13.088, do hereby acknowledge the finding of emergency by the State Board of Medical Licensure with respect to the filing of said regulation providing for an individualized review of the qualifications of those graduates of foreign medical schools who are applying for medical licensure in the Commonwealth, and hereby direct that said regulation shall become effective upon being filed with the Legislative Research Commission, as provided by Chapter 13 of the Kentucky Revised Statutes.

JOHN Y. BROWN, JR., Governor
FRANCES JONES MILLS, Secretary of State

FINANCE AND ADMINISTRATION CABINET
Kentucky State Board of Medical Licensure

201 KAR 9:020E. Licensing qualifications; approved schools.

RELATES TO: KRS 311.530 to 311.620, 311.990
PURSUANT TO: KRS 13.082
EFFECTIVE: July 16, 1982
NECESSITY AND FUNCTION: KRS 311.565 empowers the State Board of Medical Licensure to exercise all the administrative functions of the state in the prevention of empiricism and in the regulation of the practice of medicine and osteopathy and authorizes the board to establish requirements and standards relating thereto. The purpose of this regulation is to assure uniformity of requirements to all applicants for regular licenses to practice medicine or osteopathy in Kentucky.

Section 1. Qualifications for Regular Medical and Osteopathic Licenses. No person shall be entitled to a regular license unless he meets all requirements specified in KRS 311.570(1) and has successfully passed a written examination prescribed by the board; provided, however, that regular licenses may be issued by reciprocity for endorsement as otherwise provided by regulation of the board without written examination. Provided, further, that graduates of medical schools situated outside the United States or Canada shall have successfully completed at least one (1) year of internship or postgraduate training in a hospital or institution located in the United States or Canada and approved by the board. In addition, all foreign medical graduates whose native language is not English shall have successfully passed a written examination to the satisfaction of the board.

Section 2. Medical and Osteopathic Schools in the United States and Canada Approved by the Board. (1) All medical schools, colleges, and universities located in the United States approved by the Council on Medical Education of the American Medical Association are approved by the board, in connection with the issuance of regular licenses to practice medicine in Kentucky.

(2) All medical schools, colleges, and universities located in Canada and approved by the Canadian Medical Association are approved by the board, in connection with the issuance of regular licenses to practice medicine in Kentucky.

(3) All osteopathic schools and colleges located in the United States and approved by the American Osteopathic Association are approved by the board in connection with the issuance of osteopathic licenses in Kentucky.

[Section 3. Medical Schools Outside the United States or Canada. All medical schools situated outside the United States or Canada are approved for regular medical licenses provided the applicant has been fully certified by the Educational Commission for Foreign Medical Graduates (ECFMG), or has been fully certified by an approved American Medical Specialty Board recognized and approved by the American Medical Association and the board.]

Section *3.* [4.] Medical and Osteopathic Programs Approved for Internship and Postgraduate Training. (1) All internship and postgraduate programs in hospitals and institutions located in the United States approved by the Council on Medical Education of the American Medical Association are approved by the board in connection with

the issuance of a regular license to practice medicine in Kentucky.

(2) All internships and postgraduate programs in hospitals and institutions located in Canada and approved by the Canadian Medical Association or the Royal College of Physicians and Surgeons of Canada are approved by the board in connection with the issuance of a regular license to practice medicine in Kentucky.

(3) All internships and postgraduate programs in hospitals and institutions located in the United States and Canada and approved by the American Osteopathic Association are hereby approved by the board in connection with the issuance of a license to practice osteopathy in Kentucky.

(4) The equivalency of all other programs in hospitals and institutions may be considered for approval by the board in connection with the issuance of a regular license on an individual basis.

Section 4. [5.] Personal Interview. If the board so directs, an applicant shall personally appear before the secretary or assistant secretary of the board, or some person designated by the secretary or assistant secretary, for a personal interview to establish his identity and qualifications.

Section 5. [6.] Endorsement. "Endorsement" means a written and signed certification by the duly authorized officer or representative of the official statutory medical or osteopathic examining board of some other state of the United States, or by the National Board of Medical Examiners, or by the National Board of Examiners for Osteopathic Physicians and Surgeons, or any approved successors thereof, that a certain person is a licentiate, in good standing, or said board, and that the person was required to and did, as a condition precedent to such licensure, satisfactorily pass a comprehensive written examination conducted by said board. Endorsement may be accepted by the board in lieu of further written examination in Kentucky without regard to the existence or nonexistence of a reciprocal agreement, but shall not be in lieu of standards and qualifications prescribed by KRS 311.570(1) and the regulations of the board. The secretary or assistant secretary of the board shall prepare, or cause to be prepared, all forms desirable and appropriate for licensure by endorsement, including applications, questionnaires, certificates, and licenses. The secretary or assistant secretary is authorized to require the submission of photographs, fingerprints, personal history data, and grades of his licensure examining board in connection therewith.

C. WILLIAM SCHMIDT, Assistant Secretary
ADOPTED: July 14, 1982
RECEIVED BY LRC: July 16, 1982 at 1:30 p.m.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-630
July 30, 1982

EMERGENCY REGULATION
Department of Fish and Wildlife Resources

WHEREAS, the U.S. Fish and Wildlife Service, Department of the Interior, has jurisdiction in the regulation of hunting throughout the several states; and

WHEREAS, all regulation of season framework, daily bag and possession limits, and shooting hours for migratory species, by the Kentucky Department of Fish and Wildlife Resources, must comply with federal regulations; and

WHEREAS, the recent promulgation of federal hunting regulations makes it impossible for the Kentucky Department of Fish and Wildlife Resources to comply with normal filing procedures under Chapter 13 of the Kentucky Revised Statutes; and

WHEREAS, the Commissioner of the Department of Fish and Wildlife Resources has determined in a letter dated July 28, 1982, that an emergency exists with respect to said regulation and that, therefore, said regulation should, pursuant to the provisions of KRS 13.088(1), become effective upon filing with the Legislative Research Commission:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, by the authority vested in me by Section 13.088(1) of the Kentucky Revised Statutes, hereby acknowledge the finding of the Department of Fish and Wildlife Resources that an emergency exists and direct that the attached regulation become effective immediately upon being filed in the Office of the Legislative Research Commission as provided under KRS 13.088(1).

JOHN Y. BROWN, JR., Governor
FRANCES JONES MILLS, Secretary of State

COMMERCE CABINET
Department of Fish and Wildlife Resources

301 KAR 2:044E. Taking of migratory wildlife.

RELATES TO: KRS 150.300, 150.305, 150.320, 150.330, 150.340, 150.360
PURSUANT TO: KRS 13.082
EFFECTIVE: July 30, 1982
NECESSITY AND FUNCTION: In accordance with KRS 150.015, this regulation is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource for the purpose of furnishing sport and recreation for present and future residents of the state. The function of this regulation is to provide for the prudent taking of migratory wildlife within reasonable limits based upon an adequate supply.

Section 1. Seasons. (1) Doves: September 1 through October 16; December 1 through December 24.

(2) Woodcock: October 2 through December 5.

(3) Common snipe: October 2 through December 5.

(4) Experimental September duck: September 8 through September 12.

Section 2. Limits.

Species	Bag Limits	Possession Limits
Doves	12	24
Woodcock	5	10
Common snipe	8	16
Experimental September duck, wood duck, teal and other ducks	*4	*8

*Daily bag limit is four (4) ducks, no more than one (1) of which may be a species other than teal or wood duck, and the possession limit is double the daily bag limit.

Section 3. Bag and Possession Limits. (1) After two (2) or more days of shooting, possession limits apply to transporting, but do not permit a double bag limit in the field.

(2) The above species (except doves) dressed in the field, or being prepared for transportation, must have one (1) fully feathered wing or head attached to the bird for identification purposes. For further information on the above species, consult Title 50, Code of Federal Regulations, Part 20.

Section 4. Shooting Hours. (1) Doves: from twelve (12) o'clock noon until one-half (½) hour before sunset prevailing time.

(2) Common snipe and woodcock: from one-half (½) hour before sunrise to sunset prevailing time.

(3) Experimental September duck: sunrise to sunset prevailing time.

Section 5. Free Permit for Experimental September Duck Season. Persons hunting during the experimental September duck season should obtain a free permit from any conservation officer or other authorized agents before hunting. The free permit contains a request for harvest information to be furnished on a self-addressed, stamped post card.

Section 6. Falconry Hunting. The wildlife species listed in this regulation may be pursued and taken by a licensed falconer with any legal hunting raptor during the regular hunting dates listed for each species. All bag and possession limits apply to falconry hunting.

Section 7. Exceptions to Statewide Migratory Bird Seasons on Specified Wildlife Management Areas. Unless excepted below, all sections of this regulation apply to the following areas:

(1) Ballard Wildlife Management Area, located in Ballard County:

(a) Doves: September 1 through October 14. No firearms permitted on this area except during shooting hours.

(b) Woodcock and snipe: Seasons closed.

(2) West Kentucky Wildlife Management Area, located in McCracken County: Doves: September 1 through October 16.

(3) Central Kentucky Wildlife Management Area, located in Madison County:

(a) Doves: September 1 through October 16.

(b) Woodcock and snipe: Seasons closed.

(4) Curtis Gates Lloyd Wildlife Management Area, located in Grant County: Doves: September 1 through October 14.

(5) Land Between the Lakes Wildlife Management Area, located in Lyon and Trigg Counties:

(a) Doves: September 1 through September 30; December 1 through December 24.

(b) Woodcock and snipe: December 1 through December 5.

(6) Fort Campbell Wildlife Management Area, located in Christian and Trigg Counties:

(a) Doves: September 1 through September 24; September 25 through October 16 in designated areas only; December 1 through December 3; December 4 through December 24 in designated areas only.

(b) Shooting hours for doves: from twelve (12) o'clock noon until sunset prevailing time.

(c) Woodcock and snipe: November 25 through December 3.

(7) Closed areas: The hunting of doves, woodcock, common snipe, and ducks is prohibited on the following wildlife management areas: Grayson Wildlife Management Area, located in Carter and Elliott Counties; Beaver Creek Wildlife Management Area, including all private inholdings, located in Pulaski and McCreary Counties; Robinson Forest Wildlife Management Area, located in Breathitt, Perry, and Knott Counties; Redbird Wildlife Management Area, including all private inholdings, located in Leslie and Clay Counties; Dewey Lake Wildlife Management Area, located in Floyd County; Cane Creek Wildlife Management Area, including all private inholdings, located in Laurel County; Mill Creek Wildlife Management Area, located in Jackson County.

CARL E. KAYS, Commissioner
ADOPTED: June 11, 1982
APPROVED: CHARLES E. PALMER, JR., Chairman
RECEIVED BY LRC: July 30, 1982 at 3 p.m.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-538
July 14, 1982

EMERGENCY REGULATION
Department of Agriculture
Division of Market Services

WHEREAS, the United States has entered into certain international treaties which require the protection of listed flora and fauna; and

WHEREAS, the United States Department of Interior has promulgated regulations making it the responsibility of the states to implement this treaty by appropriate statutes and regulations; and

WHEREAS, the General Assembly of the Commonwealth of Kentucky, in Chapter 415 of the 1982 Kentucky Acts, has created Section 246.650 and 246.660 of the Kentucky Revised Statutes under the foregoing authority to regulate the sale of ginseng and the taking thereof within the Commonwealth; and

WHEREAS, it is necessary that the Kentucky Department of Agriculture execute the legislation to establish the taking season of Wild American Ginseng beginning August 15, 1982; and

WHEREAS, the regulations must be in full force and effect by the aforementioned date; and

WHEREAS, the Commissioner of Agriculture of the Commonwealth of Kentucky has determined that an emergency exists:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by Section 13.088(1) of the Kentucky Revised Statutes, hereby acknowledge the finding of the Department of Agriculture and the Commissioner of Agriculture that an emergency exists and direct that the attached regulation become effective immediately upon being filed in the Office of the Legislative Research Commission.

JOHN Y. BROWN, JR., Governor
FRANCES JONES MILLS, Secretary of State

ENERGY AND AGRICULTURE CABINET
Department of Agriculture
Office of Marketing Services

302 KAR 45:010E. Ginseng, general provisions.

RELATES TO: KRS 246.650, 246.660
PURSUANT TO: KRS 13.082, 246.660
EFFECTIVE: July 16, 1982
NECESSITY AND FUNCTION: KRS 246.660 authorized the Department of Agriculture to adopt rules and regulations relating to the administration of a program for Wild American Ginsen. This regulation sets forth general provisions which apply in this chapter with regard to definitions, harvest season, and cooperative agreements.

Section 1. (1) "Ginseng Dealer" means any person engaged in the business of buying ginseng roots from ginseng collectors, ginseng cultivators, and other ginseng dealers for resale to ginseng exporters or to other ginseng dealers or any person who sells ginseng in any form in interstate commerce.

(2) "Commissioner" means the Commissioner of Agriculture.

(3) "Department" unless otherwise specified means the Kentucky Department of Agriculture.

(4) "State" means the Commonwealth of Kentucky.

Section 2. License. (1) No person shall be a ginseng dealer without first obtaining a license issued by the department.

(2) Licenses will be issued for a period of one (1) year, and will expire on the 30th day of June each year.

(3) Completed applications, issued by the department, must be returned prior to June 30th of each year along with the ten dollars ($10) license fee.

Section 3. Record Keeping. (1) All ginseng dealers shall keep records, on forms furnished by the department, of all purchases and sales of ginseng. These records will include month purchased, month dug, county where dug, weight of purchase, and signature of digger or seller.

(2) Retention. All persons required to maintain records under this section shall retain the records for a period of three (3) years.

(3) Availability. Records required under this section shall be made available to the department upon request.

Section 4. Annual Report. All ginseng dealers will file an annual report with the department by June 30th. The annual report shall include the listing of each purchase and sale of ginseng made by the dealer since July 1 the previous year.

Section 5. Harvest Season. Wild ginseng will only be dug between August 15th and December 1st of each year. Any seeds adhering to a plant taken during the season shall be planted within fifty (50) feet of the location of the plant with no tool used other than the finger.

Section 6. All sales of ginseng by dealers shall be certified for sale during the ginseng selling season beginning August 15th of each year and extending until March 31st of the following year.

Section 7. All ginseng dealers licensed hereunder must obtain a certificate of legal taking issued by the department identifying the origin, year of taking, and weight of any shipment of ginseng to a destination outside the Commonwealth of Kentucky. The certificate shall also state whether the ginseng is Wild American Ginseng or whether the ginseng has been cultivated or propagated by a grower. Such certification shall be issued to the dealer on triplicate forms issued by the department. A copy of such certification must be enclosed with the shipment subject of the certification. A copy of such certificate shall be retained for a minimum of three (3) years by the licensed ginseng dealer and a copy of the certificate shall be retained by the certifying agent of the department and submitted in accordance with internal procedures of the department.

ALBEN W. BARKLEY II, Commissioner
ADOPTED: July 15, 1982
RECEIVED BY LRC: July 16, 1982 at 1:30 p.m.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-612
July 23, 1982

EMERGENCY REGULATION
Transportation Cabinet
Motor Vehicle Taxes

WHEREAS, the Transportation Cabinet is directed and authorized under KRS 138.725 to establish regulations and is responsible for coordinating and supervising the collection of taxes for the road fund of the Commonwealth of Kentucky; and

WHEREAS, in its continuing effort to clarify and simplify procedures for administering the programs pursuant to statutory authorizations, the Transportation Cabinet has proposed a motor vehicle tax regulation designed to accomplish this end; and

WHEREAS, orderly implementation by all affected agencies and the motor carrier industry requires advance awareness and a date certain on which the new regulation shall be effective and such a date is stated in the proposed regulation; and

WHEREAS, the Secretary of the Transportation Cabinet has determined that an emergency exists in that time is of the essence in collection of taxes for the road fund and recommends that the Governor declare the at-

tached regulation to be effective immediately upon being filed with the Legislative Research Commission:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by KRS 13.088(1), do hereby acknowledge the finding of the Transportation Cabinet that an emergency exists with respect to filing the aforesaid motor vehicle tax regulation, and direct that said regulation shall become effective immediately upon filing with the Legislative Research Commission as provided by Chapter 13 of the Kentucky Revised Statutes.

JOHN Y. BROWN, JR., Governor
FRANCES JONES MILLS, Secretary of State

TRANSPORTATION CABINET
Department of Vehicle Regulation

601 KAR 9:072E. Kentucky highway use license, taxes and records.

RELATES TO: KRS Chapter 138
EFFECTIVE: July 26, 1982
PURSUANT TO: KRS 13.082, 138.725
NECESSITY AND FUNCTION: KRS 138.725 makes the Department of Vehicle Regulation responsible for the application of the Kentucky motor carrier fuel use tax and weight distance tax to motor carriers covered by KRS 138.655 to 138.725. This regulation provides procedures for licensees to follow in order to comply with the statutes.

Section 1. Application for Kentucky Highway Use License. Every motor carrier as defined in KRS 138.655(5) shall apply for and obtain on a department approved form a license before using or continuing to use the public highways in the state. The department shall issue a license number to each motor carrier, and the carrier shall cause said license number to be displayed on a motor vehicle identification card issued it by the department. The card shall be carried in each vehicle operated by the carrier at all times.

Section 2. Bonds-Cash Deposit. Every motor carrier and heavy equipment motor carrier, pursuant to the provisions of KRS 138.655 and 138.670 shall file with the department at the time of application for a license a corporate bond, cash bond, or security approved by the department. The applicant for the license shall be the principal obligor and the Commonwealth of Kentucky shall be the obligee. In the event the department decides to accept a bond in lieu of the cash bond or securities, the bond will be conditioned as required in KRS 138.670. The department shall administer the bond as provided in KRS 138.670.

Section 3. Registration for Weight Distance Tax. (1) For the purpose of this section registration shall mean the registration of the licensee for the purpose of the tax imposed by KRS 138.660 and shall be required of all motor carriers as defined in KRS 138.655(5). The current registration period shall be deemed that quarterly period for which the tax is due under KRS 138.660 or required to be reported on the quarterly return. The applicant for the license shall apply to the department for a motor vehicle identification card on forms prescribed and furnished by the department. The completion by the applicant and submittal to the department for validation shall be necessary prior to the authority of the applicant to operate a motor vehicle on the public highways of Kentucky. A motor carrier identification card shall be issued which must contain the name and address of the owner or operator, the identification of the vehicle, and such other information as may be requested, including, but without limitation, the KYU license number issued to the applicant for the use of the public highways of Kentucky. The identification card shall show the vehicle combined license weight or the actual combined gross weight of the vehicle and any towed unit when operated on the public highways of the state during the current registration period as defined hereinabove.

(2) Definitions.

(a) "Combined license weight" shall mean the declared combined maximum gross weight of the vehicle and any towed unit for the registration purposes for the current registration period as defined hereinabove; or the highest actual combined gross weight of the vehicle and any towed unit when operated on the public highways of the state during the current registration period as defined herein.

(b) "Declared gross weight" shall mean the same as paragraph (a) of this section.

(c) "Tare weight" shall mean the weight of the vehicle without the weight of the load.

(d) "Net weight" shall mean the same as paragraph (c) of this section.

(e) "Gross weight" shall mean the unloaded weight of the vehicle plus the maximum load to be carried by it on the highways of the Commonwealth of Kentucky.

(3) The identification card shall be displayed in the cab of the vehicle at all times. Failure to display the identification card shall constitute a violation of KRS 138.655. Each day constitutes a separate violation.

Section 4. Communications, Business Names and License Address. All licensees must immediately report any change in principal business address, legal status or business name to the department. All motor carrier operations must be conducted in the name in which the license and the identification plate is issued or the duly assumed business name of the licensee, as it appears on the application for the license. All licensees are required to use the name utilitized in the application for the license in all documents relating to their operations and in all correspondence with the department. All correspondence with the department shall be addressed as follows: Kentucky Department of Vehicle Regulation, Division of Fuel and Roadway Taxation, Post Office Box 2007, Frankfort, Kentucky 40602.

Section 5. Trip Permits. A trip permit may be issued in the discretion of the department under the provisions of KRS 138.665. Application for trip permits will be considered on a case by case basis.

Section 6. Instruments Filed Become Permanent Records. All bonds filed with the department as required by statute are permanent records and cannot be returned to licensee or removed from the custody of the department as long as the licensee is subject to the Kentucky Statutes.

Section 7. Kentucky Highway Use License for Leased Vehicles. (1) Any person leasing or renting a commercial motor vehicle to a lessee who is engaged in private carriage, where the operator of such vehicle is required to have a Kentucky Highway Use License may obtain the license by

making application to the department and complying with the appropriate rules and regulations. The license shall entitle the lessee to operate the leased or rented vehicle under the lessor's license.

(2) The lease shall be carried in the vehicle and the required cab card shall be in the lessor's name and the lessor shall make the required quarterly reports and pay all taxes which may become due by virtue of the operation of the motor vehicle.

(3) A motor vehicle which is leased to a certificated carrier, will be required to have the Kentucky Highway Use License and the lessee shall be responsible for the payment of any tax which may become due.

(4) A lessor of motor vehicle equipment who makes an application for a license under this section shall furnish the department a copy of the standard lease or rental agreement as well as the address of the place of business where the lessor's records are maintained. A current list of all lessees who lease equipment from the lessor and who will use the lessor's Kentucky Highway Use License shall be filed with the department. This list shall contain the name of the lessee, the lessee's address, the number of vehicles leased to each lessee and other pertinent information which the department may require. The list required herein shall be updated and kept current on a semi-annual basis by the lessor.

Section 8. Kentucky Highway Use License to Shipper in Lieu of Carrier. (1) In order to encourage the free flow of commerce to and from points in Kentucky without imposing unnecessary burdens or inconvenience, application to act as agent for one (1) or more carriers, for use tax purposes, will be accepted from business organizations with shipping facilities domiciled within the commercial area of a city located within ten (10) miles of the borders of the Commonwealth.

(2) Upon application and approval by the department, applicants may be authorized to secure a motor carrier fuel use license as agent for one (1) or more carriers. Such carriers must be exclusively engaged in Kentucky in the business of transporting merchandise to or from applicant's place of business in Kentucky. The license will be issued, along with cab cards for the motor vehicles owned by the carriers. The applicant will be designated on said cab cards as agent for a particular carrier.

(3) Any applicant so licensed shall be responsible for filing quarterly returns with the department, and returns shall evidence the entire mileage operation of each such carrier in Kentucky and be accompanied by payment. Bond shall be required as in other cases.

Section 9. Authorized Deductions on Quarterly Returns. Every person licensed as a motor carrier may deduct on his quarterly tax return the amount of tax paid on fuel at the time of purchase, provided the purchase is made in Kentucky and the Kentucky motor fuel tax has been paid. A valid receipt must be obtained as evidence of purchase from the person making the sale or delivery.

(1) The valid receipt is one (1) in which:

(a) The purchase receipt shall be the original prepared by a station or vendor located in the State of Kentucky and shall have an imprinted Kentucky address. Receipts that have an imprinted Kentucky address, but include other station locations outside of Kentucky are invalid.

(b) The following is included:

1. Name and station location of the vendor;
2. Date of purchase;
3. Number of gallons;
4. Type of fuel purchased;
5. Company unit number of vehicle or registration number of units; and
6. Licensee's name.

(c) The name and address of the vendor shall be preprinted or imprinted, which includes, but is not restricted to, credit card machines. Station receipts that are identified only by impressed rubber stamp markers or handwritten are not valid.

(2) Bulk or storage purchasers of fuel shall maintain a withdrawal or disbursement record when such fuel is used in taxable highway or road units. This record shall be kept on all units fueling from this tank showing the unit fueled, gallons withdrawn, and the date of withdrawal. Tax on bulk purchases shall be paid at the time of purchase in accordance with KRS 138.220 and 234.320. If a motor carrier uses tax free bulk storage to fuel taxable units (highway units), tax will be levied on total fuel purchased for bulk storage.

(a) Any use of fuel from a tax free storage tank without adequate records to prove non-highway use shall be taxable. Approved location of tax free storage shall be issued by the Revenue Cabinet before tax free fuel is purchased.

((b)Credit for fuel purchase receipts other than the taxable units shall not be allowed.

(3) In instances where fuel is purchased by trip leased units and the lessee is responsible for the Kentucky highway tax, all receipts shall be made in the name of the lessee. Receipts made out in the name other than the person or company responsible for the fuel tax shall be invalid.

(4) All receipts shall be kept in the possession of the carrier for a period of five (5) years, subject to examination by representatives of the Transportation Cabinet or Revenue Cabinet.

Section 10. Cancellation of License. (1) If a motor carrier fails to comply with the terms of KRS 138.655 to 138.725, Kentucky Highway Use Tax License will be cancelled. Reasons for cancellation include, but are not limited to, the following:

(a) Failure to file tax return thirty (30) days after the due date. The licensee will be mailed a second notice or reminder and be given fifteen (15) days to file the return. If the licensee fails to comply with the second notice, the license will be subject to cancellation.

(b) Failure to pay additional taxes assessed by the department. To be reinstated after cancellation of license, the carrier must prove to the department that sufficient records are being and will be maintained to file accurate Kentucky Highway Use Tax Returns.

(c) Failure by a licensee to produce such records after written demand may result in cancellation of the license and any other penalties applicable by law. Each succeeding day shall constitute a separate violation until the records are produced at the place stated in the demand.

Section 11. Procedure upon Cancellation of License. (1) Upon cancellation of Kentucky Highway Use License in accordance with the provisions of KRS 138.675 and after notice to the carrier by mailing the same to the address on file in the department, the carrier shall immediately return to the department the license and all cab cards issued to such carrier.

(2) Failure to return the license and cards or the operation of a motor vehicle displaying a cab card after notice of revocation of the highway use license shown thereon, shall be a violation of this regulation.

(3) Cancellation of the user's license shall also constitute a revocation of the grant of reciprocal privileges for an interstate motor vehicle.

(4) Any interstate carrier operating a motor vehicle displaying a cab card or plate with a cancelled highway use license shown thereon shall be subject to citation before the department to show cause why such carrier's operating authority, if any, should not be revoked and in every case the motor vehicle shall be subjected to seizure in accordance with KRS 138.990(18).

Section 12. Tax Liability and Protest Procedures. (1) The licensee will be mailed a tax statement, found as the result of an audit or found as the result of an examination of licensee's tax return. The licensee has thirty (30) days to pay or protest to the department per KRS 131.110 in writing any assessment or tax liability imposed by the department. A protest must be accompanied by a supporting statement identifying specific adjustments being protested and setting forth the reasons upon which the protest is being made.

(2) If the licensee so desires, he may, within thirty (30) days, protest directly to the Kentucky Board of Tax Appeals.

(3) The department will acknowledge receipt of the protest and if protest is acceptable, a tax conference will be set between the department and licensee within sixty (60) days of the protest. The department will notify the licensee within thirty (30) days its decision to deny or accept the reasons of the protest. If denied, the licensee may protest to the Kentucky Board of Tax Appeals.

(4) If the licensee does not acknowledge the tax statement within thirty (30) days, a reminder will be sent to licensee demanding payment within fifteen (15) days. If within fifteen (15) days, the taxes have not been remitted to the department, a demand will be made against the licensee's surety bond. Any balance of unpaid taxes will be submitted to the department's legal section for collection.

Section 13. Penalties. Licensee shall be subject to the penalties provided for the violation of KRS 138.655 to 138.725 specifically including KRS 138.720 and the penalties as set forth in KRS 138.990(17) and (18) shall apply and will be accessed by the department through its personnel or the proper law enforcement agencies or by courts of competent jurisdiction.

Section 14. Inspection. Any highway enforcement officer or state police officer may inspect the vehicle identification card, license registration, driver's log, lease, trip sheet or shipping document to determine if the vehicle is qualified to operate on the highways of the State of Kentucky. The law enforcement officer may also weigh vehicles to determine if the gross weight conforms to the licensed weight on the vehicle identification card.

Section 15. Maintenance of Records. (1) Licensees shall keep and maintain complete and comprehensive records of all business transactions.

(2) All papers, books, accounts, payroll records, time records, bills, invoices, notes, mortgages, memoranda, correspondence files, vouchers, journals, ledgers, contracts, leases and agreements, operating and statistical statements or exhibits, stock books, minutes of meetings of directors, trustees and/or stockholders, records of mileage operated, annual or other periodic or special reports, working sheets or papers and all other papers and records disclosing or appertaining to operations of licensees authorizing transportation of persons or property by motor vehicle shall be maintained and shall at all reasonable times be available for examination, inspection and audit by the department.

(3) Odometer readings for each vehicle shall be retained on file, with drivers' logs of miles, trip reports, manifests and/or any other such records which prove miles operated.

(4) Kentucky miles reported shall be no less than the miles as calculated on the official Kentucky mileage map prepared by the Kentucky Department of Highways. The motor carrier shall not calculate miles operated by fuel purchases and miles per gallon.

(5) Miles per gallon reported shall be calculated by maintaining adequate records of total miles operated and total fuel consumed. Total fuel consumed is the sum of road purchases and bulk storage withdrawals or data from maintenance records.

(6) Mileage records must be maintained as follows:

(a) Total miles operated in Kentucky for each unit with less than 59,999 pounds.

(b) Total miles operated in Kentucky for each unit with more than 59,999 pounds.

(c) Separate records must be maintained where a licensee has hauled or is hauling under the provisions of a Resource Recovery Road Permit. To qualify for the exemption provided by that permit, valid trip tickets for all dates and miles which represent hauling under the permit must be kept and provided to the department.

(7) Any licensee must produce and make available for audit and examination at any reasonable time, within or without this state, the records, accounts, papers, reports and other documents under the licensee's control.

(a) When such records are maintained outside this state by licensees engaged in transportation in Kentucky, the licensee shall reimburse the department for all expenses incurred by the department in making audits and examinations of such records and accounts at their out of state location.

(b) Records maintained by licensees outside this state may be presented at a designated place in this state for audit and examination. This may be done at the request of the licensee or by direction of the department. Such records must be presented by a representative of the carrier who can explain all entries and records and be responsible for their safekeeping.

(c) When a motor carrier keeps and maintains its records outside this state, the department may examine such records and shall be reimbursed by the motor carrier for all expenses incurred in making such out of state examination. The department shall bill the carrier for transportation, lodging and meals at the rate set by the Kentucky regulations on travel expense.

(d) The refusal by a licensee to produce such records after written demand may result in cancellation of the license and any other penalties applicable by law. Each succeeding day shall constitute a separate violation until the requested records are produced at the place stated in the demand.

(e) In addition to any other penalty authorized by law, the operating authority or license of a person who fails to prepare or maintain records required by statute or regulation of the state shall be subject to suspension or cancellation.

(f) Such records must be preserved for five (5) years.

Section 16. Records Disposition. The department will retain the active file of KYU tax returns for at least five (5)

years. An inactive KYU license will be retained two (2) years after cancellation.

Section 17. Certified Scale Weights. (1) Actual weight of shipments of machinery, machines, heavy equipment and household goods must be otained by having such shipment weighed over a certified scale whenever scale is available at point of origin, destination or enroute. The scale ticket shall be attached to the carrier's copy of the freight bill and be retained as a part of the carrier's records.

(2) Actual weights shall also be obtained by the carrier for other shipments when the weight declared appears incorrect or is not in accord with established shipping weights for like articles or marks.

Section 18. Reinstatement of License. (1) If the carrier desires to be reinstated after cancellation, the carrier must:

(a) Prove to the department that sufficient records are being and will be maintained to file accurate Kentucky Highway Use Tax returns.

(b) Submit quarterly returns for all missed periods.

(c) Pay all taxes for missed returns plus penalties and interest:

Section 19. 601 KAR 9:070, Motor carrier fuel use tax, and 601 KAR 9:071, Records of fuel tax licensees, are hereby repealed.

JAMES F. RUNKE, Commissioner
ADOPTED: July 15, 1982
APPROVED: FRANK R. METTS, Secretary
RECEIVED BY LRC: July 26, 1982 at 9:30 a.m.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-544
July 15, 1982

EMERGENCY REGULATION
Cabinet for Human Resources

WHEREAS, under the provisions of KRS 210.410, the Secretary of the Cabinet for Human Resources is authorized to make grants and other fund allocations to assist in the operation of community mental health and mental retardation programs in the Commonwealth; and

WHEREAS, pursuant to KRS 210.420(2), distribution of allocations from state general fund monies is to be made based upon a formula including provisions for per capita allocations, incentive allocations and discretionary allocations, said formula to appear in the form of an administrative regulation; and

WHEREAS, the Secretary has developed a regulation revising the method of allocation to assure a more accurate distribution of available general fund monies to community mental health and mental retardation programs in the Commonwealth based upon actual services provided; and

WHEREAS, the time delays inherent in complying with procedural requirements of KRS Chapter 13 would preclude the effectiveness of the regulation on July 1, 1982; and

WHEREAS, the Secretary has found that an emergency exists with respect to said regulation, and that, therefore, said regulation should, in accordance with the provisions of KRS 13.088(1), be effective immediately upon filing with the Legislative Research Commission:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by KRS 13.088(1), do hereby acknowledge the finding of an emergency by the Secretary for Human Resources with respect to the filing of the regulation of the Cabinet for Human Resources pertaining to the formula for the allocation of general fund monies to community mental health-mental retardation programs, and direct that said regulation shall become effective upon filing with the Legislative Research Commission as provided in Chapter 13 of the Kentucky Revised Statutes.

JOHN Y. BROWN, JR., Governor
FRANCES JONES MILLS, Secretary of State

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 6:050E. Formula for allocation of funds.

RELATES TO: KRS 210.420, 210.440
EFFECTIVE: July 16, 1982
PURSUANT TO: KRS 13.082, 210.420, 210.450
NECESSITY AND FUNCTION: KRS 210.440 requires the Secretary of the *Cabinet* [Department] for Human Resources to allocate funds to the mental health-mental retardation boards at the beginning of each fiscal year. KRS *210.420* [210.430] requires the Secretary to prescribe, by regulation, a formula for the allocation of these funds, including provisions for per capita allocations, incentive allocations which require local matching funds based on per capita wealth of the area served, and discretionary allocations to be available to the Secretary to maintain essential services pursuant to KRS 210.410. This regulation prescribes the formula for allocation of such funds.

Section 1. Population. (1) Population figures used by the secretary to determine the formula allocations come from the U.S. Department of Commerce, Bureau of the Census, *as reported by the Urban Studies Center, University of Louisville, Population Research Unit 7, Report 7, January, 1982.* [Current Population Reports. The publication is Federal-State Cooperative Program-for Population Estimates, Series P-26, No. 76-17, July, 1977.] The estimates available from the most recent *edition* [addition] of this publication will be used for formula allocations in future years.

(2) Any geographic breakdown in population is in accordance with KRS 210.370.

Section 2. Definitions. (1) *"Cabinet" means Cabinet for Human Resources.* ["Per capita funds" means the figure derived by taking seventy and two-tenths (70.2) percent of the yearly allocation and dividing this figure by the population of the state.]

(2) *"Local tax match" includes revenue raised locally by a mental health/mental retardation board from:* ["Local match funds" means any revenue raised by a region that does not come from federal or state governments such as local tax, match other, or monies submitted by affiliate health care providers, including in-kind contributions, valued according to the assessed fair market value.]

(a) A mental health/mental retardation tax (KRS 210.460, 210.470, 210.480);

(b) A county fiscal court appropriation and/or an appropriation by a city legislative body, including in-kind contributions at fair market value.

(3) *"Other local match" includes revenue raised locally by a mental health/mental retardation board, but is limited to:* ["Local tax" means any funds coming from a mental health-mental retardation tax or an appropriation from a county fiscal court or municipal government, including in-kind contributions, valued according to the assessed fair market value.]

(a) In-kind contributions other than those from a county fiscal court or city legislative body;

(b) Cash donations and contributions;

(c) Sales of workshop products;

(d) Interest income;

(e) Rental income; and

(f) Funds provided by affiliates derived from the sources specified in this subsection, but only to the extent that such funds are used to finance programs endorsed by the board in its Annual Plan and Budget.

[(4)"Match other" means all funds raised locally that do not meet the definition of local tax funds. This would include but not be limited to donations, collections for services, earnings from contracts, or other non-appropriations from local governments or fiscal courts, etc. Funds budgeted from savings from prior years cannot qualify as matching funds.]

(4) [(5)] "Per capita wealth" means the current total assessed value of property, as adjusted and recorded by the Kentucky Department of Revenue, divided by the population of a given area.

(5) [(6)] "Region" means that geographic locality determined by incorporation thereof for the purpose of delivery of comprehensive mental health-mental retardation services under KRS 210.370 as controlled by a board of directors. [Region and "district" are synonymous to area development districts as defined by KRS 147A.050 with the exception of Livingston County's placement. Because of isolation, Livingston County is included in the Purchase Area rather than the Pennyrile District found in KRS 147A.050.]

Section 3. *Formula for Allocation of State Appropriated Funds. The formula for allocation of state appropriated funds shall be as follows: (1)* Per capita allocations. Of the *total* general funds *appropriated* [allocated] *by the General Assembly for a fiscal year* [to the department] for the [operation of regional] community mental health-mental retardation *services* [centers] *programs, fifteen (15)* [, seventy and two tenths (70.2)] percent thereof shall be distributed based on [a] per capita allocations. The sum available to each region [as it is incorporated] shall be determined by dividing the total funds available *in the per capita allocation* by the total population of the Commonwealth, multiplied by the population of each region; *provided, however, that the payment of such sum shall be on a cost related fee for service basis following receipt of appropriate and timely billings submitted by each respective board.*

(2) [Section 4. Secretary's] Discretionary [Funds] *allocations.* The discretionary allocations available to the secretary to maintain essential services pursuant to KRS 210.410 shall be equal to ten (10) percent of the general funds *appropriated* [allocated to the department] *by the General Assembly* for *a fiscal year* [the operation of regional] *for* community mental health-mental retardation programs.

(3) Cost-related fee for service allocations. Of the total general funds appropriated by the General Assembly for a fiscal year for the Community Mental Health/Mental Retardation Services Program sixty percent (60%) thereof shall be allocated based on service units reported in the board's Annual Plan and Budget as approved by the Secretary including approved amendments thereto; provided, however, that payment shall be on a cost-related fee for service basis following receipt of appropriate and timely billings submitted by the board. In the event any board fails to report sufficient service units to access its cost-related fee for service allocation, such funds shall be reallocated on a cost-related fee for service basis to those regions whose reported service units exceed their allocation.

(4) [Section 5.] Incentive allocations. *(a)* [(1)] Of the *total* general funds *appropriated* [allocated to the department] for [the operation of regional] community mental health-mental retardation *programs* [centers], *fifteen (15)* [nineteen and eight-tenths (19.8)] percent thereof shall be allocated to the regions based on local *tax match* [matching funds,] *and other local match* weighted to reflect the per capita wealth of the region. Local *tax match* [matching fund figures] *and other local match* shall be based upon the preceeding fiscal year's local collections as determined by the independent auditor[s] of each board and certified by the *cabinet* [department]. [The per capita wealth adjustment alters the local tax and match other by adjusting the credit for matching funds from the state. The adjustment figure is computed by dividing the per capita wealth of the state by the per capita wealth of a region. Therefore, the true local tax and match other figures are figured by multiplying the per capita wealth adjustment by the local tax funds or the match other funds respectively.]

(b) The cabinet shall adjust the local tax match revenue and other local match revenue by applying a per capita wealth adjustment factor. The adjustment factor shall be computed by dividing the per capita wealth of the state by the per capita wealth of a region.

(c) [(a)] *The matching rates shall be* [The state shall match at a rate of] thirty-five (35) cents for each dollar of local tax match after per capita adjustment *and fifteen (15) cents for each dollar of other local funds after per capita wealth adjustment. The preceeding totals shall equal the total state funds earned by each board under the incentive allocation provided there are sufficient funds appropriated and allocated to the incentive allocation.*

(d) An initial incentive ceiling shall be calculated for each board by dividing the local incentive funds available (fifteen percent (15%) of the total general funds appropriated) by the population of the state, multiplied by the population of each region. In the event one (1) or more boards fail to report sufficient local tax match and other local match funds to attain their ceiling, the amount they are under the ceiling shall be placed back into the incentive allocation for reallocation to regions that exceeded their ceiling. If through this method all incentive funds cannot be allocated, the remaining funds shall be placed in the cost-related fee for service fund to be allocated on a cost-related fee for service basis.

(e) Incentive funds shall be adjusted following the receipt of actual collections for the previous fiscal year. The report of actual collections shall be submitted by the independent auditor in conjunction with each annual audit report of each respective board.

[(b) The state shall match at the rate of fifteen (15) cents for each dollar of local match other funds after per capita wealth adjustment.]

[(c) Therefore, the total of paragraphs (a) and (b) equals

the total state funds earned by each center under their incentive section if there are sufficient funds appropriated and allocated to the incentive section of the grant.]

[(2) Because it is possible that mental health-mental retardation boards may raise sufficient local funds to match more state funds than are available under the incentive section, a maximum must be calculated for each board. This maximum shall be applied only if all boards reach their maximum. If one or more boards do not reach their maximum, the amount they are under their maximum shall be used to raise the maximum of all other boards. The calculation used to determine the initial maximum incentive funds available to each board is as follows: divide the total incentive funds available (nineteen and eight-tenths (19.8) percent of the total general funds appropriated) by the population of the state and multiply that figure by the population of each region.]

[(3) Any incentive funds not distributed to a region because the region failed to reach its maximum shall be placed back into the fund for reallocation to those regions that exceeded their local match.]

[(a) If through this method all incentive funds cannot be allocated, the remaining funds would then be allocated on the per capita method of allocation.]

[(b) First quarter allocations of the incentive funds shall be based on estimate of local matching funds available. Incentive funds shall be adjusted based upon the receipt of actual collections for the previous fiscal year. The actual collections shall be a by-product of each annual audit report of each respective board.]

[(c) Local funds can be provided by affiliates but only to the extent that these funds are used to finance programs endorsed by the board in their annual plan and budget.]

DAVID T. ALLEN, Commissioner
ADOPTED: June 29, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: July 16, 1982 at 1:30 p.m.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-556
July 16, 1982

EMERGENCY REGULATION
Cabinet for Human Resources

WHEREAS, the 1982 regular session of the Kentucky General Assembly vested in the Cabinet for Human Resources responsibility for the onsite sewage disposal system in the Commonwealth; and

WHEREAS, through operation of KRS 211.350(5) the Cabinet for Human Resources is authorized to establish a reasonable fee to cover its cost of implementing the onsite sewage disposal program throughout the Commonwealth; and

WHEREAS, implementation of the onsite sewage disposal program in the Commonwealth will necessitate diversion of staff within the Cabinet's Department for Health Services and the development of an intricate system of processing; and

WHEREAS, said system will result in the expenditure of funds from the budget of the Cabinet which are already earmarked for other programs without a specific fee assessed for the processing of applications; and

WHEREAS, the time delays inherent in complying with the procedural requirements of KRS Chapter 13 would preclude the effectiveness of the regulation upon the July 15, 1982, date of enactment of the Act of the General Assembly; and

WHEREAS, the Secretary of the Cabinet has found that an emergency exists with respect to said regulation and that, therefore, said regulation should, in accordance with KRS 13.088(1), be effective immediately upon filing with the Legislative Research Commission:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by KRS 13.088(1), do hereby acknowledge the finding of an emergency by the Secretary of the Cabinet for Human Resources with respect to said regulation of the Cabinet for Human Resources pertaining to the fee for processing applications for onsite sewage disposal systems, and direct said regulation shall become effective upon filing with the Legislative Research Commission as provided in Chapter 13 of the Kentucky Revised Statutes.

JOHN Y. BROWN, JR., Governor
FRANCES JONES MILLS, Secretary of State

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 10:060E. Onsite sewage disposal.

RELATES TO: KRS 211.350
PURSUANT TO: KRS 13.082, 194.050, 211.350
EFFECTIVE: July 16, 1982
NECESSITY AND FUNCTION: KRS 211.350(5) authorizes the Cabinet for Human Resources to establish a schedule of reasonable fees to cover the costs of services performed by the Cabinet with respect to onsite sewage disposal systems. The function of this regulation is to set forth the fee to be charged in order to cover the actual cost to the Cabinet of the administration of the onsite sewage disposal system program.

Section 1. Definitions. (1) "Cabinet" means Cabinet for Human Resources.

(2) "Onsite sewage disposal system" means an installation intended for the treatment and disposal of sewage by means of a septic tank, or other approved device, and includes the drainfield into which the effluent will be dispersed.

Section 2. All applications for a permit to construct, install, or alter an onsite sewage disposal system filed with the Cabinet or its agent shall be accompanied by a fee of nine dollars ($9).

DAVID T. ALLEN, Commissioner
ADOPTED: July 12, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: July 16, 1982 at 3:30 p.m.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-546
July 15, 1982

EMERGENCY REGULATION
Cabinet for Human Resources
Department for Social Insurance

WHEREAS, the Secretary of the Cabinet for Human Resources is responsible, under KRS 194.050 and KRS 205.520, for promulgating, by regulation, the policies of the Cabinet with regard to the provision of Medical Assistance; and

WHEREAS, the Cabinet and the Kentucky Association of Health Care Facilities have entered into an agreement to resolve a court action brought by the Association against the Cabinet; and

WHEREAS, the Secretary has found that the terms of the agreement must be implemented by regulation; and

WHEREAS, the Secretary has promulgated a regulation on Amounts Payable for Skilled Nursing and Intermediate Care Facility Services which updates the upper limits for the uniform rate year using the latest available cost data; and

WHEREAS, the Secretary has found that an emergency exists with respect to said regulation and that, therefore, said regulation should, pursuant to the provisions of KRS 13.088(1), become effective immediately upon filing with the Legislative Research Commission:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by KRS 13.088(1), do hereby acknowledge the finding of an emergency by the Secretary of the Cabinet for Human Resources with respect to the filing of said regulation on Amounts Payable for Skilled Nursing and Intermediate Care Facility Services, and hereby direct that said regulation shall become effective upon being filed with the Legislative Research Commission, as provided in Chapter 13 of the Kentucky Revised Statutes.

JOHN Y. BROWN, JR., Governor
FRANCES JONES MILLS, Secretary of State

CABINET FOR HUMAN RESOURCES
Department for Social Insurance

904 KAR 1:036E. Amounts payable for skilled nursing and intermediate care facility services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
EFFECTIVE: July 16, 1982

NECESSITY AND FUNCTION: The *Cabinet* [Department] for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the *cabinet* [department], by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the *cabinet* [department] for skilled nursing care facility services and intermediate care facility services.

Section 1. Reimbursement for Skilled Nursing and Intermediate Care Facilities. All skilled nursing or intermediate care facilities participating in the Title XIX program shall be reimbursed in accordance with this regulation. Payments made shall be in accordance with the requirements set forth in 42 CFR 447.250 through 42 CFR 447.272. A skilled nursing facility desiring to participate in Title XIX shall be required to participate in Title XVIII-A.

Section 2. Basic Principles of Reimbursement. (1) Payment shall be on the basis of rates which are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

(2) Payment amounts shall be arrived at by application or the reimbursement principles developed by the *cabinet* [department] *(Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Payment System, revised July 1, 1982, which is hereby incorporated by reference)* and supplemented by the use of the Title XVIII-A reimbursement principles.

Section 3. Implementation of the Payment System. The *cabinet's* [department's] reimbursement system is supported by the Title XVIII-A Principles of Reimbursement, with the system utilizing such principles as guidelines in unaddressed policy areas. The *cabinet's* [department's] reimbursement system includes the following specific policies, components or principles:

(1) Prospective payment rates for routine services shall be set by the *cabinet* [department] on a facility by facility basis, and shall not be subject to retroactive adjustment. Prospective rates shall be set annually, and may be revised on an interim basis in accordance with procedures set by the *cabinet* [department]. An adjustment to the prospective rate (subject to the maximum payment for that type of facility) will be considered only if a facility's increased costs are attributable to one (1) of the following reasons: governmentally imposed minimum wage increases; the direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental agency as issued in regulation or written policy which affects all facilities within the class; or other governmental actions that result in an unforeseen cost increase. The amount of any prospective rate adjustment may not exceed that amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs will be classified into two (2) general areas, salaries and other. The effective date of interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility. The state will set a uniform rate year for SNFs and ICFs (July 1-June 30) by taking the latest audited cost data available as of April 30 of each year and trending the facility costs to July 1 of the rate year. (Unaudited and/or budgeted cost data may be used if a full year's audited data is unavailable.) Allowable costs will then be indexed for inflation for the rate year, and the maximum set at 110 percent of the median for the

class (SNF or ICF). In recognition of the higher costs of hospital based SNFs, their upper limit shall be set at 165 percent of 110 percent of the median of allowable trended and indexed costs of all other SNFs. The maximum payment amounts will be adjusted each July 1, beginning with July 1, 1982, so that the maximum payment amount for the prospective uniform rate year will be at 110 percent of the median per diem allowable costs for the class (SNF or ICF) on July 1 of that year. For purposes of administrative ease in computations normal rounding may be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents. Upon being set, the arrays and upper limits will not be altered due to revisions or corrections of data. For ICF-MRs, a prospective rate will be set in the same manner as for SNFs and basic ICFs, except that no maximum (upper limit) shall be imposed.

(3) The reasonable direct cost of ancillary services provided by the facility as a part of total care shall be compensated on a reimbursement cost basis as an addition to the prospective rate. Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement. Ancillary costs may be subject to maximum allowable cost limits under federal regulations. Any percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except in the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the *cabinet* [department] exceeding twenty-five (25) percent of billed charges, or where an evaluation by the *cabinet* [department] of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent.

(4) Interest expense used in setting the prospective rate is an allowable cost if permitted under Title XVIII-A principles and if it meets these additional criteria:

(a) It represents interest on long-term debt existing at the time the vendor enters the program or represents interest on any new long-term debt, the proceeds of which are used to purchase fixed assets relating to the provision of the appropriate level of care. If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates will be allowable. The form of indebtedness may include mortgages, bonds, notes and debentures when the principal is to be repaid over a period in excess of one (1) year; or

(b) It is other interest for working capital and operating needs that directly relates to providing patient care. The form of such indebtedness may include, but is not limited to, notes, advances and various types of receivable financing; however, short-term interest expense on a principal amount in excess of program payments made under the prospective rate equivalent to two (2) months experience based on ninety (90) percent occupancy or actual program receivables will be disallowed in determining cost;

(c) For both paragraphs (a) and (b) of this subsection, interest on a principal amount used to purchase goodwill or other intangible assets will not be considered an allowable cost.

(5) Compensation to owner/administrators will be considered an allowable cost provided that it is reasonable, and that the services actually performed are a necessary function. Compensation includes the total benefit received by the owner for the services he renders to the institution, excluding fringe benefits routinely provided to all employees and the owner/administrator. Payment for services requiring a licensed or certified professional performed on an intermittent basis will not be considered a part of compensation. "Necessary function" means that had the owner not rendered services pertinent to the operation of the institution, the institution would have had to employ another person to perform the service. Reasonableness of compensation will be based on total licensed beds (all levels).

(6) The allowable cost for services or goods purchased by the facility from related organizations shall be the cost to the related organization, except when it can be demonstrated that the related organization is in fact equivalent to any other second party supplier, i.e., a relationship for purposes of this payment system is not considered to exist. A relationship will be considered to exist when an individual or individuals possess five (5) percent or more of ownership or equity in the facility and the supplying business; however, an exception to the relationship will be determined to exist when fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

(7) The amount allowable for leasing costs shall not exceed the amount which would be allowable based on the computation of historical costs, except that for general intermediate care facilities entering into lease/rent arrangements prior to April 22, 1976, intermediate care facilities for the mentally retarded entering into lease/rent arrangements prior to February 23, 1977, and skilled nursing facilities entering into lease/rent arrangements prior to December 1, 1979, the *cabinet* [department] will determine the allowable costs of such arrangements based on the general reasonableness of such costs.

(8) The following provisions are applicable with regard to median per diem cost center upper limits:

(a) For facilities (except ICF-MRs) beginning participation in the Medicaid program on or after April 1, 1981, (newly participating facilities), the following upper limits (within the class) shall be applicable with regard to otherwise allowable per diem costs, by cost center: for nursing services, 125 percent of the median; for dietary services, 125 percent of the median; for property costs, 105 percent of the median; and for all other costs, 105 percent of the median.

(b) Facilities participating in the Medicaid program prior to April 1, 1981, shall be classified as newly participating facilities when either of the following occurs on or after April 1, 1981: first, when the facility expands its bed capacity by expansion of its currently existing plant or, second, when a multi-level facility (one providing more than one (1) type of care, converts existing personal care beds in the facility to either skilled nursing or intermediate care beds, and the number of additional or converted personal care beds equals or exceeds (in the cumulative) twenty-five (25) percent of the Medicaid certified beds in the facility as of March 31, 1981. Facilities participating in the Medicaid program prior to April 1, 1981 shall not be classified as newly participating facilities solely because of changes of ownership.

(c) For purposes of application of this subsection the facility classes are basic intermediate care and skilled nursing care. The "median per diem cost" is the midpoint of the range of all facilities' costs (for the clsss) which are attributable to the specific cost center, which are otherwise allowable costs for the facilities' prior fiscal year, and which are adjusted by trending, indexing and the occupancy factor. The median for each cost center for each class

shall be determined annually using the same cost data for the class which was used in setting the maximum payment amount. The Division for Medical Assistance shall notify all participating facilities of the median per diem cost center upper limits currently in effect.

(d) Intermediate care facilities for the mentally retarded (ICF-MRs) are not subject to the median per diem cost center upper limits shown in this subsection.

(9) Certain costs not directly associated with patient care will not be considered allowable costs. Costs which are not allowable include political contributions, *travel and related costs for trips outside the state (for purposes of training, conventions, meetings, assemblies, conferences, seminars, or any related activities)* [the cost of travel outside the state (and all costs related thereto)], and legal fees for unsuccessful lawsuits against the *cabinet* [department].

(10) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods will be used:

(a) Determine the actual gain on the sale of the facility.

(b) Add to the seller's depreciated basis two-thirds (⅔) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis.

(c) Gain is defined as any amount in excess of the seller's depreciated basis as computed under program policies at the time of the sale, excluding the value of goodwill included in the purchase price.

(d) A sale is any bona fide transfer of legal ownership from an owner(s) to a new owner(s) for reasonable compensation, which is usually fair market value. Stock transfers, except stock transfers followed by liquidation of all company assets and which may be revalued in accordance with Internal Revenue Service rules, are not considered changes of facility ownership. Lease-purchase agreements and/or other similar arrangements which do not result in transfer of legal ownership from the original owner to the new owner are not considered sales until such time as legal ownership of the property is transferred.

(11) Each facility shall maintain and make available such records (in a form acceptable to the *cabinet* [department]) as the *cabinet* [department] may require to justify and document all costs to and services performed by the facility. The *cabinet* [department] shall have access to all fiscal and service records and data maintained by the provider, including unlimited onsite access for accounting, auditing, medical review, utilization control and program planning purposes.

(12) The following shall apply with regard to the annual cost report required of the facility:

(a) The year-end cost report shall contain information relating to prior year cost, and will be used in establishing prospective rates and setting ancillary reimbursement amounts.

(b) New items or expansions representing a departure from current service levels for which the facility requests prior approval by the program are to be so indicated with a description and rationale as a supplement to the cost report.

(c) *Cabinet* [Departmental] approval or rejection of projections and/or expansions will be made on a prospective basis in the context that if such expansions and related costs are approved they will be considered when actually incurred as an allowable cost. Rejection of items or costs will represent notice that such costs will not be considered as part of the cost basis for reimbursement. Unless otherwise specified, approval will relate to the substance and intent rather than the cost projection.

(d) When a request for prior approval of projections and/or expansions is made, absence of a response by the *cabinet* [department] shall not be construed as approval of the item or expansion.

(13) The *cabinet* [department] shall audit each year-end cost report in the following manner: an initial desk review shall be performed of the report and the *cabinet* [department] will determine the necessity for and scope of a field audit in relation to routine service cost. A field audit may be conducted for purposes of verifying prior year cost to be used in setting the new prospective rate; field audits may be conducted annually or at less frequent intervals. A field audit of ancillary cost will be conducted as needed.

(14) Year-end adjustments of the prospective rate and a retroactive cost settlement will be made when:

(a) Incorrect payments have been made due to computational errors (other than the omission of cost data) discovered in the cost basis or establishment of the prospective rate.

(b) Incorrect payments have been made due to misrepresentation on the part of the facility (whether intentional or unintentional).

(15) Reimbursement paid may not exceed the facility's customary charges to the general public for such services, except in the case of public facilities rendering inpatient services at a nominal charge (which may be reimbursed at the prospective rate established by the *cabinet* [department]).

(16) The *cabinet* [department] may develop and/or utilize methodology to assure an adequate level of care. Facilities determined by the *cabinet* [department] to be providing less than adequate care may have penalties imposed against them in the form of reduced payment rates.

(17) Each facility shall submit the required data for determination of the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. This time limit may be extended at the specific request of the facility (with the *cabinet's* [department's] concurrence). The *cabinet* [department] may also require, as necessary, that facilities whose cost report does not cover a full facility fiscal year shall submit an interim and/or budgeted cost report by April 30 to be used in setting the prospective rate for the facility for the next unform rate year.

Section 4. Prospective Rate Computation. The prospective rate for each facility will be set in accordance with the following:

(1) Determine allowable prior year cost for routine services.

(2) The allowable prior year cost, not including fixed or capital costs, will then be trended to the beginning of the uniform rate year and increased by a percentage so as to reasonably take into account economic conditions and trends. Such percentage increase shall be known as an inflation factor.

(3) The unadjusted basic per diem cost (defined as the unadjusted allowable cost per patient per day for routine services) will then be determined by comparison of costs with the facility's occupancy rate (i.e., the occupancy factor) as determined in accordance with procedures set by the *cabinet* [department]. The occupancy rate shall not be less than actual bed occupancy, except that it shall not exceed ninety-eight (98) percent of certified bed days (or ninety-eight (98) percent of actual bed usage days, if more, based

on prior year utilization rates). The minimum occupancy rate shall be ninety (90) percent of certified bed days for facilities with less than ninety (90) percent certified bed occupancy. The *cabinet* [department] may impose a lower occupancy rate for newly constructed or newly participatingfacilities, or for existing facilities suffering a patient census decline as a result of a competing facility newly constructed or opened serving the same area. The *cabinet* [department] may impose a lower occupancy rate during the first two (2) full facility fiscal years an existing skilled nursing facility participates in the program under this payment system.

(4) Cost center median related per diem upper limits will then be applied as appropriate to the unadjusted basic per diem cost. The resultant adjusted amounts (and unadjusted amounts, as applicable) will be combined (or recombined) to arrive at the basic per diem cost (defined as the adjusted allowable cost per patient per day for routine services).

(5) To the basic per diem cost shall be added a specified dollar amount for investment risk and an incentive for cost containment in lieu of a return on equity capital, except that no return for investment risk shall be made to nonprofit facilities, and publicly owned and operated facilities shall not receive the investment or incentive return.

(a) Cost incentive and investment schedule for general intermediate care facilities:

(Effective *7-1-82* [7-1-81])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$*25.99 & below* [24.99 & below]*	—	—
26.00 - 26.99 [25.00 - 25.99]	$1.38	$ .87
27.00 - 27.99 [26.00 - 26.99]	1.29	.75
28.00 - 28.99 [27.00 - 27.99]	1.18	.62
29.00 - 29.99 [28.00 - 28.99]	1.06	.47
30.00 - 30.99 [29.00 - 29.99]	.92	.31
31.00 - 31.99 [30.00 - 30.99]	.76	.13
32.00 - 34.19 [31.00 - 32.55]	.53	—

Maximum Payment *$34.19* [$32.55]

* For a basic per diem of *$25.99* [$24.99] and below, the investment amount will be equal to 7.5 percent, but not to exceed $1.38, and the incentive amount will be equal to 5.0 percent, but not to exceed $.87.

(b) Cost incentive and investment schedule for intermediate care facilities for the mentally retarded:

(Effective *7-1-82* [1-1-82])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$*31.99 & below* [29.99 & below]*	—	—
32.00 - 33.99 [30.00 - 31.99]	$1.38	$ .87
34.00 - 35.99 [32.00 - 33.99]	1.29	.75
36.00 - 37.99 [34.00 - 35.99]	1.18	.62
38.00 - 39.99 [36.00 - 37.99	1.06	.47
40.00 - 41.99 [38.00 - 39.99]	.92	.31
42.00 - 43.99 [40.00 - 41.99]	.76	.13
44.00 - 45.99 [42.00 - 43.99]	.53	—

* For a basic per diem of *$31.99* [$29.99] and below, the investment amount will be equal to 7.5 percent, but not to exceed $1.38 and the incentive amount will be equal to 5.0 percent, but not to exceed $.87.

(c) Cost incentive and investment schedule for skilled nursing facilities:

(Effective *7-1-82* [10-1-81])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$*34.00 & below* [31.99 & below]*	—	—
35.00 - 36.99 [32.00 - 33.99]	$1.38	$ .87
37.00 - 38.99 [34.00 - 35.99]	1.29	.75
39.00 - 40.99 [36.00 - 37.99]	1.18	.62
41.00 - 42.99 [38.00 - 39.99]	1.06	.47
43.00 - 44.99 [40.00 - 41.99]	.92	.31
45.00 - 46.99 [42.00 - 43.99]	.76	.13
47.00 - 49.99 [44.00 - 45.99]	.53	—

Maximum Payment *$52.69* [$48.75]**

* For a basic per diem of *$34.99* [$31.99] and below, the investment amount will be equal to 7.5 percent, but not to exceed $1.38, and the incentive amount will be equal to 5.0 percent, but not to exceed $.87.

** The maximum payment for hospital based skilled nursing facilities is set at *$83.09* [$75.65].

(6) The prospective rate is then compared, as appropriate, with the maximum payment. If in excess of the program maximum, the prospective rate shall be reduced to the appropriate maximum payment amount. The maximum payment amounts have been set to be at or about 110 percent of the median of adjusted basic per diem costs for the class, recognizing that hospital based skilled nursing facilities have special requirements that must be considered. The *cabinet* [department] has determined that the maximum payment rates shall be reviewed annually against the criteria of 110 percent of the median for the class and that adjustments to the payment maximums will be made effective July 1, 1982 and each July 1 thereafter. This policy shall allow, but does not require lowering of the maximum payments below the current levels if application of the criteria against available cost data should show that 110 percent of the median is a lower dollar amount than has been currently set.

Section 5. Rate Review and Appeal. Participating facilities may appeal *cabinet* [departmental] decisions as to application of the general policies and procedures in accordance with the following:

(1) First recourse shall be for the facility to request in writing to the Director, Division for Medical Assistance, a re-evaluation of the point at issue. This request must be received within twenty (20) days following notification of the prospective rate by the program. The director shall review the matter and notify the facility of any action to be taken by the *cabinet* [department] (including the retention of the original application of policy) within twenty (20) days of receipt of the request for review.

(2) Second recourse shall be for the facility to request in writing to the Commissioner, *Department* [Bureau] for Social Insurance, a review by a standing review panel to be established by the commissioner. This request must be postmarked within fifteen (15) days following notification

of the decision of the Director, Division for Medical Assistance. Such panel shall consist of three (3) members: one (1) member from the Division for Medical Assistance, one (1) member from the Kentucky Association of Health Care Facilities, and one (1) member from the *Division for Management and Development* [Center for Program Development], *Department* [Bureau] for Social Insurance. A date for the rate review panel to convene will be established within fifteen (15) days after receipt of the written request. The panel shall issue a binding decision on the issue within ten (10) days of the hearing of the issue. The attendance of the representative of the Kentucky Association of Health Care Facilities at review panel meetings shall be at the *cabinet's* [department's] expense.

Section 6. Definitions. For purposes of Sections 1 through 6, the following definitions shall prevail unless the specific context dictates otherwise.

(1) "Allowable cost" means that portion of the facility's cost which may be allowed by the *cabinet* [department] in establishing the reimbursement rate. Generally, cost is considered allowable if the item of supply or service is necessary for the provision of the appropriate level of patient care and the cost incurred by the facility is within cost limits established by the *cabinet* [department], i.e., the allowable cost is "reasonable."

(2) "Ancillary services" means those direct services for which a separate charge is customarily made, and which are retrospectively settled on the basis of reasonable allowable cost at the end of the facilities' fiscal year. Ancillary services are limited to the following:

(a) Legend and non-legend drugs, including urethral catheters, and irrigation supplies and solutions utilized with those catheters regardless of how those supplies and solutions are utilized. Coverage and allowable cost payment limitations are specified in the *cabinet's* [department's] regulation on payment for drugs.

(b) Physical, occupational and speech therapy.

(c) Laboratory procedures.

(d) X-ray.

(e) Oxygen and other related oxygen supplies.

(f) Psychological and psychiatric therapy (for ICF/MR only).

(3) "Hospital based skilled nursing facilities" means those skilled nursing facilities so classified by Title XVIII-A.

(4) The "basic per diem cost" is the computed rate arrived at when otherwise allowable costs are trended and adjusted in accordance with the inflation factor, the occupancy factor, and the median cost center per diem upper limits.

(5) "Inflation factor" means the comparison of allowable routine service costs, not including fixed or capital costs, with an inflation rate to arrive at projected current year cost increases, which when added to allowable costs, including fixed or capital costs, yields projected current year allowable costs.

(6) "Incentive factor" means the comparison of the basic per diem cost with the incentive return schedule to arrive at the actual dollar amount of cost containment incentive return to be added to the basic per diem cost.

(7) "Investment factor" means the comparison of the basic per diem cost with the investment return schedule to arrive at the actual dollar amount of investment return to be added to the basic per diem cost.

(8) "Maximum allowable cost" means the maximum amount which may be allowed to a facility as reasonable cost for provision of an item of supply or service while complying with limitations expressed in related federal or state regulations.

(9) "Maximum payment" means the maximum amount the *cabinet* [department] will reimburse, on a facility by facility basis, for routine services.

(10) "Occupancy factor" means the imposition of an assumed level of occupancy used in computing unadjusted basic per diem rates.

(11) "Prospective rate" means a payment rate of return for routine services based on allowable costs and other factors, and includes the understanding that except as specified such prospective rate shall not be retroactively adjusted, either in favor of the facility or the *cabinet* [department].

(12) "Routine services" means the regular room, dietary, medical social services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Routine services include but are not limited to the following:

(a) All general nursing services, including administration of oxygen and related medications, handfeeding, incontinency care and tray services.

(b) Items which are furnished routinely and relatively uniformly to all patients, such as patient gowns, water pitchers, basins, and bed pans. Personal items such as paper tissues, deodorants, and mouthwashes are allowable as routine services if generally furnished to all patients.

(c) Items stocked at nursing stations or on the floor in gross supply and distributed or utilized individually in small quantities, such as alcohol, applicators, cotton balls, bandaids and tongue depressors.

(d) Items which are utilized by individual patients but which are reusable and expected to be available in an institution providing a skilled nursing or intermediate care facility level of care, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment.

(e) Laundry services, including personal clothing to the extent it is the normal attire for everyday facility use, but excluding dry cleaning costs.

(f) Other items or services generally available or needed within a facility unless specifically identified as ancillary services. (Items excluded from reimbursement include private duty nursing services and ambulance services costs.)

[Section 7. Implementation of Uniform Rate Year. The first uniform rate year shall be July 1, 1981-June 30, 1982. For general ICFs, payments based on the uniform rate year shall begin effective July 1, 1981. For SNFs, payments based on the uniform rate year shall begin effective October 1, 1981. For ICF-MRs, payments based on the uniform rate year shall begin effective January 1, 1982.]

JOHN CUBINE, Commissioner
ADOPTED: June 30, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: July 16, 1982 at 1:30 p.m.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-545
July 15, 1982

EMERGENCY REGULATION
Cabinet for Human Resources
Department for Social Insurance

WHEREAS, the Secretary of the Cabinet for Human Resources is responsible, under KRS 194.050 and KRS 205.520, for promulgating, by regulation, the policies of the Cabinet with regard to the provision of Medical Assistance; and

WHEREAS, the Secretary has found that implementation of a new accounting and information reporting system by the Cabinet in cooperation with participating mental health centers has resulted in inadequate data upon which to base cost related payments to the centers; and

WHEREAS, the Secretary has found that to avoid interruption in payments to the mental health centers for services rendered it is necessary to implement a new regulation concerning payments for mental health center services; and

WHEREAS, the Secretary has promulgated a regulation on Payments for Mental Health Center Services which provides for payments based on usual and customary charges and with total payments not to exceed an annualized upper limit; and

WHEREAS, the Secretary has found that an emergency exists with respect to said regulation and that, therefore, said regulation should, pursuant to the provisions of KRS 13.088(1), become effective immediately upon filing with the Legislative Research Commission:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by KRS 13.088(1), do hereby acknowledge the finding of emergency by the Secretary of the Cabinet for Human Resources with respect to the filing of said regulation on Payments for Mental Health Center Services, and hereby direct that said regulation shall become effective upon being filed with the Legislative Research Commission, as provided in Chapter 13 of Kentucky Revised Statutes.

JOHN Y. BROWN, JR., Governor
FRANCES JONES MILLS, Secretary of State

CABINET FOR HUMAN RESOURCES
Department for Social Insurance

904 KAR 1:045E. Payments for mental health center services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
EFFECTIVE: July 16, 1982

NECESSITY AND FUNCTION: The *Cabinet* [Department] for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the *cabinet* [department], by regulation, to comply with any requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the *cabinet* [department] for mental health center services.

Section 1. Mental Health Centers. In accordance with 42 CFR 447.321, the *cabinet* [department] shall make payment to providers who are appropriately licensed and have met the conditions for participation (including the signing of such contractural arrangements as the *cabinet* [department] may require of this class of provider) set by the *cabinet* [department], on the following basis:

(1) *Payment shall be on a prospective basis based on usual and customary charges compared against the mental health center's annualized upper limit on payments. Payments may not exceed usual and customary charges or the annualized upper limits.* [Payment shall be made on the basis of reasonable allowable costs.]

(2) Payment amounts shall be determined by application of the "Community Mental health Center General Policies and Guidelines and Principles of Reimbursement," herein incorporated by reference, developed and issued by the *cabinet* [department], supplemented by the use of Title XVIII reimbursement principles.

(3) *Under this system, a center will receive in total Title XIX payments during the year the amount of its usual and customary charges for services rendered Title XIX eligible recipients, so long as such usual and customary charges do not exceed (on a cumulative basis) the annualized upper limit (total payments amount) which has been set for the center.* [Allowable costs shall not exceed customary charges which are reasonable.]

(4) *The annualized upper limit shall be the lesser of the prior fiscal year (July 1—June 30) audited allowable Title XIX costs or Title XIX payments to the center, with such amount increased by ten (10) percent to allow for inflation in the payment period. Allowable costs shall not exceed customary charges which are reasonable. Allowable costs shall not include the costs associated with political contributions, membership dues, travel and related costs for trips outside the state (for purposes of training, conventions, meetings, assemblies, conferences, seminars, or any related activities), and legal fees for unsuccessful lawsuits against the cabinet.* [The upper limit for allowable costs shall be set at the median visit cost, for the four (4) different service areas reimbursed under the program (inpatient, outpatient, partial hospitalization, and personal care), with the upper limit imposed on a prospective basis at the time final rates are determined.]

[(5) Allowable costs shall not include the costs associated with political contributions, membership dues, travel and related costs for trips outside the state, and legal fees for unsuccessful lawsuits.]

Section 2. Implementation of Payment System. (1) *Interim payments made shall be based on charges, and shall be considered final payments except under the following circumstances:* [The system shall utilize a method whereby community mental health centers are reimbursed on a prospective basis based on actual allowable cost.]

(a) The program may pay a percentage of charges to assure that the annualized upper limit (the lesser of fiscal year 1982 costs or program expenditures) with respect to the center is not exceeded. When a reduction factor is used, any payments owing to the center at the end of the payment period shall be settled (paid) to ensure that payments for the period equal usual and customary charges subject to the upper limit for the center. Reduction factors shall (to the extent possible) be applied in such a manner as to ensure an even flow of reimbursement to the center throughout the year, i.e., generally so as to ensure that the payments for any one (1) month do not exceed by a substantial amount the prorated annual amount.

(b) Any overpayments due the program at the end of the period as a result of exceeding the upper limit shall be recouped in a similar manner, i.e., by settlement or by withholding.

(c) Overpayments discovered as a result of audits may be settled in the usual manner.

[(2) The department may establish an interim rate at the end of each fiscal year until such time as a final prospective rate is determined with interim payments adjusted to the final prospective rate as necessary.]

(2) [(3)] The vendor shall complete an annual cost report on forms provided by the *cabinet* [department] not later than sixty (60) days from the end of the vendor's accounting year and the vendor shall maintain an acceptable accounting system to account for the cost of total services provided, charges for total services rendered, and charges for covered services rendered eligible recipients.

(3) [(4)] Each community mental health center provider shall make available to the *cabinet* [department] at the end of each fiscal reporting period, and at such intervals as the *cabinet* [department] may require, all patient and fiscal records of the provider, subject to reasonable prior notice by the *cabinet* [department].

(4) [(5)] Payments due the community mental health center shall be made at reasonable intervals but not less often than monthly.

Section 3. Billing and Data Collection. For purposes of Title XIX program payments, this regulation and the "Title XIX Payments Addendum" to the reimbursement manual shall supersede any conflicting sections (e.g., sections 100, 103, 205, and 207) of the reimbursement manual. However, no provision of this regulation should be construed as relieving any center of the necessity of collecting and submitting such data as the program may require, for implementation of the unit system for payments, during the payment period covered by this regulation.

Section *4.* [3.] Nonallowable Costs. The *cabinet* [department] shall not make reimbursement under the provisions of this regulation for services not covered by 904 KAR 1:044, community mental health center services, nor for that portion of a community mental health center's costs found unreasonable or nonallowable in accordance with the *cabinet's* [department's] "Community Mental Health Center General Policies and Guidelines and Principles of Reimbursement."

Section 5. Implementation Date. Payments under this system shall begin effective July 1, 1982.

JOHN CUBINE, Commissioner
ADOPTED: June 29, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: July 16, 1982 at 3:30 p.m.

Amended Regulations Now In Effect

LEGISLATIVE RESEARCH COMMISSION
As Amended

1 KAR 1:010. Form of administrative regulations; Administrative Register; codification.

RELATES TO: KRS Chapter 13
PURSUANT TO: KRS 13.090
EFFECTIVE: August 11, 1982
NECESSITY AND FUNCTION: KRS 13.090 requires the Legislative Research Commission to prescribe rules governing the manner and form in which regulations shall be prepared. This proposed regulation is to assure uniformity of all proposed regulations submitted for publication in the Administrative Register.

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

Section 2. Each proposed regulation forwarded to the Legislative Research Commission and each duplicate shall be typewritten or mechanically reproduced on a separate sheet of white paper size 8½ x 11 inches. The Cabinet and Department of the administrative body shall be listed at the top of each page. A space at least two (2) inches square in the upper right hand corner shall be left clear for the Legislative Research Commission's stamp showing the date and time of receipt of the proposed regulation. Each proposed regulation shall include in the upper left hand corner the statute number to which the regulation relates or which will be affected by the regulation, and a citation of the statutory authority pursuant to which it was adopted. Beneath these citations shall be a brief statement which sets forth the necessity for issuing the regulation and a summary of the functions intended to be implemented by the regulation. A proposed regulation affecting an existing regulation shall set forth the number of the regulation being amended, superseded or repealed as the case may be. No regulation may be amended by reference to a section only. The proposed amendment shall contain the full text

of the regulation being amended. Each proposed regulation shall bear the date of adoption. The original copy shall be signed by the proper authority of the adopting administrative body and by an attorney, officially representing the agency, certifying that he has examined and approved the proposed regulation as to form and legality. Each proposed regulation shall state the place and manner in which interested persons may submit their views or request a hearing pursuant to KRS 13.085(4).

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

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

Section 5. The administrative body shall immediately upon receipt of a request for a public hearing pursuant to KRS 13.085, notify in writing the Administrative Regulations Compiler of the date, time and place of the scheduled hearing. Following completion of the hearing, the administrative body shall promptly forward to the Legislative Research Commission a copy of the regulation accompanied by a statement indicating any changes in the original wording, a summary of any comments submitted at the hearing, and a statement of affirmative consideration as required by KRS 13.085(4). Upon receipt of these documents, the proposed regulation will be submitted to the *Legislative Research Commission* [Administrative Regulations Review Subcommittee]. *The Legislative Research Commission shall act on a proposed regulation within forty (40) days of publication unless a public hearing is scheduled.* [Proposed regulations for which no hearing is requested will be submitted to the [Administrative Regulations Review Subcommittee by the] Legislative Research Commission *within forty (40)* [thirty (30)] days following publication.]

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

VIC HELLARD, JR., Director
ADOPTED: June 2, 1982
RECEIVED BY LRC: June 3, 1982 at 10 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Banking and Securities
As Amended

808 KAR 3:050. Conduct.

RELATES TO: KRS 290.020, 290.030, 290.040, 290.050
PURSUANT TO: KRS 290.070
EFFECTIVE: August 11, 1982
NECESSITY AND FUNCTION; KRS 290.070 requires the Department of Banking and Securities to prescribe rules and regulations for the proper conduct and regulation of credit unions. This regulation is to assure the proper conduct of credit unions.

Section 1. Definitions. As used in this chapter:
(1) The term "department" means the Department of Banking and Securities of the Commonwealth of Kentucky.
(2) The term "commissioner" means the Commissioner of the Department of Banking and Securities.
(3) The term "Act" means the Kentucky Credit Union Act (Chapter 290 of the Kentucky Revised Statutes, as amended).
(4) The term "Federal Credit Union" means a credit union organized under the provisions of the Federal Credit Union Act (73 Stat. 628, 12 U.S.C. 1751-1772).

Section 2. Organization and Operation of Credit Unions. (1) Persons desiring to form a credit union shall submit, in triplicate, on forms prescribed by the department, proposed Articles of Incorporation. Articles of Incorporation shall be subscribed to before an officer competent to administer oaths by not less than eight (8) natural persons who have a common bond of occupation, or association, or are within a well defined neighborhood, community, or rural district, and shall specifically state:
(a) The proposed name of the association.
(b) The location of the proposed credit union and the territory in which it will operate.
(c) The names and addresses of the subscribers to the Articles of Incorporation and the number of shares subscribed by each.
(d) The par value of shares, which shall be five dollars ($5) each.
(e) [(d)] The proposed field of membership, specified in detail.
(f) [(e)] The term of existence of the corporation, which may be perpetual.
(g) [(f)] The name and address of the person named as agent for the service of process.
(h) [(g)] The fact that these Articles of Incoporation are filed to enable such persons to avail themselves of the advantages of the Kentucky Credit Union Act, as amended.
(i) [(h)] Copies of the form of Articles of Incorporation may be obtained from the department.
(2) Five (5) executed copies of the proposed Articles of Incorporation shall be submitted to the commissioner together with a check or money order payable to the Secretary of State in the amount of fifteen dollars ($15) in payment of the Articles of Incorporation filing fee. The commissioner will investigate and make recommendations as to whether the proposed articles conform to the Act; as to the general character and fitness of the subscribers thereto and as to the economic advisability of establishing the proposed credit union. The commissioner shall approve or disapprove the proposed organization, and if ap-

proved the Certificate of Incorporation shall be the Charter of the state credit union. If the organization is disapproved, the incorporators shall be notified of the basis for such action and the Articles of Incorporation fee shall be returned to them.

Section 3. Standard Form of Bylaws. (1) Proposed bylaws, in form and content approved by the commissioner, shall be submitted by the incorporators to the commissioner for his approval at the time of submitting the Articles of Incorporation to the department.

(2) Specimen copies of the standard form of bylaws may be obtained from the Department of Banking and Securities, Frankfort, Kentucky 40601.

Section 4. Amendments to the Bylaws of a Credit Union May Be Adopted. Amendments to the Articles of Incorporation may be adopted as provided in the Kentucky Business Corporation Act. No amendment of the bylaws or of the Articles of Incorporation shall become effective, however, until approved, in writing, by the commissioner. Five (5) executed copies of the proposed amendments to the Articles of Incorporation shall be submitted to the commissioner together with a check or money order payable to the Secretary of State in payment of the amendment to the Articles of Incorporation fee of fifteen dollars ($15).

Section 5. Loans by Credit Unions to Other Credit Unions. Based on a resolution of its board of directors, a credit union may lend its funds to other state-chartered credit unions or to federal credit unions in the total amount not exceeding twenty-five (25) percent of its paid-in and unimpaired capital and surplus. The terms of such loans shall not exceed one (1) year and the rate of interest shall not exceed that established in the Act. Prior to making the loan, the credit union shall require the borrowing credit union to furnish the following:

(1) A current financial report;

(2) A copy of the latest supervisory committee audit report;

(3) A certified copy of the resolution of the board of directors authorizing such borrowing; and

(4) A certificate from the secretary of the borrowing credit union that the persons negotiating the note are officials of the credit union and are authorized to act in its behalf, and that such borrowing does not exceed the maximum borrowing power of the borrowing credit union.

Section 6. Retirement Benefits for Employees of Credit Unions. Credit unions may make provision for reasonable retirement benefits for employees and for officers who are compensated in conformance with the Act and bylaws, but no credit union shall undertake to directly administer its own retirement plan as trustee. A copy of said retirement plan shall be submitted for the prior approval of the Commissioner.

Section 7. Refund of Interest. When an interest refund is authorized by the board of directors pursuant to the Act, it shall be recorded in the books of the credit union as a reduction of interest income from loans for that year or period.

Section 8. Advertising. No credit union shall represent by any means nor permit any representation by any means (including any means of advertisement) that it is under the supervision or regulation of the Department of Banking and Securities.

Section 9. Fee for Examination. (1) Each credit union shall pay the department a fee for each examination in accordance with the schedule of fees fixed by this section.

(2) In establishing such fees, the commissioner shall consider the anticipated aggregate cost of the examination program of the department including supervision, salaries, travel, and all other items which affect the cost of the examination program along with the ability of credit unions to pay such fees.

(3) The schedule of examination fees shall be as follows:

(a) Newly organized credit unions. No fee will be charged a newly organized credit union for the first examination made within a year of the date of its organization being approved.

(b) Credit unions with assets of less than $25,000; a fee of $100.

(c) Credit unions with assets of $25,000 to $500,000; a fee of $100 plus $1.20 per $1,000 of assets over $25,000.

(d) Credit unions with assets of $500,000 to $1,000,000; a fee of $670 plus $.60 per $1,000 of assets over $500,000.

(e) Credit unions with assets of over $1,000,000; a fee of $970 plus $.30 per $1,000 of assets over $1,000,000.

Section 10. 808 KAR 3:010, Conduct and regulation, is hereby repealed.

TRACY FARMER, Secretary
ADOPTED: June 9, 1982
RECEIVED BY LRC: June 14, 1982 at 10 a.m.

CABINET FOR HUMAN RESOURCES
Department for Health Services
As Amended

902 KAR 14:010. EMS personnel funding assistance.

RELATES TO: KRS 211.950 to 211.958
PURSUANT TO: KRS 13.082, 211.952
EFFECTIVE: August 11, 1982
NECESSITY AND FUNCTION: KRS 211.952 authorizes the Cabinet for Human Resources to maintain a program for the planning, development, and improvement of emergency medical services throughout the state utilizing, among other factors, the system components described in Public Law 93-154, the Emergency Medical Services Act of 1973. The function of this regulation is to establish standards and criteria governing the allocation of funding assistance for payment of salaries of trained emergency medical services personnel to maintain essential services in accordance with KRS 211.956 and to provide for ambulance and equipment funding for volunteer services pursuant to KRS 211.958.

Section 1. Application for Personnel Funding Assistance. Any city or county may apply to the Cabinet for Human Resources with the assistance of the applicable emergency medical services system for funding assistance to maintain an adequate number of trained personnel to staff its ambulance service in accordance with KRS 211.956. The application shall include the total ambulance service operating budget, a summary of the total city or county general fund budget, and itemization of sources

and amounts of city or county revenues utilized in the provision of ambulance services. Application forms may be obtained from the Cabinet for Human Resources.

Section 2. Funding Criteria and Allocation. To qualify for funding assistance pursuant to KRS 211.956, the applicant city or county must budget a minimum of five percent (5%) of its available general fund dollars as budgeted and reported to the Department for Local Government toward the cost of ambulance service operations, except that revenues raised by an ambulance service district tax may be applied to reduce the amount of general funds necessary on a one-for-one direct reduction basis.

(1) The maximum amount of matching funds for which the city or county may qualify shall be determined as follows:

(a) The first five percent (5%) of city or county general funds budgeted and any other funds earmarked for ambulance service including the balance of ambulance service district tax revenues not applied to meet the five percent (5%) general fund requirement, shall be deducted from the total ambulance service operating budget.

(b) The percentage of actual personnel costs to the total ambulance service budget shall be determined, and such percentage applied to the total ambulance service operating cost remaining after deductions in paragraph (a) of this subsection.

(c) The city or county shall be eligible for no more than fifty percent (50%) of the amount derived from paragraphs (a) and (b) of this subsection up to a maximum of $40,000 per county, including grants to cities within counties.

(2) An eligible applicant shall receive a matching portion of available state funds prorated on the basis of total population served by all eligible applicants. Total per capita grants shall be not less than eighty percent (80%) of the amount of General Fund appropriation budgeted for salary payment assistance.

(3) Up to ten percent (10%) of the amount budgeted may be allocated by the cabinet to eligible applicants for special needs based on utilization rates, the number of emergency transports, or upon determination of a financial emergency of an *eligible* applicant that would drastically alter or eliminate essential services without special assistance from the state.

(4) Allocations from the personnel fund may be made to cities or counties for purchase of vehicles and equipment where at least fifty percent (50%) of ambulance personnel are volunteers (non-compensated) or in which at least fifty percent (50%) of the ambulance services are operated by volunteers on a twenty-four (24) hour basis. Funding for equipment *shall be consistent with the provisions of* [pursuant to] KRS 211.958 [shall not exceed ten percent (10%) of the total amount available in the personnel fund].

Section 3. Matching Requirement. The matching requirement of fifty percent (50%) for personnel salaries shall be budgeted from city or county general funds or from ambulance district tax revenues only.

DAVID T. ALLEN, Commissioner
ADOPTED: June 15, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 15, 1982 at 4 p.m.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Certificate of Need and Licensure Board
As Amended

902 KAR 20:127. Certificate of need hearings.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)

PURSUANT TO: KRS 13.082, 216B.040, 216B.085, 216B.090[, 216B.110]

EFFECTIVE: August 11, 1982

NECESSITY AND FUNCTION: KRS 216B.040 authorizes the Certificate of Need and Licensure Board to promulgate administrative regulations. KRS 216B.085 authorizes the Certificate of Need and Licensure Board to conduct public hearings on certificate of need applications *and* [,] certificate of need revocations [, or requests for exemptions]. KRS 216B.090 authorizes *public hearings for* reconsideration *of decisions of the board pertaining to certificates of need or revocation of certificates of need* [hearings. KRS 216B.110 authorizes administrative review]. This regulation sets forth the process for public hearings *on certificate of need applications in the formal review process, certificate of need revocations, and reconsideration of decisions of the board pertaining to certificates of need or revocations of certificates of need* [, reconsideration hearings and administrative review].

Section 1. Definitions. (1) "Affected persons" means the applicant; [the health systems agency for the health service area in which the proposed project is to be located; health systems agencies serving contiguous health service areas or located within the same standard metropolitan statistical area;] any person residing within the geographic area served or to be served by the applicant; any person who regularly uses health [care] facilities within that geographic area; health [care] facilities [and health maintenance organizations (HMOs)] located in the health service area in which the project is proposed to be located which provides services similar to the services of the facility under review; health [care] facilities [and HMOs] which, prior to receipt by the agency or the proposal being reviewed, have formally indicated an intention to provide similar services in the future; *the department and* third party payors who reimburse health [care] facilities for services in the health service area in which the project is proposed to be located [; and any agency which establishes rates for health care facilities or HMOs located in the health service area in which the project is proposed to be located].

(2) "Board" means the Kentucky health facilities and health services certificate of need and licensure board.

(3) "Department" means the Department for Human Resources.

(4) "Executive director" means the executive director of the Kentucky health facilities and health services certificate of need and licensure board.

(5) "Party to the proceedings" means the applicant for a certificate of need and any affected person who appears at a hearing on the matter under consideration and enters an appearance of record.

(6) "Public information channels" means the office of communications and council affairs in the Department for Human Resources.

(7) [(2)] "Review commences" means the date of public notice *of the appropriate batching cycle for the particular application after it is deemed complete* [as established by regulation.]

Section 2. Request for *Public* Hearing. (1) The following persons have the right to request a public hearing:

(a) Any affected person *(in the case of an application submitted for formal review)*;

(b) A certificate of need holder who has been notified of the board's intent to revoke his certificate of need; *and*

(c) Any party to the proceedings who shows "good cause" pursuant to KRS 216B.090(1) and Section 10(3) of this regulation may request a hearing to reconsider a decision of the board pertaining to a certificate of need or the revocation of a certificate of need.

[(c) Any health maintenance organization which has been denied an exemption under KRS 216B.070, and the regulations promulgated thereunder;]

[(d) Any person who has been notified by the board that his acquisition of major medical equipment or health facility requires a certificate of need.]

(2) The request for a hearing shall be made in writing to the executive director [of the board] and must be received by the executive director*:*

(a) Within thirty (30) days of the date the review commences *in the case of hearings requested under subsection (1)(a) of this section;* [or]

(b) Within thirty (30) days of the date the certified letter was mailed notifying the person of a board decision under subsection (1)(b) *of this section; and*

(c) Within fifteen (15) days of the date the notice of the board's decision is mailed in the case of a hearing requested under subsection (1)(c)[, (c) or (d)] of this section.

(3) Any affected person who has failed, after appropriate notice of the matter has been given, to request a public hearing within the time periods set out in subsection (1) of this section is deemed to have waived his right to require a hearing to be held.

Section 3. Notice of Hearings. Notice of the date, time and location of the hearing shall be mailed to all affected persons except third party payors and members of the public [by mail] at least seven (7) days before the date of the hearing. Notice to third party payors and members of the public shall be provided through *public information channels* [newspapers of general circulation].

Section 4. Hearing Officer. (1) Hearings shall be before a quorum of the board, or at the request of the chairman, before a hearing officer designated by the secretary of the Department for Human Resources.

(2) In accordance with KRS 216B.040*(3)* [(2)] (c) and 216B.085(1), the board and the hearing officer may administer oaths and issue subpoenas.

Section 5. Disqualifications. No member of the board or hearing officer shall participate in any hearing concerning an applicant or certificate of need holder with which he has had, within the past twelve (12) months preceding the hearing, any substantial ownership, employment, staff, fiduciary, contractual, creditor or consultative relationship.

Section 6. Hearing Procedure. *(1) Public hearings shall be completed within the following time periods:*

(a) Hearings on applications in the formal review process shall be completed within the ninety (90) day formal review cycle unless the applicant agrees in writing to a deferral of the board's decision;

(b) Hearings on the board's initial decision to revoke a certificate of need shall be completed within the thirty (30) days after the request for the hearing is filed unless the certificate of need holder agrees in writing to a later date not to exceed thirty (30) days. If a hearing is held the board shall make a final decision at its next regularly scheduled meeting after the hearing; and

(c) Reconsideration hearings shall be held within thirty (30) days after the decision to grant the request for reconsideration. The board shall make its decision on reconsideration at its next regularly scheduled meeting after the public hearing.

(2) The hearing officer may conduct a prehearing conference to resolve issues not in dispute or not requiring an evidentiary record and may issue prehearing orders which shall determine the form and the manner in which the evidentiary hearing is conducted.

(3) [(1)] Any *party to the proceedings* [person] shall have the right to be represented by counsel, to present arguments and evidence relevant to the subject of the hearing and may conduct reasonable cross examination of persons who present evidence or testimony.

(4) [(2)] All testimony shall be recorded but need not be transcribed unless the board's decision is appealed.

[(3) Any affected person who appears on record at the hearing or, in the absence of a hearing, any affected person who submits written information to the board shall be deemed to be a party to the proceedings.]

(5) [(4)] The board or hearing officer may place reasonable time limits upon the presentation of testimony, evidence and argument, and may terminate or exclude irrelevant or redundant evidence, testimony or argument.

Section 7. Findings and Recommendations. (1) After the conclusion of the hearing, the hearing officer or the board shall prepare written findings of fact, conclusions of law and recommendations.

(2) The executive director shall [forthwith] transmit a copy of the findings, conclusions and recommendations to each member of the board, the person requesting the hearing and all persons deemed parties to the proceeding.

(3) *Each* [The person requesting the hearing and each person who has been deemed to be a] party to the proceedings may file exceptions with the executive director prior to the *next regularly scheduled* board meeting.

Section 8. Decisions of the Board [and Record]. (1) Any decision of the board to approve, disapprove or revoke a certificate of need [or to approve or disapprove a request for an exemption, as defined in Section 2(1)(c) or (d),] shall be based solely on the record established with regard to the matter.

(2) *In addition to the requirements of KRS 216B.015(21),* the record shall *also* include[:]

[(a) The application filed and any information provided by the applicant at the request of a health systems agency or the board;]

[(b) Any information provided by a holder in response to a notice of intent to revoke a certificate of need;]

[(c) Any staff reports, memoranda or documents prepared by or for a health systems agency or the board regarding the matter under review which were introduced at any hearing;]

[(d) The recommendations made by a health systems agency to the board;]

[(e) Any information provided by affected persons which was introduced at a hearing;]

[(f) Any other evidence admitted in a hearing held with respect to the matter under review;]

[(g) The findings of fact, conclusions of law and recommendation of the board or the hearing officer; and]

[(h)] Any exceptions *timely* filed.

(3) [(4)] All decisions granting, denying, *or* modifying [or revoking] a certificate of need shall be made by the board in writing and shall be recorded in the minutes of the board. The board shall notify the parties to the proceedings of the decision, by certified mail. The decision shall *be* [become] final *for purposes of judicial appeal* [and conclusive thirty (30) days after notice thereof is mailed] unless *a request for reconsideration is filed* [an administrative appeal is taken].

Section 9. Ex parte Contacts. [(1)] *No person shall have ex parte contact with any member of the board regarding a certificate of need application from the commencement of the review to the final decision or regarding a certificate of need from the issuance of an initial decision to revoke to the final decision. In the event an ex parte contact occurs, it shall promptly made a part of the record and identified as such. In no event shall the information conveyed in an ex parte contact be relied upon or considered in reaching a decision.* [After a hearing is convened before the board or hearing officer and before a decision is made on a certificate of need application, a proposed revocation of a certificate of need, or a request for an exemption from filing a certificate of need application, there shall be no ex parte contacts with regard to the pending action between any board member or other person associated with the board who exercises any discretion respecting the application, proposed revocation or exemption; and:]

[(a) The certificate of need applicant, or the holder of the certificate proposed to be revoked, or the person requesting an exemption; or]

[(b) Any person acting on behalf of such certificate of need applicant, certificate of need holder, or person requesting an exemption from filing a certificate of need application; or]

[(c) Any person opposed to the issuance of the certificate of need or in favor of the revocation of the certificate.]

[(2) In the event that an ex parte contact occurs, the contact shall be reported to the board at the beginning of the first board meeting after the contact occurred. Board members shall orally report the name of the person making the contact and on whose behalf the contact was made or submit, for inclusion in the record, documents received.]

Section 10. Reconsideration Hearings. (1) Any *party to the proceeding* [person] may, for good cause shown, request in writing a hearing for purposes of reconsideration of a board decision *in respect to certificate of need applications or revocations of certificates of need.*

(2) The request shall be filed with the executive director within fifteen (15) days of the date the notice of the board's decision is mailed.

(3) A reconsideration hearing for good cause shall be granted only if the request for reconsideration:

(a) Presents significant, relevant information not previously available for consideration by the board; or

(b) Demonstrates that there have been significant changes in the factors or circumstances relied upon by the board in reaching its decision; or

(c) Demonstrates that the board has materially failed to follow its adopted procedures in reaching its decision.

(4) The board shall *consider* [act on] requests for reconsideration *at its next regularly scheduled meeting* [in a summary manner].

(5) If a public hearing for reconsideration is granted by the board, it shall be *conducted in accordance with the requirements of this regulation for public hearings* [held within thirty (30) days after the decision to grant the request for reconsideration].

(6) The decision of the board shall be final for purposes of judicial appeal.

[(6) If the request for a reconsideration hearing is granted, such hearing shall be before a quorum of the board, or at the request of the chairman, before a hearing officer designated by the Secretary of the Department for Human Resources and shall be conducted in accordance with the provisions of this regulation.]

[(7) Notification of the date, time and place of the reconsideration hearing shall be sent to the person requesting the hearing, the person proposing the project and the health systems agency in which the project is proposed and to others upon request.]

[(8) Written findings stating the basis of the decision shall be made within forty-five (45) days after the conclusion of the hearing and shall be recorded in the minutes of the board. The decision shall become final and conclusive thirty (30) days after the date the notice of finding is mailed unless an administrative appeal is taken.]

[Section 11. Administrative Review. (1) Pursuant to KRS 216B.110, within thirty (30) days of the date the notice of the final decision of the board is mailed, any person adversely affected by a final decision of the board may file a request for an administrative review. If a reconsideration hearing was requested, the running of the appeal time for an administrative review shall be stayed until the date on which notice is mailed of the board's decision to deny the reconsideration hearing, or if the request is granted, until the date on which notice is mailed of the board's final decision. The request for an administrative review shall be filed in writing with the executive director of the board, and shall state the specific grounds for the appeal.]

[(2) The executive director of the board shall forward a certified record of the board's proceedings to the Office of the Attorney General within ten (10) days of the receipt of the notice of appeal. The cost of such record shall be taxed as costs upon appeal. The charge per page shall be the same as the per page charge under the Commonwealth's current price contract for court reporters. In lieu of filing of such record an abstract thereof may be filed if all parties to the appeal agree.]

[(3) Appeals shall be on the certified record or abstract thereof. No new or additional evidence may be introduced. The record shall contain:]

[(a) The record as specified in Section 8;]

[(b) The transcript or tape of the public hearing and reconsideration hearing, if any;]

[(c) All correspondence relevant to the board's action;]

[(d) The record of all ex parte contacts which occurred in violation of Section 9, which record shall be separately identified;]

[(e) The final order of the board.]

[(4) The appeals officer appointed by the Office of the Attorney General shall review the case upon the certified record or abstract thereof, and shall dispose of the case in a summary manner within forty-five (45) days after the conclusion of the review and shall reverse or remand the case to the board for reconsideration if, he finds that the board acted outside its jurisdiction, or is arbitrary or capricious, or that the findings of fact in issue are not supported by substantial evidence and are clearly erroneous.]

[(5) If the case is remanded to the board by the appeals

officer, the action of the board upon reconsideration shall be a final order for the purposes of judicial appeal. If the decision of the board is affirmed or reversed on review, the appeals officer's decision shall be the final decision for judicial review pursuant to KRS 216B.115 and 216B.120.]

FRANK W. BURKE, SR., Chairman
ADOPTED: May 19, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 11, 1982 at 4:30 p.m.

Amended After Hearing

(Republished prior to Subcommittee consideration as required by KRS 13.085(4).)

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution
Amended After Hearing

401 KAR 50:015. Documents incorporated by reference.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the [Department for] Natural Resources and Environmental Protection *Cabinet* to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the incorporation by reference of documents referred to within these regulations.

Section 1. Code of Federal Regulations. (1) The following documents from the "Code of Federal Regulations" which are in effect at the time of the effective date of this regulation, are incorporated herein by reference:

(a) 40 CFR 50:

1. Appendix A: Reference Method for the Determination of Sulfur Dioxide in the Atmosphere (Pararosaniline Method).
2. Appendix B: Reference Method for the Determination of Suspended Particulates in the Atmosphere (High Volume Method).
3. Appendix C: Measurement Principle and Calibration Procedure for the Continuous Measurement of Carbon Monoxide in the Atmosphere (Non-Dispersive Infrared Spectrometry).
4. Appendix D: Measurement Principle and Calibration Procedure for the Measurement of Photochemical Oxidants Corrected for Interferences due to Nitrogen Oxides and Sulfur Dioxide.
5. Appendix E: Reference Method for the Determination of Hydrocarbons Corrected for Methane.
6. Appendix F: Measurement Principle and Calibration Procedure for the Measurement of Nitrogen Dioxide in the Atmosphere (Gas Phase Chemiluminescence).
7. Appendix G: Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air.
8. Appendix H: Interpretation of the National Ambient Air Quality Standards for Ozone.

(b) 40 CFR 58: Appendix B: Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring.

(c) [(b)] 40 CFR 60:

1. Appendix A: Reference Methods:

a. Method 1—Sample and Velocity Traverses for Stationary Sources.
b. Method 2—Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube).
c. Method 3—Gas Analysis for Carbon Dioxide, Excess Air, and Dry Molecular Weight.
d. Method 4—Determination of Moisture in Stack Gases.
e. Method 5—Determination of Particulate Emissions from Stationary Sources.
f. Method 6—Determination of Sulfur Dioxide Emissions from Stationary Sources.
g. Method 7— Determination of Nitrogen Oxide Emissions from Stationary Sources.
h. Method 8—Determination of Sulfuric Acid Mist and Sulfur Dioxide Emissions from Stationary Sources.
i. Method 9—Visual Determination of the Opacity of Emissions from Stationary Sources.
j. Method 10—Determination of Carbon Monoxide Emissions from Stationary Sources.
k. Method 11—Determination of Hydrogen Sulfide Content of Fuel Gas Streams in Petroleum Refineries.
l. Method 12—Determination of Inorganic Lead Emissions from Stationary Sources.
m. [l.] Method 13A—Determination of Total Fluoride Emissions from Stationary sources—SPADNS Zirconium Lake Method.
n. [m.] Method 13B—Determination of Total Fluoride Emissions from Stationary Sources—Specific Ion Electrode Method.
o. [n.] Method 14—Determination of Fluoride Emissions from Potroom Roof Monitors of Primary Aluminum Plants.
p. [o.] Method 15—Determination of Hydrogen Sulfide, Carbonyl Sulfide, and Carbon Disulfide Emissions from Stationary Sources.
q. [p.] Method 16—Semicontinuous Determination of Sulfur Emissions from Stationary Sources.

r. [q.] Method 17—Determination of Particulate Emissions from Stationary Sources (Instack Filtration Method).

s. [r.] Method 19—Determination of Sulfur Dioxide Removal Efficiency and Particulate, Sulfur Dioxide and Nitrogen Oxides Emission Rates from Electric Utility Steam Generators.

t. [s.] Method 20—Determination of Nitrogen Oxides, Sulfur Dioxide, and Oxygen Emissions from Stationary Gas Turbines.

u. Method 24—Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings.

v. Method 25—Determination of Total Gaseous Nonmethane Organic Emissions as Carbon.

2. Appendix B: Performance Specifications:

a. Performance Specification 1—Performance specifications and specification test procedures for transmissometer systems for continuous measurement of the opacity of stack emissions.

b. Performance Specification 2—Performance specifications and specification test procedures for monitors of sulfur dioxide and nitric oxides from stationary sources.

c. Performance Specification 3—Performance specifications and specification test procedures for monitors of carbon dioxide and oxygen from stationary sources.

(d) [(c)] 40 CFR 61: Appendix B: Test Methods:

1. Method 101—Reference method for determination of particulate and gaseous mercury emissions from stationary sources (air streams).

2. Method 102—Reference method for determination of particulate and gaseous mercury emissions from stationary sources (hydrogen streams).

3. Method 103—Beryllium screening method.

4. Method 104—Reference method for determination of beryllium emissions from stationary sources.

5. Method 105—Method for determination of mercury in wastewater treatment plant sewage sludges.

6. Method 106—Determination of vinyl chloride from stationary sources.

7. Method 107—Determination of vinyl chloride content of inprocess wastewater samples, and vinyl chloride content of polyvinyl chloride resin, slurry, wet cake, and latex samples.

(2) Copies may be obtained from: Office of the Federal Register, National Archives and Records Service, 8th and Pennsylvania Avenue, NW, Washington, D.C. 20408; Phone (202) 523-5215.

Section 2. Association of Official Analytical Chemists. The following document from the Association of Official Analytical Chemists is incorporated herein by reference:

(1) Method 9—Spectrophotometric Molybdovanadophosphate from "Official Method of Analysis" of the Association of Official Analytical Chemists, 11th Edition.

(2) Copies may be obtained from: Association of Official Analytical Chemists, Box 540, Benjamin Franklin Station, Washington, D.C. 20014; Phone (202) 245-1191.

Section 3. American Society for Testing and Materials. The following documents from the appropriate annual "Book of ASTM Standards" from the American Society for Testing and Materials are incorporated herein by reference:

(1) ASTM Standards:

(a) A 99-66(71) Standard Specification for Ferromanganese.

(b) A 100-69(74) Standard Specification for Ferrosilicon.

(c) A 101-73 Standard Specification for Ferrochromium.

(d) A 482-66(71) Standard Specification for Ferrochrome-Silicon.

(e) A 483-64(74) Standard Specification for Silicomanganese.

(f) A 495-64(70) Standard Specification for Calcium-Silicon and Calcium-Manganese-Silicon.

(g) D 240-76 Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter.

(h) D 322-67(77) Standard Test Method for Gasoline Diluent in Used Gasoline Engine Oils by Distillation.

(i) D 388-66(72) Standard Specification for Classification of Coals by Rank.

(j) D 1072-56(75) Standard Test Method for Total Sulfur in Fuel Gases.

(k) D 1137-53(75) Standard Method for Analysis of Natural Gases and Related Types of Gaseous Mixtures by the Mass Spectrometer.

(l) D 1475-60(74) Standard Test Method for Density of Paint, Varnish, Lacquer, and Related Products.

(m) D 1644-75 Standard Test Methods for Nonvolatile Content of Varnishes.

(n) D 1826-64(75) Standard Test Method for Calorific Value of Gases in Natural Gas Range by Continuous Recording Calorimeter.

[(o) D 1888-78 Standard Test Methods for Particulate and Dissolved Matter, Solids, or Residue in Water.]

(o) D 1945-64(73) Standard Method for Analysis of Natural Gas by Gas Chromatography.

(p) D 1946-67(72) Standard Method for Analysis of Reformed Gas by Gas Chromatography.

(q) D 2015-66(72) Standard Test Method for Gross Calorific Value of Solid Fuel by the Adiabatic Bomb Calorimeter.

(r) D 2369-73 Standard Test Method for Volatile Content of Paints.

(s) D 2880-78 Standard Specification for Gas Turbine Fuel Oils.

(t) D 3176-74 Standard Method for Ultimate Analysis of Coal and Coke.

(u) D 3178-73 Standard Test Methods for Carbon and Hydrogen in the Analysis Sample of Coal and Coke.

(v) E 123-78 Standard Specification for Apparatus for Determination of Water by Distillation.

(2) Copies may be obtained from: American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103; Phone (215) 299-5400.

Section 4. Technical Association of the Pulp and Paper Industry. The following document from the Technical Association of the Pulp and Paper Industry (TAPPI) is incorporated herein by reference:

(1) T624 os-68—Analysis of Soda and Sulfate—White and Green Liquors. This reference is also numbered ANSI P3.6-1970 (American National Standards Institute).

(2) Copies may be obtained from: TAPPI, 1 Dunwood Park, Atlanta, Georgia 30341.

Section 5. EPA. The following documents from the U. S. EPA are incorporated herein by reference:

(1) (a) Guideline on Air Quality Models, EPA-450/2-78-027, OAQPS No. 1.2-080, April, 1978.

(b) Workbook for Comparison of Air Quality Models, EPA-450/2-78-028a, OAQPS No. 1.2-097, May, 1978.

(c) Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment, Appendix B, EPA-450/2-78-036, OAQPS No. 1.2-111, June, 1978.

(d) Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Control Systems, EPA-450/2-78-051, OAQPS No. 1.2-119, December, 1978.

(e) Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals, EPA-450/2-77-026, OAQPS No. 1.2-082, October, 1977.

(2) Copies may be obtained from: U. S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711.

Section 6. American Association of State Highway and Transportation Officials. The following document from the American Association of State Highway and Transportation Officials (AASHTO) is incorporated herein by reference:

(1) AASHTO T 59-78 Standard Method of Test for Testing Emulsified Asphalt.

(2) Copies may be obtained from: American Association of State Highway and Transportation Officials, 444 N. Capitol Avenue, Washington, D.C. 20001.

Section 7. Federal Test Method Standard. The following document from the Federal Test Standard is incorporated herein by reference:

(1) Federal Test Method Standard No. 141a, Method 4082.1, "Water in Paints and Varnishes (Karl Fischer Titration Method)."

(2) Single copies may be obtained from:

(a) General Services Administration Regional Offices; or

(b) Superintendent of Documents, U. S. Government Printing Office, Washington, D.C. 20402.

Section 8. Kentucky Division of Air Pollution. The following documents from the Kentucky Division of Air Pollution are incorporated herein by reference:

(1) (a) Kentucky Method 50: Kentucky Division of Air Pollution Control Reference Method 50, "Determination of Total Particulate Emissions from Stationary Sources."

(b) Kentucky Method 90: Kentucky Division of Air Pollution Control Reference Method 90, "Determination of Total Gaseous Organic Emissions from Stationary Sources."

(c) Kentucky Method 91: Kentucky Division of Air Pollution Control Reference Method 91, "Alternate Test Method for the Determination of Total Gaseous Organic Emissions from Stationary Sources."

(d) Kentucky Method 95: Kentucky Division of Air Pollution Control Reference Method 95, "Determination of Gasoline Vapor Emissions from Bulk Terminals."

(e) Kentucky Method 130: Kentucky Division of Air Pollution Control Reference Method 130, "Determination of Gaseous Fluoride Emissions from Stationary Sources."

(2) Copies may be obtained from: Division of Air Pollution Control, Technical Services, Department for Natural Resources and Environmental Protection, 5th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

Section 9. American National Standards Institute. The following document from the American National Standards Institute is incorporated herein by reference:

(1) Voluntary Product Standard PS 59-73—Prefinished Hardboard Paneling. This reference is also numbered ANSI A135.5-1973 (American National Standards Institute).

(2) Copies may be obtained from: American National Standards Institute, 1430 Broadway, New York, New York 10018.

Section 10. American Public Health Association. The following document from the American Public Health Association, American Water Works Association and Water Pollution Control Federation is incorporated herein by reference:

(1) Method 209B from Standard Methods for the Examination of Water and Wastewater, 15th Edition, 1980.

(2) Copies may be obtained from: American Public Health Association, 1015 Fifteenth Street, N.W., Washington, D.C. 20005.

JACKIE SWIGART, Secretary

ADOPTED: July 27, 1982

RECEIVED BY LRC: July 28, 1982 at 4 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
Amended After Hearing

401 KAR 50:035. Permits and compliance schedules.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

NECESSITY AND FUNCTION: KRS 224.033 requires the [Department for] Natural Resources and Environmental Protection *Cabinet* to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the issuance of permits and compliance schedules.

Section 1. Prohibitions. (1) No person shall construct, recontruct, alter, or modify a source unless a construction permit to do so has been issued by the department.

(2) No person shall use, operate, or maintain a source in contravention of any regulations of the Division of Air Pollution unless an operating permit, conditioned by an approved compliance schedule, has been issued by the department and is currently in effect.

(3) No person shall use, operate, or maintain a source, which is in compliance with all regulations of the Division of Air Pollution unless*:*

(a) A permit to so operate has been issued by the department and is currently in effect*; or* [.]

(b) The source has demonstrated to the satisfaction of the department that it is in compliance with the provisions of all applicable regulations including all provisions relating to public participation, a complete application for a permit to operate has been accepted by the department and the department has notified the applicant that the application is complete. Operation authorized by this paragraph shall expire thirty (30) days after the date of notification made to the source by the department that an operating permit fee balance as specified by 401 KAR 50:036, Section 5(1) is due or immediately upon notification to the source by the department that the source operating permit is denied.

(c) Within thirty (30) days after receipt of an application

to operate, the department shall advise the owner or operator as to whether or not the application is complete.

(4) When supported by justification which the department deems adequate, the department may, upon request by a source owner or operator, extend the termination date of an operating permit by a period not to exceed 180 days for the purpose of allowing sufficient time for a source to correct such deficiencies in the application as have been identified by the department and to allow completion of the application review by the department.

(5) [(4)] No person shall use, operate, or maintain a source which has changed ownership after a shutdown of six (6) months or more unless:

(a) The provisions of 401 KAR 50:055, Section 3(1) are met;

(b) The source was issued an operating permit and was in compliance with all applicable regulations under the previous ownership; and

(c) The provisions of Section 5(2) are met.

Section 2. Applications. (1) Applications for permits or compliance schedules required under Section 1 shall be made on forms prepared by the department for such purpose and shall contain such information as the department shall deem necessary to determine whether the permit or compliance schedule should be issued.

(2) Applications for permits or compliance schedules shall be signed by the corporate president or by another duly authorized agent of the corporation; or by an equivalently responsible officer in the case of organizations other than corporations; or, in other cases, by the source owner or operator; or, in the case of political subdivisions, by the highest executive official of such subdivision. Such signature shall constitute personal affirmation that the statements made in the application are true and complete.

(3) The information submitted in the application shall, when specifically requested by the department, include an analysis of the characteristics, properties and volume of the air contaminants based upon source or stack samples of the air contaminants taken under normal operating conditions. Failure to supply information required or deemed necessary by the department to enable it to act upon the permit or compliance schedule application shall result in denial of the permit or shall result in disapproval of the compliance schedule.

(4) An application for a permit or compliance schedule may include one (1) or more affected facilities provided that all are contained within one (1) source. A person may apply for an amended permit to include new affected facilities provided that such new facilities are within the same source.

Section 3. Consideration of Applications. (1) (a) The department shall deny an application for a permit or compliance schedule if the department determines that emission standards, standards of performance, ambient air quality standards, approved control measures *or* [and] the provisions of Title 401, Chapter 51, are not met or will not be met upon completion of a compliance schedule.

(b) The department shall deny an application for a permit or compliance schedule if the applicant willfully makes material misstatements in the application or amendments thereto.

(c) When required by the regulations of Title 401, Chapters 50 to 65, the department shall base the determination of compliance with ambient air quality standards and prevention of significant air quality increments upon either:

1. Air quality models in accordance with 401 KAR 50:040; or

2. Ambient air quality monitoring in accordance with 401 KAR 53:010.

(d) In cases where no emission standards have been prescribed by regulation, the department shall require the use of all available, practical and reasonable methods to prevent and control air pollution.

(2) Compliance schedules herein shall be subject to approval of the department. If for any reason, the department and the source are unable to negotiate a mutually acceptable schedule, the department will propose a compliance schedule which will be subjected to a hearing pursuant to KRS 224.083. After considering the hearing report, the department shall issue an appropriate compliance schedule.

(3) Notification. This subsection shall apply to the proposed construction, modification, alteration or reconstruction of any source that is not subject to Section 4.

(a) Within thirty (30) days after receipt of an application to construct, reconstruct, modify, or alter, or any addition to such application, the department shall advise the owner or operator of any deficiency in the information submitted in support of the application. In the event of such a deficiency, the date of receipt of the application for the purpose of paragraph (b) of this subsection shall be the date on which the department makes a determination that the application is complete.

(b) The department shall notify the applicant, in writing, of its approval, conditional approval, or denial of the application, and shall set forth its reasons for conditional approval or denial within thirty (30) days after receipt of a complete application, unless the department determines that an additional period of time is necessary to adequately review the application.

Section 4. [(3)] Procedures for Public Participation. This [sub]section shall apply to the proposed major source construction, major modifications as defined in Title 401, Chapter 51, or modifications to any source which will cause an increase in the potential to emit of 100 tons per year or more of any one (1) pollutant.

(1) [(a)] Within thirty (30) days after receipt of an application to construct, reconstruct, or modify or any addition to such application, the department shall advise the owner or operator of any deficiency in the information submitted in support of the application. In the event of such a deficiency, the date of receipt of the application for the purpose of *subsections (2), (6) and (7) of this section* [paragraphs (b), (e) and (f) of this subsection] shall be the date on which the department makes a determination that the application is complete.

(2) [(b)] Within thirty (30) days after the receipt of a complete application, the department shall:

(a) [1.] Make a preliminary determination whether the source should be approved, approved with conditions, or disapproved.

(b) [2.] Make available in at least one (1) location in each region in which the proposed source would be constructed, reconstructed, or modified, a copy of all materials submitted by the owner or operator, a copy of the department's preliminary determination and a copy or summary of other materials, if any, considered by the department in making the preliminary determination; and

(c) [3.] For sources subject to 401 KAR *51:017* [51:016E], notify the public, by prominent advertisement in newspapers of general circulation in each region in

which the proposed source would be situated, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification if applicable, and of the opportunity to comment in writing and of the opportunity to request a public hearing to receive written or oral comments. The cost of such advertisement shall be borne by the applicant.

(d) [4.] For all other sources subject to this [sub]section, notify the public, by prominent advertisement in newspapers of general circulation in each region in which the proposed source would be situated, of the application, the preliminary determination, and of the opportunity to comment in writing. The cost of such advertisement shall be borne by the applicant.

(3) [(c)] A copy of the notice required pursuant to this section shall be sent to the *following persons (any person otherwise entitled to receive notice under this subsection may waive his/her rights to receive notice):*

(a) The applicant; [and to]

(b) Officials and agencies having cognizance over the locations where the source will be situated as follows: the Administrator of the U. S. EPA through the appropriate regional office; local air pollution control agencies; the chief executive of the city and county; any comprehensive regional land use planning agency; and any state, federal land manager or Indian governing body whose land may be affected by the emissions from the proposed source; *and* [.]

(c) Persons on a mailing list compiled by including those who request in writing to be on the list, soliciting persons for "area lists" from participants in past permit proceedings in that area, and notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as state-founded newsletters, environmental bulletins, or state law journals. The department may update the mailing list from time to time by requesting written indication of continued interest from those listed. The department may delete from the list the name of any person who fails to respond to such a request.

(4) All public notices issued under this regulation shall contain the following minimum information:

(a) Name and address of the department and division processing the permit action for which notice is being given;

(b) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

(c) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;

(d) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, statement of basis or fact sheet, and the application; and

(e) A brief description of the comment procedures required by subsections (5) and (8) of this section.

(f) In addition to the general public notice described in paragraphs (a) to (e) of this subsection, the public notice for a hearing under subsection (8) of this section shall be given at least thirty (30) days before the hearing and shall contain the following information: reference to the date of previous public notices relating to the permit; date, time, and place of the hearing; and a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(5) [(d)] Public comments submitted in writing within thirty (30) days after the date such information is made available shall be considered by the department in its final decision on the application. No later than ten (10) days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The department shall consider the applicant's response in making its final decision. All comments shall be made available for public inspection at the same location in the region at which the department made available preconstruction information relating to the proposed source.

(6) [(e)] The department shall take final action on an application subject to this [sub]section by notifying the applicant in writing of its approval, conditional approval, or denial of the application, and shall set forth its reasons for conditional approval or denial. Such notification shall be made available for public inspection at the location in the region at which the department made available preconstruction information relating to the proposed source or modification. The public shall be notified of the department's final action on an application subject to this subsection by prominent advertisement in newspapers of general circulation in each region in which the proposed source or modification would be situated. The cost of such advertisement shall be borne by the applicant.

(a) [1.] For sources subject to 401 KAR *51:017* [51:016E] and for which a public hearing has been requested and held, the department shall take final action within 150 days after receipt of a complete application.

(b) [2.] For all other sources subject to this [sub]section, the departmnt shall take final action within ninety (90) days after receipt of a complete application.

(7) [(f)] The department may extend each of the time periods specified in *subsections (2), (5) or (6) of this section* [paragraphs (b), (d) or (e) of this subsection] by no more than thirty (30) days or such other period as agreed to by the applicant and the department deems necessary. In accordance with Federal Regulation 40 CFR 52.21(r), the department shall in no case exceed one (1) year from the date of receipt of a complete application for taking final action on an application subject to 401 KAR *51:017* [51:016E].

(8) (a) For sources subject to 401 KAR 51:017, the department shall hold a public hearing whenever it finds, on the basis of requests, a significant degree of public interest in a draft permit(s). The department also may hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one (1) or more issues involved in the permit decision. Public notice of the hearing shall be given as specified in paragraphs (b) and (c) of this subsection.

(b) Whenever a public hearing is to be held the department shall designate a presiding officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(c) Any person may submit oral or written statements and data concerning a draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under subsection (5) of this section shall automatically be extended to the close of any public hearing under this subsection. The hearing officer may also extend the comment period by so stating at the hearing.

(d) A tape recording or written transcript of the hearing shall be made available to the public at a reasonable reproduction cost.

[(4) This subsection shall apply to the proposed construction, modification, alteration or reconstruction of any source that is not subject to subsection (3) of this section.]

[(a) Within thirty (30) days after receipt of an application to construct, reconstruct, modify, or alter, or any addition to such application, the department shall advise the owner or operator of any deficiency in the information submitted in support of the application. In the event of such a deficiency, the date of receipt of the application for the purpose of paragraph (b) of this subsection shall be the date on which the department makes a determination that the application is complete.]

[(b) Within thirty (30) days after receipt of a complete application the department shall notify the applicant, in writing of its approval, conditional approval, or denial of the application, and shall set forth its reasons for conditional approval or denial.]

[(c) The department may extend the time period specified in paragraph (b) of this subsection by no more than thirty (30) days or such other period as the department deems necessary.]

Section *5.* [4.] Permits and Compliance Schedules. (1) Permits and compliance schedules issued hereunder shall be subject to such terms and conditions set forth and embodied in the permit or compliance schedule as the department shall deem necessary to insure compliance with its standards. Such terms and conditions may include maintenance and availability of records relating to operations which may cause or contribute to air pollution including periodic source or stack sampling of the affected facilities.

(2) In the case of *a* transfer of ownership *or name change* of a source, the new owner *or owner respectively* shall abide by any current compliance schedule or permit *to operate* issued *by the department* to the previous owner *or to the same owner under the previous source name* [by the department]. The new owner *or owner* shall notify the department of the change in ownership *and/or source name* within ten (10) days *following* [of] the change in ownership *or source name and shall apply for a new permit to operate in the event of a change in the name of the source.*

Section *6.* [5.] Exemptions. The provisions of this regulation shall not apply to the following [affected facilities]:

(1) Those affected facilities to which no *regulation* [standard] is applicable *and* [or] which emit an air pollutant to which no *ambient air quality* standard applies.

(2) Incinerators with a charging rate of less than 500 pounds per hour *except those subject to 401 KAR 51:017, 401 KAR 51:052, or 401 KAR 63:020.*

(3) *Except as provided in 401 KAR 59:018,* internal combustion engines whether fixed or mobile, and vehicles used for transport of passenger or freight.

(4) Direct fired sources used for heating and ventilating.

(5) Those sources as set forth in 401 KAR 63:005.

(6) Indirect heat exchangers at a source with a total capacity of less than fifty (50) million BTU per hour input which use natural gas, liquid petroleum gas, or distillate fuel oil as a main fuel or combinations of these as main and standby fuel *and which are not subject to the requirements of 401 KAR 51:017 or 401 KAR 51:052.*

(7) Publicly owned roads.

(8) Feed grain mills *having a hammermill* with a rated capacity of [less than] ten (10) tons per hour *or less, provided that the source does not include a grain dryer.*

(9) Sawmills which produce only rough cut or dimensional lumber from logs and which have a rated capacity of 1,500 board feet per hour or less provided the source does not include an indirect heat exchanger or waste wood burner subject to regulation in Title 401, Chapter 59 or 61.

(10) All sources except those subject to regulation in Title 401, Chapter 57 or 401 KAR 63:020, whose potential to emit is less than or equal to two (2) tons per year of the following pollutants: particulate matter, sulfur dioxide, volatile organic compounds, nitrogen oxides or carbon monoxide. This exemption shall not apply to sources of volatile organic compounds located in urban counties designated as non-attainment for ozone in 401 KAR 51:010.

Section *7.* [6.] Source Obligation. (1) Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this regulation or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this regulation who commences construction after June 6, 1979 without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action as provided under KRS 224.994.

(2) Approval to construct shall become invalid if construction is not commenced within twelve (12) months after receipt of such approval, if construction is discontinued for a period of six (6) months or more, or if construction is not completed within a reasonable time. The department may extend the twelve (12) month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within twelve (12) months of the projected and approved commencement date.

(3) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the requirements of the department and any other requirements under local, state, or federal law.

JACKIE SWIGART, Secretary
ADOPTED: July 27, 1982
RECEIVED BY LRC: July 28, 1982 at 4 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution
Amended After Hearing

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

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the [Department for] Natural Resources and Environmental Protection *Cabinet* to prescribe regulations for the prevention, abatement and control of air pollution. This regulation provides for the prevention of significant deterioration of ambient air quality.

Section 1. Applicability. The provisions of this regulation are applicable to any major stationary source or any major modification which:

(1) *Commenced construction* [Is constructed] after the effective date of this regulation;

(2) Emits any pollutant regulated by the Clean Air Act; and

(3) Is constructed in areas designated as attainment or unclassifiable for any pollutant as defined in 401 KAR 51:010.

Section 2. Definitions. As used in this regulation terms not defined herein shall have the meaning given them in 401 KAR 50:010.

(1) "Major stationary source" means:

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

(b) Notwithstanding the stationary source size specified in paragraph (a) of this subsection, any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the Clean Air Act; and

(c) Any physical change that would occur at a stationary source not otherwise qualifying under this subsection as a major stationary source, if the changes would constitute a major stationary source by themselves.

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

(2) "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Clean Air Act.

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

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

1. Routine maintenance, repair and replacement;

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

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

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

a. The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any permit condition which was established after January 6, 1975; or

b. The source is approved to use under any permit issued under this regulation, previously adopted regulations 401 KAR 51:015 and 401 KAR 51:016E, or under 40 CFR 52.21;

5. An increase in the hours of operation or in the production rate, unless such change would be prohibited after January 6, 1975 *pursuant to 40 CFR 52.21, after June 6, 1979* pursuant to 401 KAR 51:015, after the effective date of this regulation pursuant to this regulation; or under 401 KAR 50:035 and 401 KAR 51:016E; or

6. Any change in ownership at a stationary source.

(3) "Net emission increase" means the amount by which the sum of paragraphs (a) and (b) of this subsection exceeds zero:

(a) Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and

(b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(c) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between *the date which is ten (10) years before construction on the particular change commences, but not before* January 6, 1975, and the date that the increase from the particular change occurs.

(d) An increase or decrease in actual emissions is creditable only if the department *or the U.S. EPA* has not relied on it in issuing a permit for the source under this regulation, 401 KAR 51:015, 401 KAR 51:016E, or 40 CFR 52.21, which permit is in effect when the increase in actual emissions from the particular change occurs.

(e) An increase or decrease in actual emissions of sulfur dioxide or particulate matter which occurs before the applicable baseline data is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

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

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

1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

2. It is enforceable at and after the time that actual construction on the particular change begins; and

3. It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

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

(4) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical or operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as a part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(5) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act.

(6) "Building, structure, facility, or installation" means

all of the pollutant emitting activities which belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any marine vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two (2) digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.

(7) "Emission unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Clean Air Act.

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

(9) "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

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

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

(10) "Necessary preconstruction approvals or permits" means those permits or approvals required under the regulations of Title 401, Chapters 50 to 63 *and federal air quality control laws and regulations.*

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

(12) "Best available control technology" means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under the Clean Air Act which would be emitted from any proposed major stationary source or major modification which the department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under Title 401, Chapters 57 and 59 *or 40 CFR Parts 60 and 61.* If the secretary determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

(13) "Baseline concentration" means that ambient concentration level which exists in the baseline area at the time of the applicable baseline date. A baseline concentration is determined for each pollutant for which a baseline date is established and shall include:

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

(b) The allowable emissions of major stationary sources which commenced construction before January 6, 1975, but were not in operation by the applicable baseline date.

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

1. Actual emissions from any major stationary source on which construction commenced after January 6, 1975; and

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

(14) "Baseline date" means the earliest date after August 7, 1977, on which the first complete application is submitted by a major stationary source or major modification subject to the requirements of federal or state prevention of significant deterioration regulations. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(a) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under 401 KAR 51:010 for the pollutant on the date of its complete application; and

(b) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

(15) "Baseline area" means any area (and every part thereof) designated as attainment or unclassifiable under 401 KAR 51:010 in which the major source or major modification establishing the baseline date would construct or would have an air quality impact equal to or greater than one (1) $\mu g/m^3$ (annual average) of the pollutant for which the baseline date is established. Area redesignations under Section 107(d)(1)(D)or (E) of the Clean Air Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

(a) Establishes a baseline date; or

(b) Is subject to this regulation and would be constructed in the Commonwealth of Kentucky.

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

(a) The applicable standards set forth in Title 401, Chapters 57 and 59;

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

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

(17) "Enforceable" means all limitations and conditions, including those requirements developed pursuant to Title 401, Chapters 50 to 63.

(18) "Secondary emissions" means emissions which would occur as a result of the construction or operation of

a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this regulation, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a marine vessel.

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

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

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

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

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

(d) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(22) "Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application.

(23) "Significant" means:

(a) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any rates given in Appendix A of this regulation.

(b) In reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the Clean Air Act that is not listed in Appendix A to this regulation, any emissions rate.

(c) Notwithstanding paragraph (b) of this subsection and Appendix A to this regulation, "significant" means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within ten (10) kilometers of a Class I area, and have an impact on such area equal to or greater than one (1) $\mu g/m^3$ (twenty-four (24) hour average).

(24) "Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

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

(26) "Low terrain" means any area other than high terrain.

Section 3. Ambient Air Increments. In areas designated as Class I or II, increases in pollutant concentration over the baseline concentration shall be limited to the levels specified in Appendix B of this regulation. For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one (1) such period per year at any one (1) location.

Section 4. Ambient Air Ceilings. No concentration of a pollutant specified in Section 1 shall exceed:

(1) The concentration permitted under the national secondary ambient air quality standard; or

(2) The concentration permitted under the national primary ambient air quality standard, whichever concentration is lower for the pollutant for a period of exposure.

Section 5. Area Classifications. (1) Mammoth Cave National Park shall be a Class I area.

(2) Any other area, unless otherwise specified in the legislation creating such an area, is designated Class II.

Section 6. Exclusions from Increment Consumption. (1) The department may, after notice and opportunity for at least one (1) public hearing to be held in accordance with procedures established in 401 KAR 50:035, exclude the following concentrations in determining compliance with a maximum allowable increase:

(a) Concentrations attributable to the increase in emissions from stationary sources which have been converted from the use of petroleum products, natural gas, or both by reason of an order in effect under a federal statute or regulation over the emissions from such sources before the effective date of such an order;

(b) Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the federal statute over the emissions from such sources before the effective date of such plan;

(c) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources; and

(d) Concentrations attributable to the temporary increase in emissions of sulfur dioxide or particulate matter from stationary sources which are affected by plan revisions approved by the Administrator of the U.S. EPA.

(2) No exclusion of such concentrations shall apply more than five (5) years after the effective date of the order to which subsection (1)(a) of this section refers or the plan to which subsection (1)(b) of this section refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply more than five (5) years after the later of such effective dates.

(3) No exclusion under this section shall occur after May 7, 1981, unless a State Implementation Plan revision meeting the requirements of 40 CFR 51.24 has been *approved by* [submitted to] the U.S. EPA.

(4) The plan revision referred to in subsection (3) of this section shall specify the following provisions:

(a) The time over which the temporary emission increase of sulfur dioxide or particulate matter would occur. Such time shall not exceed two (2) years in duration unless a longer time is approved by the U.S. EPA;

(b) That the time period for excluding certain contributions in accordance with paragraph (a) of this subsection is not renewable;

(c) That no emissions increase will occur from a stationary source which would:

1. Impact a Class I area or an area where an applicable increment is known to be violated; or

2. Cause or contribute to the violation of a national ambient air quality standard; and

(d) Limitations will be in effect at the end of the time period specified in accordance with paragraph (a) of this subsection which would ensure that the emissions levels from stationary sources affected by the plan revision would not exceed those levels occurring from such sources before the plan revision was approved.

Section 7. Stack Heights. (1) The degree of emission limitation required for control of any air pollutant under this regulation shall not be affected in any manner by:

(a) So much of the stack height of any source as exceeds good engineering practice; or

(b) Any other dispersion technique.

(2) Subsection (1) of this section shall not apply with respect to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.

Section 8. Review of Major Stationary Sources and Major Modifications; Source Applicability and Exemptions. (1) No major stationary source or major modifications to which the requirements of Sections 9 to 17 apply shall begin actual construction without a permit which states that the stationary source or modification would meet those requirements.

(2) The requirements of Sections 9 to 17 shall apply to any major stationary source and any major modification with respect to each pollutant subject to regulations under the Clean Air Act that it would emit, except as otherwise provided in Section 1.

(3) The requirements of Sections 9 to 17 shall apply only to any major stationary source or major modification that would be constructed in an area designated as attainment or unclassifiable under 401 KAR 51:010. Major volatile organic compound sources locating in an area unclassified for ozone may choose to accept the non-attainment area review requirement immediately pursuant to 401 KAR 51:052 and conduct post-approval monitoring for ozone.

(4) The requirements of Sections 9 to 17 shall not apply to a particular major stationary source or major modification if:

(a) The owner or operator:

1. Obtained a federal, state or local preconstruction approval effective before *the effective date of this regulation* [August 7, 1980];

2. Commenced construction before *the effective date of this regulation* [August 7, 1980]; and

3. Did not discontinue construction for a period of eighteen (18) months or more; or

(b) The source of modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution, and the Governor of the Commonwealth of Kentucky requests that it be exempt from those requirements;

(c) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

1. Coal cleaning plants (with thermal dryers);
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants (furnace process);
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants;
21. Fossil-fuel boilers (or combination thereof) totaling more than 250 million BTUs per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or
27. Any other stationary source category which, as of August 7, 1980, is being regulated under Title 401, Chapters 57 and 59 *or 40 CFR Parts 60 and 61*; or

(d) The source is a portable stationary source which has previously received a permit under this regulation; and:

1. The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary;

2. The emissions from the source would not exceed its allowable emissions;

3. The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

4. Reasonable notice is given to the department prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the department not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the department.

(5) The requirements of Sections 9 to 17 shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, relative to that pollutant, the source or modification is located in an area designated as nonattainment under 401 KAR 51:010.

(6) The requirements of Sections 10, 12 and 14 shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modifications:

(a) Would impact no Class I area and no area where an applicable increment is known to be violated; and

(b) Would be temporary.

(7) The requirements of Sections 10, 12 and 14 as they relate to any maximum allowable increase for a Class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net in-

crease in allowable emissions of each pollutant subject to regulations under the Clean Air Act from the modification after the application of best available control technology would be less than fifty (50) tons per year.

(8) The department may exempt a stationary source or modification from the requirements of Section 12 with respect to monitoring for a particular pollutant if:

(a) The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the amounts given in Appendix C to this regulation; or

(b) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in Appendix C to this regulation, or the pollutant is not listed in Appendix C to this regulation.

Section 9. Control Technology Review. (1) A major stationary source or major modification shall meet each applicable emissions limitation under Title 401, Chapters 50 to 63 [and each applicable emissions standard and standard of performance under Title 401, Chapters 57 and 59].

(2) A new major stationary source shall apply best available control technology for each pollutant subject to regulation under the Clean Air Act that it would have the potential to emit in significant amounts.

(3) A major modification shall apply best available control technology for each pollutant subject to regulation under Clean Air Act for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operations in the unit.

(4) For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than eighteen (18) months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

Section 10. Source Impact Analysis. The owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:

(1) Any national ambient air quality standard in any air quality control region; or

(2) Any applicable maximum allowable increase over the baseline concentration in any area.

Section 11. Air Quality Models. (1) All estimates of ambient concentrations required under this regulation shall be based on the applicable air quality models, data bases, and other requirements specified in the "Guideline on Air Quality Models," filed by reference in 401 KAR 50:015.

(2) Where an air quality impact model specified in the "Guideline on Air Quality Models" is inappropriate, the model may be modified or another model substituted. Such a change must be subject to notice and opportunity for public comment under Section 17. Written approval of the U.S. EPA must be obtained for any modification or substitution. Methods like those outlined in the "Workbook for the Comparison of Air Quality Models," filed by reference in 401 KAR 50:015, should be used to determine the comparability of air quality models.

Section 12. Air Quality Analysis. (1) Preapplication analysis.

(a) Any application for a permit under this regulation shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

1. For the source, each pollutant that it would have the potential to emit in a significant amount as defined in Section 2(23);

2. For the modification, each pollutant for which it would result in a significant net emissions increase.

(b) With respect to any such pollutant for which no national ambient air quality standard exists, the analysis shall contain such air quality monitoring data as the department determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

(c) With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

(d) In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one (1) year and shall represent at least the year preceding receipt of the application, except that, if the applicant demonstrates through historical data or dispersion models that the monitoring data gathered over a period shorter than one (1) year (but not to be less than four (4) months) will be obtained during a time period when maximum air quality levels can be expected, the data that is required shall have been gathered over at least that shorter period.

(e) The owner or operator of a proposed stationary source or modification of volatile organic compounds who satisfies all conditions of 401 KAR 51:052 may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under paragraphs (a) to (d) of this subsection.

(2) Post-construction monitoring. The owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the department determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

(3) Operations of monitoring stations. The owner or operator of a major stationary source or major modification shall meet the requirements of Appendix B to 40 CFR 58, filed by reference in 401 KAR 50:015, during the operation of monitoring stations for purposes of satisfying subsections (1) and (2) of this section.

Section 13. Source Information. The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under this regulation.

(1) With respect to a major source or major modification to which Sections 9, 11, 13 and 15 apply, such information shall include:

(a) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

(b) A detailed schedule for construction of the source or modification;

(c) A detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates, and any other information necessary to determine that best available control technology would be applied.

(2) Upon request of the department, the owner or operator shall also provide information on:

(a) The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

(b) The air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the source or modification would affect.

Section 14. Additional Impact Analysis. (1) The owner or operator shall provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(2) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

Section 15. Sources Impacting Federal Class I Areas; Additional Requirements. (1) Notice to *U.S. EPA and* federal land managers. The department shall provide notice of any permit application for a proposed major stationary source or major modification the emissions from which would affect a Class I area to the *U.S. EPA,* the federal land manager, and the federal official charged with direct responsibility for management, of any lands within any such area. The department shall provide such notice promptly after receiving the application. The department shall also provide the federal land manager and such federal officials with a copy of the preliminary determination required under Section 17, and shall make available to them any materials used in making that determination, promptly after the department makes it.

(2) Federal land manager. The federal land manager and the federal official charged with direct responsibility for management of such lands have an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the department, whether a proposed source or modification will have an adverse impact on such values.

(3) Denial; impact on air quality related values. The federal land manager of any such lands may demonstrate to the department that the emissions from a proposed source or modification would have an adverse impact on the air quality related values (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area as defined in Appendix B to this regulation. If the department concurs with such demonstration then the department shall not issue the permit.

(4) Class I variances. The owner or operator of a proposed source or modification may demonstrate to the federal land manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the federal land manager concurs with such demonstration and he so certifies, the department may, provided that the applicable requirements of this regulation are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide and particulate matter would not exceed the maximum allowable increases over baseline concentration for such pollutants specified in Appendix D to this regulation.

(5) Sulfur dioxide variance by governor with federal land manager's concurrence. The owner or operator of a proposed source or modification which cannot be approved under subsection (4) of this section may demonstrate to the Governor of the Commonwealth of Kentucky that the source cannot be constructed by reason of any maximum allowable increase in sulfur dioxide for a period of twenty-four (24) hours or less applicable to any Class I area and, in the case of federal mandatory Class I areas, that a variance under this clause would not adversely affect the air quality related values of the area (including visibility). The governor, after consideration of the federal land manager's recommendation (if any) and subject to his concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the department shall issue a permit to such source or modification pursuant to the requirements of subsection (7) of this section, provided that the applicable requirements of this regulation are otherwise met.

(6) Variance by the governor with the president's concurrence. In any case where the Governor of the Commonwealth of Kentucky recommends a variance in which the federal land manager does not concur, the recommendations of the governor and the federal land manager shall be transmitted to the President of the United States of America. If the variance is approved, the department shall issue a permit pursuant to the requirements of subsection (7) of this section, provided that the applicable requirements of this regulation are otherwise met.

(7) Emission limitations for presidential or gubernatorial variance. In the case of a permit issued pursuant to subsections (5) or (6) of this section the source or modification shall comply with such emission limitations as may be necessary to assure that emissions of sulfur dioxide from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which would exceed the maximum allowable increases over the baseline concentration as specified in Appendix E of this regulation and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of twenty-four (24) hours or less for more than eighteen (18) days, not necessarily consecutive, during any annual period.

Section 16. Public Participation. The department shall follow the applicable procedures of 401 KAR 50:035 in processing applications under this regulation.

Section 17. Source Obligation. (1) Any owner or

operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this regulation or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this regulation who *begins actual* [commences] construction after the effective date of this regulation without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

(2) Approval to construct shall become invalid if construction is not commenced within eighteen (18) months after receipt of such approval, if construction is discontinued for a period of eighteen (18) months or more, or if construction is not completed within a reasonable time. The department may extend the eighteen (18) month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen (18) months of the projected and approved commencement date.

(3) Approval to construction shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of Title 401, Chapters 50 to 63 and any other requirements under local, state, or federal law.

(4) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of Sections 9 to 18 shall apply to the source or modification as though construction had not yet commenced on the source or modification.

Section 18. Environmental Impact Statements. Whenever any proposed source or modification is subject to action by a federal agency which might necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act (42 U.S.C. 4321), review by the department conducted pursuant to this regulation shall be coordinated with the broad environmental reviews under that Act and under Section 309 of the Clean Air Act to the maximum extent feasible and reasonable.

Section 19. Innovative Control Technology. (1) An owner or operator of a proposed major stationary source or major modification may request the department in writing to approve a system of innovative control technology.

(2) The department shall, with the consent of the governor(s) of other affected state(s), determine that the source or modification may employ a system of innovative control technology if:

(a) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

(b) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under Section 9(2) by a date specified by the department. Such date shall not be later than four (4) years from the time of startup or seven (7) years from permit issuance.

(c) The source or modification would meet the requirements of Sections 9 and 10 based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the department;

(d) The source or modification would not before the date specified by the department:

1. Cause or contribute to a violation of an applicable national ambient air quality standard;
2. Impact any Class I area; or
3. Impact any area where an applicable increment is known to be violated; and

(e) All other applicable requirements including those for public participation have been met.

(3) The department shall withdraw any approval to employ a system of innovative control technology made under this regulation if:

(a) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate;

(b) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

(c) The department decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

(4) If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with subsection (3) of this section, the department may allow the source or modification up to an additional three (3) years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

Section 20. Permit Condition Rescission. (1) Any owner or operator holding a permit for a stationary source or modification which contains conditions pursuant to 401 KAR 51:015 or 401 KAR 51:016E may request that the department rescind the applicable conditions.

(2) The department shall rescind a permit condition if so requested if the applicant can demonstrate to the satisfaction of the department that this regulation does not apply to the source or modification or a portion thereof.

APPENDIX A TO 401 KAR 51:017
Significant Net Emissions Rate

POLLUTANT	EMISSIONS RATE
Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Particulate matter:	25 tpy
Ozone:	40 tpy of volatile organic compounds
Lead:	0.6 tpy
Asbestos	0.007 tpy
Beryllium	0.0004 tpy
Mercury	0.1 tpy
Vinyl chloride	1 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H_2S)	10 tpy
Total reduced sulfur (including H_2S)	10 tpy
Reduced sulfur compounds (including H_2S)	10 tpy

APPENDIX B TO 401 KAR 51:017
Ambient Air Increments

Pollutant	Maximum Allowable Increase (Micrograms per cubic meter)
Class I	
Particulate Matter:	
Annual geometric mean	5
24-hour maximum	10
Sulfur Dioxide:	
Annual arithmetic mean	2
24-hour maximum	5
3-hour maximum	25
Class II	
Particulate Matter:	
Annual geometric mean	19
24-hour maximum	37
Sulfur Dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512

APPENDIX C TO 401 KAR 51:017
Significant Air Quality Impact

Pollutant	Air Quality Level	Averaging Time
Carbon monoxide	575 μg/m³	8-hour average
Nitrogen dioxide	14 μg/m³	annual average
Total suspended particulate	10 μg/m³	24-hour average
Sulfur dioxide	13μg/m³	24-hour average
Ozone	No de minimus air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds subject to this regulation would be required to perform an ambient impact analysis including the gathering of ambient air quality data.	
Lead	0.1μg/m³	*24-hour average* [3-month average]
Mercury	0.25μg/m³	24-hour average
Beryllium	0.001μg/m³	24-hour average
Fluorides	0.25μg/m³	24-hour average
Vinyl chloride	15μg/m³	24-hour average
Hydrogen sulfide	*0.04* [0.2]μg/m³	1-hour average

APPENDIX D TO 401 KAR 51:017
Ambient Air Increments
for Class I Variances

	Maximum Allowable Increase (micrograms per cubic meter)
Particulate Matter:	
Annual geometric mean	19
24-hour maximum	37
Sulfur dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	325

APPENDIX E TO 401 KAR 51:017
Ambient Air Increments for Presidential or Gubernatorial SO_2 Variances

Maximum Allowable Increase
(Micrograms per cubic meter)

Period of Exposure	Terrain areas Low	High
24-hour maximum	36	62
3-hour maximum	130	221

JACKIE SWIGART, Secretary
ADOPTED: July 27, 1982
RECEIVED BY LRC: July 28, 1982 at 4 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution
Amended After Hearing

401 KAR 51:052. Review of new sources in or impacting upon non-attainment areas.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the [Department for] Natural Resources and Environmental Protection *Cabinet* to prescribe regulations for the prevention, abatement and control of air pollution. This regulation establishes requirements for the construction, modification of stationary sources within, or impacting upon, areas where the national ambient air quality standards have not been attained.

Section 1. Applicability. The requirements of this regulation shall apply to new major sources or major modifications commenced after the classification date defined below and that will locate in or impact upon any area designated as non-attainment in 401 KAR 51:010.

Section 2. Definitions. As used in this regulation terms not defined herein shall have the meaning given them in 401 KAR 50:010.

(1) "Major stationary source" means:

(a) Any stationary source which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Clean Air Act; or

(b) Any physical change that would occur at a stationary source not qualifying under paragraph (a) of this subsection as a major stationary source, if the change would constitute a major stationary source by itself.

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

(2) "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Clean Air Act.

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

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

1. Routine maintenance, repair and replacement;

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

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

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

a. The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any permit condition which was established after December 21, 1976 *pursuant to 40 CFR 52.21 or pursuant to 401 KAR 51:015, 401 KAR 51:016E or 401 KAR 51:017*; or

b. The source is approved to use under any permit issued under this regulation, previously adopted regulations 401 KAR *51:050* [51:015] and 401 KAR *51:051E* [51:016E], or under 40 CFR *51, Appendix S* [52.21];

5. An increase in the hours of operation or in the production rate, unless such change is prohibited under a permit condition which was established after December 21, 1976 pursuant to *40 CFR 52.21 or pursuant to 401 KAR 51:015, 401 KAR 51:016E or 401 KAR 51:017* [duly adopted regulations]; or

6. Any change in ownership at a stationary source.

(3) "Net emission increase" means the amount by which the sum of paragraphs (a) and (b) of this subsection exceeds zero:

(a) Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and

(b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(c) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between *the date which is ten (10) years before construction on the particular change commences, but not before* December 21, 1976, and the date that the increase from the particular change occurs.

(d) An increase or decrease in actual emissions is creditable only if the department has not relied on it in issuing a permit for the source under this regulation, which permit is in effect when the increase in actual emissions from the particular change occurs.

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

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

1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

2. It is enforceable at and after the time that actual construction on the particular change begins;

3. The department has not relied on it in issuing any permit *or in demonstrating attainment or reasonable further progress*; and

4. It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

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

(4) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical or operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(5) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act.

(6) "Building, structure, facility, or installation" means all of the pollutant emitting activities which belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any marine vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two (2) digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.

(7) "Emission unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Clean Air Act.

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

(9) "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

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

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

(10) "Necessary preconstruction approvals or permits" means those permits or approvals required under the regulations of Title 401, Chapters 50 and 63.

(11) "Allowable emissions" means the emissions rate calculated using the maximum rated capacity of the source

(unless the source is subject to enforceable permit conditions which limit operating rate, or hours or operation, or both) and the most stringent of the following:

(a) The applicable new source performance standards set forth in Title 401, Chapters 57 and 59, *or 40 CFR Parts 60 and 61*;

(b) *Any other federally approved* [The applicable] regulatory emission limitations, including those with a future compliance date; or

(c) The emission rate specified as an enforceable permit condition, including those with a future compliance date.

(12) "Enforceable" means having the legal authority to compel a source to comply with limitations and conditions including those developed pursuant to Title 401, Chapters 50 to 63.

(13) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this regulation, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a marine vessel.

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

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

(b) The department may presume that source specific allowable emissions for the emission unit are equivalent to the actual emissions of the emissions unit.

(c) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the emission unit on that date.

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

(16) "Significant" means in reference to a net emissions increase or the potential of a source to emit any pollutant, a rate of emissions that would equal or exceed any rates given in Appendix A of this regulation.

(17) "Lowest achievable emission rate" means, for any source, the more stringent rate of emissions based on the following:

(a) The most stringent emissions limitation which is contained in any implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(b) The most stringent emissions limitation which is achieved in practice by such class or category of stationary source. This limitation, when applied to a major modification, means the lowest achievable emissions rate for the new or modified emission unit within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under any applicable new source standard under Title 401, Chapters 57 and 59, *and 40 CFR Parts 60 and 61*.

(18) "VOC" means volatile organic compounds.

(19) "Classification date" means the effective date of this regulation.

(20) "Reasonable further progress" means annual incremental reductions in emissions of the applicable air pollutant which are sufficient, in the judgment of the department and the U.S. EPA, to provide for attainment of the applicable ambient air quality standard by the date specified in 401 KAR 51:010, Section 2.

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

(22) "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. Energy conversion facilities must utilize solid waste to provide more than fifty (50) percent of the heat input to be considered a resource recovery facility under this regulation.

Section 3. Initial Screening Analyses and Determination of Applicable Requirements. (1) Review of all sources for emissions limitation compliance. The department shall examine each proposed major new source and proposed major modification to determine if such source or modification will meet all applicable emission requirements in Title 401, Chapters 50 to 63. If the department determines *from the application and all other available information* that the proposed source or modification *will not* [cannot] meet the applicable emission requirements, the permit to construct shall be denied.

(2) Review of specified sources of air quality impact. In addition, the department shall determine whether the major stationary source or major modification would be constructed in an area designated in 401 KAR 51:010 as nonattainment for a pollutant for which the stationary source or modification is major. If a designated non-attainment area is projected to be an attainment area as part of an approved control strategy by the new source start-up date, offsets shall not be required if the new source would not cause a new violation.

(3) Fugitive emission sources. Section 5 shall not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(a) Coal cleaning plants (with thermal dryers);

(b) Kraft pulp mills;

(c) Portland cement plants;
(d) Primary zinc smelters;
(e) Iron and steel mills;
(f) Primary aluminum ore reduction plants;
(g) Primary copper smelters;
(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(i) Hydrofluoric, sulfuric, or nitric acid plants;
(j) Petroleum refineries;
(k) Lime plants;
(l) Phosphate rock processing plants;
(m) Coke oven batteries;
(n) Sulfur recovery plants;
(o) Carbon black plants (furnace process);
(p) Primary lead smelters;
(q) Fuel conversion plants;
(r) Sintering plants;
(s) Secondary metal production plants;
(t) Chemical process plants;
(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million BTUs per hour heat input;
(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(w) Taconite ore processing plants;
(x) Glass fiber processing plants;
(y) Charcoal production plants;
(z) Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or
(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under Title 401, Chapters 57 and 59, *and 40 CFR Parts 60 and 61.*

Section 4. Sources Locating in Designated Attainment or Unclassifiable Areas. (1) This section shall apply only to new major stationary sources or new major modifications which will locate in designated attainment or unclassifiable areas specified in 401 KAR 51:010 if the source or modification would cause impacts which exceed the significance levels specified in Appendix B of this regulation at any locality that does not meet the national ambient air quality standards.

(2) Sources to which this section applies must meet the requirements in Section 5(1), (2) and (4). However, such sources may be exempt from Section 5(3).

(3) For sources of sulfur dioxide, particulate matter, and carbon monoxide, the determination of whether a new major source or major modification will cause or contribute to a violation of a national ambient air quality standard shall be made on a case-by-case basis using the source's allowable emissions in an approved atmospheric simulation model pursuant to 401 KAR 50:040.

(4) For sources of nitrogen oxides, the initial determination of whether a new major source or major modification would cause or contribute to a violation of the national ambient air quality standard for nitrogen dioxide shall be made using an approved atmospheric simulation model assuming all the nitric oxide emitted is oxidized to nitrogen dioxide by the time the plume reaches ground level. The initial concentration estimates may be adjusted if adequate data are available to account for the expected oxidation rate.

(5) For ozone, sources of VOC, locating outside a designated ozone non-attainment area as defined in 401 KAR 51:010, will be presumed to have no significant impact on the designated non-attainment area. If ambient monitoring indicates that the area of source location is in fact non-attainment, then the source may be permitted under the applicable provisions of this regulation until the area is designated non-attainment in 401 KAR 51:010. Once the area of source location has been redesignated to non-attainment status in 401 KAR 51:010, the provisions of Section 5(3) and (4) as they relate to emissions of VOC shall not apply, *provided the area is not also an urban county as defined in 401 KAR 50:010.*

(6) The determination as to whether a new major source or major modification would cause or contribute to a violation of a national ambient air quality standard shall be made as of the start-up date.

(7) Applications for major new sources and major modifications locating in attainment or unclassifiable areas the operation of which would cause a new violation of a national ambient air quality standard but would not contribute to an existing violation may be approved only if both the following conditions are met:

(a) The new source is required to meet an emission limitation, or a design, operational or equipment standard, or existing sources are controlled, such that the new source will not cause a violation of any national ambient air quality standard.

(b) The new emission limitations for the new source as well as any existing sources affected must be enforceable in accordance with the mechanisms set forth in Section 8.

Section 5. Conditions for Approval. The provisions of this section shall apply to new major stationary sources or major modifications which would be constructed in an area designated in 401 KAR 51:010 as non-attainment *for a pollutant* for which the stationary source or modification is major. Approval may be granted only if the following conditions are met:

(1) The new major source or major modification shall be required to meet an emission limitation which specifies the lowest achievable emission rate for such source.

(2) The applicant shall *demonstrate* [certify] that all existing major sources owned or operated by the applicant (or any entity controlling, controlled by, or under common control with the applicant) in the Commonwealth of Kentucky are in compliance with all applicable emission limitations and standards specified in Title 401, Chapters 50 to 63, *and 40 CFR Parts 60 and 61,* or are in compliance with an expeditious enforceable compliance schedule or a court decree establishing a compliance schedule.

(3) Emissions from existing sources in the affected area of the proposed new major source or modifications (whether or not under the same ownership) shall be reduced (offset) such that there will be reasonable progress toward attainment of the applicable national ambient air quality standard. Only those transactions in which the emissions being offset are from the same criteria pollutant category shall be accepted.

(4) The emission reductions shall be such as to provide a positive net air quality benefit in the affected area. Atmospheric simulation modeling is not necessary for volatile organic compounds and oxides of nitrogen. Except as provided in Section 4(5), compliance with subsection (3) of this section and Section 7(7) will be adequate to meet this condition.

(5) For a major stationary source or major modification locating in an area designated non-attainment with respect to that pollutant for which the proposed source or modification is major, permits issued under this regulation shall specify that construction shall not commence until the U.S. EPA has approved the department's plan relating to the requirements of Part D, Title I, of the Clean Air Act.

Section 6. Exemptions from Certain Conditions. The following sources are exempt from Secton 5(3) and (4):

(1) Resource recovery projects burning municipal solid waste;

(2) Sources which must switch fuels due to lack of adequate fuel supplies or a source which is required to be modified as a result of federal regulations or other federal statutes and from which no exemption from such regulation or statute is available to the source. Such exemption shall be granted only if all the requirements of subsection (3) of this section are met;

(3) The exemptions contained in this section for sources identified under subsections (1) and (2) shall be granted only if:

(a) The applicant demonstrates to the department's satisfaction that it has made its best efforts to obtain sufficient emission offsets to comply with Section 5(3) and (4) and that such efforts were unsuccessful;

(b) The applicant has secured all available emission offsets; and

(c) The applicant will continue to seek the necessary emissions offsets and apply them when they become available.

(4) Such an exemption may result in the need to revise the applicable requirements of the department to provide additional control of existing sources so as to achieve reasonable progress towards attainment of applicable ambient air quality standards.

(5) Temporary emission sources, such as pilot plants, portable facilities which will be relocated after a short period of time not to exceed 120 days, and emissions resulting from the construction phase of a new source, shall be exempt from Section 5(3) and (4).

(6) Secondary emissions associated with major sources or major modifications locating in or impacting upon a non-attainment area may be exempt from Section 5(1) and (2), providing that the source of the secondary emissions is not itself a major stationary source or major modification. If the source of the secondary emissions is itself a major source or major modification, then that source is subject to the provisions of this regulation.

Section 7. Baseline for Determining Credit for Emission Offsets. The baseline for determining credit for emission reductions or offsets will be the emission limitations in effect at the time the application to construct or modify a source is filed. Credit for emission offset purposes may be allowed for existing control that goes beyond that required by regulations. Offset calculations shall be made on a pound per hour basis when all facilities involved in the emission offset calculations are operating at their maximum expected or allowed production rate. Offsets may be calculated on a tons per year basis providing that baseline emissions for existing sources providing the offsets are calculated using the actual annual operating hours for the previous two (2) year period. Where the department requires certain hardware controls in lieu of an emission limitation, baseline allowable emissions shall be based on actual operating conditions for the previous two (2) year period in conjunction with the required hardware controls.

(1) No applicable emission limitation. Where the requirements of the department do not contain an emission limitation for a source or source category, the emission offset baseline involving such sources shall be actual emissions determined under actual operating conditions for the previous two (2) year period. Where the emission limitations required by the department allow greater emissions than the uncontrolled emission rate of the source, emission offset credit will be allowed only for control below the uncontrolled emission rate.

(2) Combustion of fuels. The emissions for determining emission offset credit involving an existing fuel combustion source will be the allowable emissions under the emission limitation requirements of the department for the type of fuel being burned at the time the new major source or major modification application is filed. If the existing source has switched to a different type of fuel at some earlier date, any resulting emission reduction (either actual or allowable) shall not be used for emission offset credit. If the existing source commits to switch to a cleaner fuel at some future date, emission offset credit based on the allowable emissions for the fuels involved is not acceptable unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emission reduction should the source switch back to a dirtier fuel at some later date.

(3) Operating hours and source shutdown. A source may be credited with emission reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels provided that the work force to be affected has been notified in writing of the proposed shutdown or curtailment. Source shutdowns and curtailments in production or operating hours occurring prior to the date the new source application is filed shall not be used for emission offset credit. However, where an applicant can establish that it shut down or curtailed production after August 7, 1977, or less than one (1) year prior to the date of permit application, whichever is earlier, and the proposed new source is a replacement for the shutdown or curtailment, credit for such shutdown or curtailment may be applied to offset emissions from the new source.

(4) Credit for hydrocarbon substitution. No emission offset credit may be allowed for replacing one (1) volatile organic compound with another of lesser photochemical reactivity, unless the replacement compound is methane, ethane, 1,1,1-trichloroethane and trichlorofluoroethane.

(5) Banking of emission offset credit. New sources obtaining permits by applying offsets after January 16, 1979 may bank offsets that exceed the requirements of reasonable progress toward attainment for future use. An owner or operator of an existing source that reduces its own emissions may bank any resulting reduction beyond those required by regulation for use under this regulation, even if the offsets are applied immediately to a new source permit. These banked emissions offsets may be used under the preconstruction review program required in the Clean Air Act as long as these banked emissions are identified and accounted for in the Commonwealth's control strategy. The banked emissions may be used pursuant to procedures specified in 401 KAR 51:055.

(6) Offset credit for meeting NSPS or NESHAPS. Where a source is subject to an emission limitation established in a New Source Performance Standard (NSPS) or a National Emission Standard for Hazardous Air Pollutants (NESHAPS) in compliance with Title 401, Chapters 59 and 57 respectively, and a different emission limitation required by the department, the more stringent limitation shall be used as the baseline for determining credit for emission offsets. The difference in emissions between NSPS or NESHAPS and other emission limitations may not be used as offset credit.

(7) Location of offsetting emissions. In the case of emission offsets involving nitrogen oxides, offsets may be obtained *only* [anywhere] within the *same air quality control region, as defined in 401 KAR 50:020 in which the source is*

to be located [state]. For sulfur dioxide, particulate matter and carbon monoxide, the department shall require atmospheric simulation modeling to ensure that the emission offsets provide a positive net air quality benefit. In the case of emission offsets involving VOC, offsetting emissions may be obtained only *as provided in 401 KAR 51:055, Section 11(2)* [within the county in which the source is to be located].

Section 8. Administrative Procedures. The necessary emission offsets may be proposed either by the owner of the proposed source or the department. The emission reduction committed to must be enforceable by the department, and must be accomplished by the start-up date of the new source. If emission reductions are to be obtained in a state that neighbors the Commonwealth of Kentucky for a new source to be located in the Commonwealth, the emission reductions committed to must be enforceable by the neighboring state and/or local agencies and the U.S. EPA.

(1) Source initiated emission offsets. The owner and/or operator of a source may propose emission offsets which involve reductions from sources controlled by the owner (internal emission offsets) and/or reductions from other sources (external emission offsets). As long as the emission offsets obtained represent reasonable progress toward attainment, they shall be acceptable. An internal emission offset shall be made enforceable by inclusion as a condition of the new source permit. An external emission offset will not be accepted unless the affected source(s) is subject to a new emission limitation requirement of the department to ensure that its emissions will be reduced by a specified amount in a specified time. The form of the new emission limitation may be a department regulation, operating permit condition, or consent or enforcement order.

(2) Department initiated emission offsets. The department may commit to reducing emissions from existing sources (including mobile sources) to provide a net air quality benefit in the impact area of the proposed new source so as to accommodate the proposed new source. The commitment must be reflected in the emission limitation requirements of the department for the new and existing sources as required by this section.

Section 9. Source Obligation. (1) Any owner or operator who constructs or operates an applicable source or modification not in accordance with the application submitted pursuant to this regulation or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this regulation who *begins actual* [commences] construction after the effective date of this regulation without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

(2) Approval to construct shall become invalid if construction is not commenced within eighteen (18) months after receipt of such approval, or if construction is discontinued for a period of eighteen (18) months or more, or if construction is not completed within a reasonable time. The department may extend the eighteen (18) month period upon satisfactory showing that an extension is justified.

(3) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of Title 401, Chapters 50 to 63 and any other requirements under local, state, or federal law.

(4) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this regulation shall apply to the source or modification as though construction had not yet commenced on the source or modification.

Section 10. Permit Condition Rescission. (1) Any owner or operator holding a permit for a stationary source or modification which was issued pursuant to 401 KAR 51:050 or 401 KAR 51:051E may request that the department rescind the permit condition.

(2) The department shall rescind a permit condition if so requested if the applicant can demonstrate to the satisfaction of the department that this regulation does not apply to the source or modification or a portion thereof.

APPENDIX A TO 401 KAR 51:052
Significant Pollutant and Emissions Rate

Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Particulate matter:	25 tpy
Ozone:	40 tpy of volatile organic compounds
Lead:	0.6 tpy

APPENDIX B TO 401 KAR 51:052
Significant Levels of Air Quality Impact

Pollutant	Annual Average	Averaging Time 24-Hour	8-Hour	3-Hour	1-Hour
Sulfur Dioxide	1.0 $\mu g/m^3$	5 $\mu g/m^3$	—	25 $\mu g/m^3$	—
Total Suspended Particulates	1.0 $\mu g/m^3$	5 $\mu g/m^3$	—	—	—
Nitrogen Dioxide	1.0 $\mu g/m^3$	—	—	—	—
Carbon Monoxide	—	—	0.5mg/m^3	—	2mg/m^3

JACKIE SWIGART, Secretary
ADOPTED: July 27, 1982
RECEIVED BY LRC: July 28, 1982 at 4 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department of Environmental Protection
Division of Air Pollution
Amended After Hearing

401 KAR 51:055. *Emissions* [Controlled] trading.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the [Department for] Natural Resources and Environmental Protection *Cabinet* to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation establishes procedures for the creation, holding, transfer and use of surplus emission reductions.

Section 1. Applicability. The provisions of this regulation shall apply to sources which emit the following pollutants: Particulate matter, sulfur dioxide (SO_2), volatile organic compounds (VOC), carbon monoxide (CO), nitrogen oxides (NO_x) *and* [,] lead (Pb) [, fluoride (F), total reduced sulfur (TRS), and sulfuric acid mist].

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given them in 401 KAR 50:010.

(1) "Emission reduction credit (ERC)" means a surplus emission reduction registered by the department in accordance with the requirements of this regulation which represents a decrease in the quantity of a pollutant discharged from a source below the level specified in Title 401, Chapters 59 and 61, 401 KAR 63:020 or any emission rate specified as a permit condition by the department.

(2) "Banking" means a system for recording ERCs so that they may be used or transferred for use at a future date.

(3) "Bubble" means an alternative emission control strategy where several sources or affected facilities are regarded as being placed under a hypothetical dome to produce a single emission point. Sources or affected facilities under a bubble may reallocate emission decreases and increases as long as the requirements of this regulation are met.

(4) "Netting" means *to lower the net emissions increase at an expanding or modernizing source below significant levels using an ERC obtained at the same source and thus remove the requirements of new source review in Title 401, Chapter 51* [the use of an ERC to avoid the requirements of Title 401, Chapter 51 by reducing emissions at a source to compensate for any increased emissions at the same source].

(5) "Offset" means the use of an ERC obtained from an existing source or affected facility to counterbalance the increase in emissions from a new or modified source or affected facility *in a non-attainment area* in order to ensure that reasonable further progress is maintained.

(6) "State Implementation Plan (SIP)" means the most recently prepared plan or revision thereof required by Section 110 of the Clean Air Act which has been approved by U.S. EPA.

(7) "Actual emissions" means the actual rate of emissions of a pollutant from an affected facility as determined in accordance with the following:

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

(b) For any affected facility which has not yet begun normal operation on the particular date on which an application for credit is submitted, actual emissions shall equal the potential to emit of the unit on that date.

(8) "Reasonable further progress" means annual incremental reductions in emissions of the applicable air pollutant which are sufficient, in the judgment of the department and the U.S. EPA, to provide for attainment of the applicable ambient air quality standard by the date specified in 401 KAR 51:010, Section 2.

(9) "Significant level" means an emission rate of a pollutant that equals or exceeds that which is listed in Appendix A to this regulation.

(10) "Surplus reduction" means a reduction in a source's emissions located in a non-attainment area below the allowable emission in the current regulation or below the emission limit specified as a permit condition, whichever was used by the department in the demonstration of attainment of a national ambient air quality standard. In attainment areas, only reductions below a source's actual level of historical emissions can be considered surplus.

(11) "Stationary source" means any building, structure, facility, or installation which emits or may emit any pollutant subject to regulation under the Clean Air Act.

(12) "Building, structure, facility, or installation" means all of the pollutant emitting activities which belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any marine vessel. Pollutant-emitting activities shall be considered as part of the same major group (i.e., which have the same two (2) digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.

Section 3. Application Procedures. (1) Any owner or operator of a source at which a reduction in emissions has occurred or will occur may apply for creation of an ERC in accordance with the requirements of this regulation.

(2) Any owner or operator shall apply for creation of an ERC on appropriate forms supplied by the department.

(3) Applications requesting creation of an ERC based on emission reductions that have already occurred are subject to the following:

(a) No application may be *approved* [submitted] for emission reductions which occurred *in non-attainment areas* prior to *January 1, 1976* [January 6, 1975]. *No application may be approved for emission reductions which occurred in attainment areas prior to the date on which the prevention of significant deterioration emissions baseline was established.*

(b) For emission reductions which occurred between *January 1, 1976* [January 6, 1975] and the effective date of this regulation, applications must be submitted within *one (1) year* [six (6) months] after the effective date of this regulation.

(c) For emission reductions which occur after the effective date of this regulation, applications must be submitted within one (1) year from the effective date of these reductions.

(4) Applications requesting an ERC for emission reductions that have not occurred at the time of application will be reviewed by the department and conditionally approved or denied. *Deposit of an ERC in the statewide registry will not be made if it is to be used at the time of its creation.* An ERC will be registered only after the reduction has taken place. *The department may conditionally deposit an ERC in the registry when it receives from a source assurances of a commitment to produce a specific reduction in the future. In all cases the reduction must actually be achieved before it can be used in an emission trade.*

(5) Before an ERC may be created, the source owner or operator must obtain a revised operating permit which includes specific quantifiable and enforceable emission limits *or operating procedures* reflecting *quantifiable* [the] reduced emissions.

Section 4. Creation of Emission Reduction Credits. No ERC may be created unless the following criteria are met:

(1) The emission level after the reduction must be enforceable by means of a permit condition or consent order.

(2) The emission reduction must represent a real and permanent decrease in emissions below the applicable baseline level. The baseline used for reviewing emissions reductions shall be [actual emissions] determined as follows:

(a) *In attainment or unclassified areas so designated in 401 KAR 51:010, the baseline will be the actual emissions as defined in Section 2(7).* [If emissions from the source are separately identified in the emission inventory used in the State's SIP demonstration of attainment of the national ambient air quality standards, the baseline will be the emissions attributed to the source in the latest SIP revision.]

(b) *In non-attainment areas so designated in 401 KAR 51:010 the baseline will be the allowable emissions in current regulation or the emission limit specified as a permit condition, whichever was used by the department in the demonstration of attainment of the national ambient air quality standard.* [If emissions from the source are not separately identified in the State's SIP demonstration of attainment of the national ambient air quality standards, the baseline will be the average emissions calculated from the operating history of the source or affected facility for the past two (2) years before application is filed. If historical data for the past two (2) years are deemed inadequate by the department, action on an application may be deferred for up to one (1) year while operating data are compiled by the applicant. The source shall demonstrate to the department's satisfaction that the baseline emissions are best estimates.]

(3) [An applicant proposing an] Emission decreases from [process curtailments or] source shutdowns must *not have already been counted in developing an area's attainment strategy* [demonstrate that the proposed decrease will not be negated by emission increases occurring at other sources in the immediate vicinity in response to the applicant's curtailment or shutdown].

Section 5. Confirmation of Emission Reduction Credits. (1) To confirm emission reductions, the department may require source tests, continuous monitors or any other means of calculation approved by the department.

(2) In cases where the department determines that the emission reduction estimates made by the applicant are incorrect, the department reserves the right to grant ERCs for a [smaller] quantity of emission reductions *other* than requested.

(3) *The department will maintain a statewide registry of ERCs to track the ownership, use, and transfer to all banked ERCs. The information contained in the registry shall include the location of the source creating the ERCs, its stack parameters, the temperature and velocity of its plume, particle size if applicable, existence of any hazardous pollutants, daily and seasonal emissions rates, and any other data which might reasonably be necessary to evaluate future use. Subject to confidentiality consideration the department shall make the registry available for public inspection.* [After all of the requirements of this regulation have been met and the emission reduction has actually occurred, the department will register an ERC in the records kept for that purpose.]

Section 6. Special Requirements. For those non-attainment areas in the Commonwealth of Kentucky without fully or conditionally approved SIPs, the following requirements shall be met:

(1) *Where reasonably available control technology (RACT) for sources is defined in the SIP it will be the baseline.* [All affected facilities to be used in creating ERCs, for which reasonably available control technology (RACT) has not already been defined, and which are part of a source with potential emissions exceeding 100 tons per year shall be required to use a level of control which shall represent RACT. The RACT level of control shall be used as a baseline for computing the ERC. If the transaction covers two (2) or more sources, only those sources whose combined potential emissions exceed 100 tons per year shall be required to use RACT emission levels as the basis for calculating ERCs.]

(2) *Where RACT for relevant source categories has not been defined, credit for surplus reductions may be granted in one (1) of two (2) ways:* [Owners or operators of sources whose potential emissions are equal to or less than 100 tons per year shall:]

(a) *Use of RACT baseline. The source may agree with the department and U.S. EPA to an acceptable RACT limit for the emission sources involved in the trade. A surplus would then consist of any emission reductions in excess of those required by this agreed upon RACT; or* [Use RACT limits in accordance with subsection (1) of this section, which shall be used as the baseline for calculating the ERC; or]

(b) *Use of actual emission baseline. The department may use a sources's actual emission rate if such source is not yet subject to RACT limits. The source, in this case, is responsible for finding or producing reductions equivalent to future RACT requirements if and when the department imposes them.* [Use the baseline established under Section 4(2). If the source owner or operator uses the baseline under Section 4(2), he shall be required by the department to produce emission reductions to meet any future RACT requirements imposed on the source.]

(3) No new emission limits shall be imposed on sources that use RACT under subsection (2)(a) of this section from the date the ERC is registered for a period of time consistent with the statutory deadlines for attainment of ambient air quality standards contained in the Clean Air Act, unless the department determines that more stringent emission limits are necessary in order to meet such statutory requirements.

[Section 7. Planned Future Control Requirements. If a proposed ERC involves emission reductions resulting from air quality control tactics or technologies which have been proposed by U.S. EPA as future control requirements for sources in identified categories, the department will grant credit only for reductions which exceed those which would result from application of those tactics and technologies.]

Section 7. [8.] Banking of Emission Reduction Credits. (1) An ERC may be used at the time it is registered or may be held for future transfer or use [, except as provided in subsection (2) of this section].

[(2) If an ERC is not used within five (5) years from its registration, control of the ERC will revert to the department.]

(2) [(3)] During the time that an ERC is held in the emissions banking system, its quantity (expressed in tons per year) will be subject to the following:

(a) *If the department determines that additional emission reductions are required from sources because ambient standards are not attained; because of increment viola-*

tions; or because new RACT requirements are being imposed, sources could satisfy the requirement for additional reductions by using their banked ERCs, by reducing emissions elsewhere or by purchasing equivalent ERCs. [Any ERC will be discounted by the department when a control requirement is adopted after registration of the ERC which requires additional control of the same type of emission from the same type of source as represented by the ERC. The percent reduction in amount of an ERC will be equal to the difference between the percent reduction required by the new control requirements and the percent reduction required by the previous control requirements. Similarity between types of sources will be determined using the Standard Industrial Classifications Manual.]

(b) If new information becomes available to the department which results in more accurate emissions estimates, the department will adjust the value of affected ERCs accordingly.

(c) If an owner or operator of a source who created an ERC fails to comply with the requirements of the revised permit resulting from creating the ERC, the department shall adjust the quantity of ERCs registered in the banking system for that owner or operator.

(d) If the ERC has been used, any violation of the conditions under which the ERC was created will result in enforcement action against the source producing that emission reduction.

Section *8.* [9.] Transfer of Emissions Reduction Credits. An ERC may be transferred in whole or in part by any means of conveyance permitted by the laws of the Commonwealth of Kentucky. The role of the department in trading of an ERC will be limited to providing information on the documentation and registration of ERCs. No transfer shall be effective until the department is notified thereof in writing, confirms receipt of the notice, and notes the transfer of ownership in the department registry for that purpose.

Section *9.* [10.] Use of Emission Reduction Credits. (1) Registered ERCs may be used in accordance with this regulation to establish alternative emission limits (bubbles), to offset increased emissions from new or modified sources or to use netting to avoid new source review.

(2) Application for use of ERCs shall be made on forms provided by the department.

(3) Before an ERC may be used, the source owner or operator must obtain a revised operating permit which includes specific quantifiable emission limits, *or operating procedures reflecting quantifiable emission reduction.*

(4) Use of an ERC shall be allowed only in transactions where emissions being exchanged are in the same criteria pollutant category. Hazardous and non-hazardous emissions may only be traded against each other if the hazardous emission is decreased. [Coke oven emissions may only be traded against other particulate emissions if the coke oven emissions decrease.]

(5) [No use of] An ERC may *not be used to meet the requirement of the National Emission Standards for Hazardous Air Pollutants in 40 CFR 61,* [allow a new or modified source to exceed] the *New Source S*tandards [of performance] in 40 CFR 60, filed by reference in 401 KAR 50:015, [Title 401, Chapter 57 or 59,] or those standards defined by lowest achievable emission rate (LAER) or best available control technology (BACT) for those sources to which such standards apply.

Section *10.* [11.] Air Quality Modeling Requirements. (1) No air quality modeling or SIP revision under Section *15* [16] shall be required for use of ERCs representing stack emissions of *carbon monoxide,* particulate matter and sulfur dioxide if all of the following conditions are met:

(a) Use of an ERC produces no net increase in applicable baseline emissions;

(b) [(a)] The relevant affected facilities are in the same immediate vicinity; i.e., the distance between any of the affected facilities shall be no greater than 250 meters; and

(c) [(b)] The relevant emission points are of similar effective *plume* [stack] height; i.e., the effective *plume* [stack] height at which the increase occurs must be as high, or higher, than the effective *plume* [stack] height at which the decrease occurs.

(2) Only limited modeling will be necessary for use of ERCs for trades where *there is no net increase in applicable baseline emissions and where emissions after the trade* [total emissions do not increase, and] will not cause a significantly different air quality impact as compared to the original affected facilities. A "significantly different impact" is one (1) that equals or exceeds the levels specified in Appendix *B* [A] to this regulation [for affected facilities in areas specified as non-attainment in 401 KAR 51:010 or Appendix B of this regulation for affected facilities in attainment and unclassified areas so designated in 401 KAR 51:010]. The limited modeling need only include the affected facilities involved in creating and using the ERCs.

(3) For use of all other ERCs representing emissions which do not meet the conditions of subsections (1) and (2) of this section, diffusion modeling considering all sources in the area of impact will be required as follows:

(a) Modeling must show that use of the ERC will neither create a new violation of the ambient air quality standards nor interfere with reasonable further progress, as determined by the department, toward attaining the national ambient air quality standards as planned in the SIP; and

(b) Modeling must show that use of the ERC will not create a violation of a prevention of significant deterioration increment as defined in 401 KAR 51:017 in attainment or unclassified area.

(4) No air quality modeling or SIP revision under Section *15* [16] shall be required for use of ERCs representing stack emissions of volatile organic compounds (VOC) or nitrogen oxides (NO_x).

(5) *The air quality models to be used to determine if the significance levels in Appendix B of this regulation will be exceeded by a trade as required in Section 10(2) and for modeling under Section 10(3) shall be:* [No SIP revision under Section 16 shall be required for use of ERCs representing stack emissions of particulate matter and sulfur dioxide if an appropriate air quality model as specified in "Guidelines on Air Quality Models," filed by reference in 401 KAR 50:015, or a modeling procedure approved by U.S. EPA for the purpose of this subsection, is used.]

(a) As appropriate, the Single Source (CRSTER) Model, the Multiple Point, Gaussian Dispersion Algorithm with Optional Terrain Adjustment (MPTER), or the Industrial Source Complex (ISC) Dispersion Model; and

(b) In compliance with the requirements of 401 KAR 50:040, or other procedures approved by the U.S. EPA for the purpose of this subsection.

(6) The meteorological data for the modeling shall be for a reasonably current five (5) year period. The meteorological data shall be obtained from surface and upper air stations that are closest to or most representative of the meteorology at the location of the source or sources.

The emissions data used shall represent the increases and decreases from the applicable baselines for the affected facilities involved in the trade.

Section *11.* [12.] Use of Emission Reduction Credits in Offsets and Netting. *(1)* All ERCs created according to this regulation may be used by source owners and operators to meet the requirements of 401 KAR 51:017 and 401 KAR 51:052.

(2) ERCs representing stack emissions of volatile organic compounds (VOC) shall be available for use *as follows:* [only by sources located in the county in which the ERCs were created.]

(a) For a source in an urban county designated non-attainment for ozone in 401 KAR 51:010, volatile organic compounds (VOC) ERCs shall only be available for use when created by sources located in counties within the same urban non-attainment area.

(b) For a source not subject to paragraph (a) of this subsection, VOC ERCs shall be available for use when created by sources located within fifty (50) kilometers of the intended user.

(3) For netting purposes, ERCs must be created by the same source to which they are to be used.

Section *12.* [13.] Alternative Emission Standards (Bubbles). (1) The owner of a source, or the owners of two (2) or more different sources, may propose a bubble which establishes alternative standards for the sources included in the bubble.

(2) Total allowable emissions from a bubble will be determined as follows:

(a) The total emissions from a bubble [excluded from SIP revision requirements under Section 16] may not exceed the arithmetic sum of the baseline level of emissions determined for each source under Section 4(2) or Section 6. *Such bubble will be excluded from SIP revision requirements under Section 15.*

(b) Total emissions from a bubble [approved as a SIP revision] may exceed the sum of the baseline level of emissions determined for each source under Section 4(2) or Section 6 *only if the bubble was approved as a SIP revision.*

(3) The total allowable emissions determined under subsection (2) of this section may be reallocated among affected facilities included in the bubble in accordance with the requirements for creating, transferring, and using ERCs contained in this regulation.

(4) Source specific alternative emission standards shall be incorporated by the department into operating permits for the affected sources.

(5) Compliance status of sources:

(a) *Sources in areas with an unapproved SIP may apply for bubbles and the department may approve such applications provided timely attainment of ambient air quality standards will not be jeopardized.* [Only sources which are in compliance with all applicable air quality regulations of the department may apply for alternative emission limits under this regulation. To be in compliance, a source owner or operator must:]

[1. Demonstrate that all affected facilities involved in the proposed trade are in compliance with applicable regulations at the time an application is submitted;]

[2. Demonstrate that the source is meeting the requirements of a legally enforceable compliance schedule for all affected facilities involved in the proposed trade; or]

[3. For a source out of compliance, be subject to a legally enforceable compliance schedule which ensures compliance with alternative standards for all affected facilities involved in the proposed trade and otherwise meets the requirements of the Clean Air Act.]

(b) *Sources not in compliance with applicable emission limits may apply for a bubble to achieve compliance.* [Submission of an application for a bubble will not affect any existing obligation of a source to comply with applicable laws, regulations and orders unless the department issues an order specifically extending a compliance schedule. No such order may extend compliance schedules beyond mandatory attainment dates in the Clean Air Act, or interfere with reasonable further progress as required by the department.]

(c) Sources in urban areas with an ambient air quality standard attainment date extension beyond December 31, 1982 for ozone or carbon monoxide may apply for a compliance date extension under a bubble application and the department may approve the application without a SIP revision if the annual reductions required under the department's reasonable further progress demonstration are not diminished for each year in question.

(d) [(c)] No alternative emission standard will be established for a source which is presently subject to federal enforcement action unless the U.S. EPA approves the alternative standard and the schedule for meeting it. As used in this paragraph, "federal enforcement action" means any of the following actions under the applicable sections of the Clean Air Act:

1. Order issued under section 113(a).
2. Civil action filed under section 113(b).
3. Criminal actions filed under section 113(c).
4. Notice imposing noncompliance penalties issued under section 120.
5. Citizen suit filed under section 304 *where U.S. EPA has intervened.*

(6) [(d)] Upon receiving notice from the department that a new or more restrictive emission standard has become applicable to any affected facility included in a bubble under this section, the owner or owners of those affected facilities shall submit revised permit applications. The revised applications must demonstrate either reductions in total bubble emissions, or use of ERCs which are equal to or greater than the reduction required to comply with the new emission standards. If the owners or operators of an affected facility do not submit permit applications that demonstrate the necessary reductions, the department shall issue an order requiring compliance with the new or more restrictive emission standards. The requirements of this paragraph shall not apply to sources under Section 6(3).

Section *13.* [14.] Public Participation. For purposes of public notification and opportunity for public comment the department shall follow the requirements of 401 KAR 50:035 for all applications for *bubbles and* the use of ERCs.

Section *14.* [15.] Transmittals to U.S. EPA. The department will transmit copies of the following documents to the U.S. EPA promptly after the documents are prepared:

(1) Copies of public notices and supporting documents relating to proposed department action on applications for *a bubble or* use of an ERC.

(2) Copies of permits reflecting department approval of *a bubble or* use of an ERC, including data on emission limits before and after the approval.

Section *15.* [16.] Amendments to the SIP; Requirements for Exemptions. (1) The department will approve *a* proposed *bubble or* use of the ERC without action

to formally amend the SIP if *the sum of the emissions increases at the affected facilities totals less than 100 tons per year after control, there is no net increase in the applicable baseline emissions, the proposal complies with all of the requirements of the regulation, and the proposal includes only stack emissions.* [all of the following conditions are met:]

[(a) The proposal complies with all of the requirements of this regulation;]

[(b) Total emissions do not increase;]

[(c) The sources affected by the proposal are included in the SIP emissions inventory;]

[(d) The proposal has been exempted from modeling requirements under Section 11(1) or involves sources whose combined total potential to emit is less than 100 tons per year; and]

[(e) The proposal includes only stack emissions.]

(2) The department will approve *a bubble or* use of an ERC without action to formally amend the SIP if the transaction involves emissions of volatile organic compounds (VOC) or nitrogen oxides (NO_x), *if there is no net increase in baseline emissions,* [if total actual emissions do not increase,] and if all other requirements of this regulation are met.

(3) The department will approve a bubble or use of an ERC without action to formally amend the SIP for trades involving particulate matter, sulfur dioxide or carbon monoxide if the trade is exempt from modeling under Section 10(1) and the proposal includes only stack emissions.

(4) The department will approve a bubble or use of an ERC without action to formally amend the SIP for trades involving particulate matter, sulfur dioxide or carbon monoxide if the trade requires only limited air quality modeling due to the provisions of Section 10(2) and the modeling shows the ambient air quality impact as a result of the trade to be insignificant, and the proposal includes only stack emissions.

(5) [(3)] The department will approve *a bubble or* the use of an ERC without action to formally amend the SIP for transactions involving fugitive emissions *of particulate matter* if:

(a) Total actual emissions do not increase;

(b) All other requirements of this regulation are met;

(c) Fugitive emissions from processes are traded against similar sources;

(d) Stack emissions are traded against those fugitive emissions which can reasonably be represented by a stack emission dispersion pattern; [and]

(e) Air quality modeling as required under Section 10 is performed; and

(f) Such trades meet the requirements of Section 10(1) or subsection (1)(c) of this section.

(6) [(e)] For those fugitive emissions which cannot be reasonably represented by a stack emission dispersion pattern, the source shall agree to conduct post-approval monitoring to assure that the predicted improvement in air quality has occurred and shall use the additional control measures as shall be necessary to cause such improvement to occur. *Such open dust emissions trades shall be submitted by the department to the U.S. EPA and approved as SIP revisions.*

(7) [(4)] All other proposals for using ERCs shall be submitted to the U.S. EPA and approved as a SIP revision.

APPENDIX A TO 401 KAR 51:055
Significant Pollutant and Emissions Rates

Carbon monoxide:	*100 tons per year (tpy)*
Nitrogen oxides:	*40 tpy*
Sulfur dioxide:	*40 tpy*
Particulate matter:	*25 typ*
Ozone:	*40 tpy of volatile organic compounds*
Lead:	*0.6 tpy*

[APPENDIX A TO 401 KAR 51:055
Significance Levels for Non-Attainment Areas

	Averaging Time (Hours)				
Pollutant	Annual	24	8	3	1
SO_2	1.0 μg/m³	5 μg/m³		25 μg/m³	
TSP	1.0 μg/m³	5 μg/m³			
NO_2	1.0 μg/m³				
CO			0.5mg/m³		2mg/m³]

APPENDIX B TO 401 KAR 51:055
Significance Levels for Attainment and Unclassified Areas

	Averaging Time (Hours)				
Pollutant	[Annual]	24	8	[3]	[1]
SO_2	[1.0 μg/m³]	13 μg/m³		[25 μg/m³]	
TSP	[1.0 μg/m³]	10 μg/m³			
[NO_2	1.0 μg/m³]				
CO			575 mg/m³		[2mg/m³]

JACKIE SWIGART, Secretary
ADOPTED: July 27, 1982
RECEIVED BY LRC: July 28, 1982 at 4 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution
Amended After Hearing

401 KAR 59:018. New stationary gas turbines.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the [Department for] Natural Resources and Environmental Protection *Cabinet* to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of emissions from new stationary gas turbines.

Section 1. Applicability. The provisions of this regulation are applicable to the following affected facilities: all stationary gas turbines with a heat input at peak load equal to or greater than 10.7 gigajoules per hour, (ten (10) million BTU/hr) based on the lower heating value of the fuel fired, which commenced on or after the classification date defined below.

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given them in 401 KAR 50:010.

(1) "Stationary gas turbine" means any simple cycle gas turbine, regenerative cycle gas turbine or any gas turbine portion of a combined cycle steam/electric generating system that is not self propelled. It may, however, be mounted on a vehicle for portability.

(2) "Simple cycle gas turbine" means any stationary gas turbine which does not recover heat from the gas turbine exhaust gases to preheat the inlet combustion air to the gas turbine, or which does not recover heat from the gas turbine exhaust gases to heat water or generate steam.

(3) "Regenerative cycle gas turbine" means any stationary gas turbine which recovers heat from the gas turbine exhaust gases to preheat the inlet combustion air to the gas turbine.

(4) "Combined cycle gas turbine" means any stationary gas turbine which recovers heat from the gas turbine exhaust gases to heat water or generate steam.

(5) "Emergency gas turbine" means any stationary gas turbine which operates as a mechanical or electrical power source only when the primary power source for a facility has been rendered inoperable by an emergency situation.

(6) "Ice fog" means an atmospheric suspension of highly reflective ice crystals.

(7) "ISO *(International Standard Organization)* standard day conditions" means 288 degrees Kelvin, sixty (60) percent relative humidity and 101.3 kilopascals pressure.

(8) "Efficiency" means the gas turbine manufacturer's rated heat rate at peak load in terms of heat input per unit of power output based on the lower heating value of the fuel.

(9) "Peak load" means 100 percent of the manufacturer's design capacity of the gas turbine at ISO standard day conditions.

(10) "Base load" means the load level at which a gas turbine is normally operated.

(11) "Fire-fighting turbine" means any stationary gas turbine that is used solely to pump water for extinguishing fires.

(12) "Turbines employed in oil/gas production or oil/gas transportation" means any stationary gas turbine used to provide power to extract crude oil/natural gas from the earth or to move crude oil/natural gas, or products refined from these substances through pipelines.

[(13) "Metropolitan statistical area" (MSA) means any area defined as such by the U.S. Department of Commerce.]

[(14) "Offshore platform gas turbines" means any stationary gas turbine located on a platform in an ocean.]

(13) [(15)] "Garrison facility" means any permanent military installation.

(14) [(16)] "Gas turbine model" means a group of gas turbines having the same nominal air flow, combustor inlet pressure, combustor inlet temperature, firing temperature, turbine inlet temperature and turbine inlet pressure.

(15) [(17)] "Electric utility stationary gas turbine" means any stationary gas turbine constructed for the purpose of supplying more than one-third (⅓) of its potential electric output capacity to any utility power distribution system for sale.

(16) [(18)] "Emergency fuel" is a fuel fired by a gas turbine only during circumstances, such as natural gas supply curtailment or breakdown of delivery system, that make it impossible to fire natural gas in the gas turbine.

[(19)][[](17)[]] "Classification date" means October 3, 1977.

Section 3. Standard for Nitrogen Oxides. (1) On and after the date on which the performance test required to be conducted by 401 KAR 50:045 is completed, every owner or operator subject to the provisions of this regulation shall comply with one (1) of the following as specified in subsections (2) to (4) of this section, except as provided in subsections (5) to *(12)* [(9)] of this section.

(a) No owner or operator subject to the provisions of this regulation shall cause to be discharged into the atmosphere from any stationary gas turbine, any gases which contain nitrogen oxides in excess of the standard set forth in the formula in Appendix A of this regulation.

(b) No owner or operator subject to the provisions of this regulation shall cause to be discharged into the atmosphere from any stationary gas turbine, any gases which contain nitrogen oxides in excess of the standard set forth in Appendix B of this regulation.

(c) F shall be defined according to the nitrogen content of the fuel as set forth in the table in Appendix C of this regulation, or manufacturers may develop custom fuel-bound nitrogen allowances for each gas turbine model they manufacture. These fuel-bound nitrogen allowances shall be substantiated with data and must be approved for use by the department before the initial performance test required by 401 KAR 50:045.

(2) *Electric utility* stationary gas turbines with a heat input at peak load greater than 107.2 gigajoules per hour (100 million BTU/hr) based on the lower heating value of the fuel fired [except as provided in subsection (4) of this section] shall comply with the provisions of subsection (1)(a) of this section.

(3) Stationary gas turbines with a heat input at peak load equal to or greater than 10.7 gigajoules per hour (ten (10) million BTU/hr) but less than or equal to 107.2 gigajoules per hour (100 million BTU/hr) based on the lower heating value of the fuel fired, shall comply with the provisions of subsection (1)(b) of this section.

(4) *Stationary gas turbines with a manufacturer's rated base load at ISO conditions of thirty (30) megawatts or less except as provided in subsection (2) of this section shall comply with subsection (1)(b) of this section.* [Stationary gas turbines employed in oil/gas production or oil/gas transportation and not located in MSAs, and offshore platform turbines shall comply with the provisions of subsection (1)(b) of this section.]

(5) Stationary gas turbines with a heat input at peak load equal to or greater than 10.7 gigajoules per hour (ten (10) million BTU/hr) but less than or equal to 107.2 gigajoules per hour (100 million BTU/hr) based on the lower heating value of the fuel fired and that have commenced construction prior to October 3, 1982 are exempt from subsection (1) of this section.

(6) Stationary gas turbines using water or steam injection for control of NO_x emissions are exempt from subsection (1) of this section when ice fog is deemed a traffic hazard by the owner or operator of the gas turbine.

(7) Emergency gas turbines, military gas turbines for use in other than a garrison facility, military gas turbines installed for use as military training facilities, and fire fighting gas turbines are exempt from subsection (1) of this section.

(8) Stationary gas turbines engaged by manufacturers in research and development of equipment for both gas turbine emission control techniques and gas turbine efficiency improvements are exempt from subsection (1) of this section on a case-by-case basis as determined by the department.

(9) Exemptions from the requirements of subsection (1)

of this section will be granted on a case-by-case basis as determined by the department in specific geographical areas where mandatory water restrictions are required by governmental agencies because of drought conditions. These exemptions will be allowed only while the mandatory water restrictions are in effect.

(10) Stationary gas turbines with a heat input at peak load greater than 107.2 gigajoules per hour (100 million BTU/hour) that commenced construction, modification, or reconstruction between the dates of October 3, 1977, and January 27, 1982, and were required to comply with subsection (1)(a), except electric utility stationary gas turbines, are exempt from subsection (1) of this section.

(11) Stationary gas turbines with a heat input greater than or equal to 10.7 gigajoules per hour (ten (10) million BTU/hour), when fired with natural gas, are exempt from subsection (1)(b) of this section when being fired with an emergency fuel.

(12) Regenerative cycle gas turbines with a heat input less than or equal to 107.2 gigajoules per hour (100 million BTU/hour) are exempt from subsection (1) of this section.

Section 4. Standard for Sulfur Dioxide. On and after the date on which the performance test required to be conducted by 401 KAR 50:045 is completed, every owner or operator subject to the provisions of this regulation shall comply with one (1) of the following conditions:

(1) No owner or operator subject to the provisions of this regulation shall cause to be discharged into the atmosphere from any stationary gas turbine any gases which contain sulfur dioxide in excess of 0.015 percent by volume at fifteen (15) percent oxygen and on a dry basis; or

(2) No owner or operator subject to the provisions of this regulation shall burn in any stationary gas turbine any fuel which contains sulfur in excess of 0.8 percent by weight.

Section 5. Monitoring of Operations. (1) The owner or operator of any stationary gas turbine subject to the provisions of this regulation and using water injection to control NO_x emissions shall install and operate a continuous monitoring system to monitor and record the fuel consumption and the ratio of water to fuel being fired in the turbine. This system shall be accurate to within plus or minus five (5) percent and shall be approved by the department.

(2) The owner or operator of any stationary gas turbine subject to the provisions of this regulation shall monitor sulfur content and nitrogen content of the fuel being fired in the turbine. The frequency of determination of these values shall be as follows:

(a) If the turbine is supplied its fuel from a bulk storage tank, the values shall be determined on each occasion that fuel is transferred to the storage tank from any other source.

(b) If the turbine is supplied its fuel without intermediate bulk storage the values shall be determined and recorded daily. Owners, operators or fuel vendors may develop custom schedules for determination of the values based on the design and operation of the affected facility and the characteristics of the fuel supply. These custom schedules shall be substantiated with data and must be approved by the department before they can be used to comply with this subsection.

(3) For the purpose of reports required under 401 KAR 59:005, Section 3, periods of excess emissions that shall be reported are defined as follows:

(a) Nitrogen oxides. Any one (1) hour period during which the average water-to-fuel ratio, as measured by the continuous monitoring system, falls below the water-to-fuel ratio determined to demonstrate compliance with Section 3 by the performance test required in 401 KAR 50:045 or any period during which the fuel-bound nitrogen of the fuel is greater than the maximum nitrogen content allowed by the fuel-bound nitrogen allowance used during the performance test required in 401 KAR 50:045. Each report shall include the average water-to-fuel ratio, average fuel consumption, ambient conditions, gas turbine load, and nitrogen content of the fuel during the period of excess emissions, and the graphs or figures developed under Section 6(1).

(b) Sulfur dioxide. Any daily period during which the sulfur content of the fuel being fired in the gas turbine exceeds 0.8 percent.

(c) Ice fog. Each period during which an exemption provided in Section 3(7) is in effect shall be reported in writing to the department quarterly. For each period the ambient conditions existing during the period, the date and time the air pollution control system was deactiviated, and the date and time the air pollution control system was reactiviated shall be reported. All quarterly reports shall be postmarked by the thirtieth (30th) day following the end of each calendar quarter.

(d) Emergency fuel. Each period during which an exemption provided in Section 3(11) is in effect shall be included in the report required under 401 KAR 59:005, Section 3. For each period, the type, reasons, and duration of the firing of the emergency fuel shall be reported.

Section 6. Test Methods and Procedures. (1) The reference methods in Appendix A of 40 CFR 60, filed by reference in 401 KAR 50:015, except as provided for in 401 KAR 50:045, shall be used to determine compliance with the standards prescribed in Section 3 as follows:

(a) Reference Method 20 for the concentration of nitrogen oxides and oxygen. For affected facilities in this regulation, the span value shall be 300 parts per million of nitrogen oxides.

1. The nitrogen oxide emission level measured by Reference Method 20 shall be adjusted to ISO standard day conditions by the ambient condition correction factor in Appendix D of this regulation. The adjusted NO_x emission level shall be used to determine compliance with Section 3.

2. Manufacturers may develop custom ambient condition correction factors for each gas turbine model they manufacture in terms of combustor inlet pressure, ambient air pressure, ambient air humidity and ambient air temperature to adjust the nitrogen oxides emission level measured by the performance test as provided for in 401 KAR 50:045 to ISO standard day conditions. These ambient condition correction factors shall be substantiated with data and must be approved for use by the department before the initial performance test required by 401 KAR 50:045.

3. The water-to-fuel ratio necessary to comply with Section 3 will be determined during the initial performance test by measuring NO_x emissions using Reference Method 20 and the water-to-fuel ratio necessary to comply with Section 3 at thirty (30), fifty (50), seventy-five (75) and 100 percent of peak load or at four (4) points in the normal operating range of the gas turbine, including the minimum point in the range and peak load. All loads shall be corrected to ISO conditions using the appropriate equations supplied by the manufacturer.

(b) The analytical methods and procedures employed to

determine the nitrogen content of the fuel being fired shall be approved by the department and shall be accurate to within plus or minus five (5) percent.

(2) The method for determining compliance with Section 4, except as provided in 401 KAR 50:045, shall be as follows:

(a) Reference Method 20 for the concentration of sulfur dioxide and oxygen; and

(b) ASTM D 2880-78 for the sulfur content of liquid fuels and ASTM D 1072-56 (75) for the sulfur content of gaseous fuels. These methods shall also be used to comply with Section 5(2). ASTM designations are filed by reference in 401 KAR 50:015.

(3) Analysis for the purpose of determining the sulfur content and the nitrogen content of the fuel as required by Section 5(2) may be performed by the owner/operator, a service contractor retained by the owner/operator, the fuel vendor, or any other qualified agency provided that the analytical methods employed by these agencies comply with the applicable subsections of this section.

APPENDIX A TO 401 KAR 59:018

Formula for NO_x Standard
Using a 75 ppm Emission Limitation

$$STD = 0.0075\,(14.4/Y) + F$$

Where:

STD = allowable NO_x emissions (percent by volume at fifteen (15) percent oxygen and on a dry basis).

Y = manufacturer's rated heat rate at manufacturer's rated load (kilojoules per watt hour) or, actual measured heat rate based on lower heating value of fuel as measured at actual peak load for the facility. The value of Y shall not exceed 14.4 kilojoules per watt hour. Y shall be determined on a dry basis, at ISO conditions.

F = NO_x emission allowance for fuel-bound nitrogen as defined in Appendix C of this regulation.

APPENDIX B TO 401 KAR 59:018

Formula for NO_x Standard Using
a 150 ppm Emission Limitation

$$STD = 0.0150\,(14.4/Y) + F$$

Where:

STD = allowable NO_x emission (percent by volume at fifteen (15) percent oxygen and on a dry basis).

Y = manufacturer's rated heat rate at manufacturer's rated peak load (kilojoules per watt hour), or actual measured heat rate based on lower heating value of fuel as measured at actual peak load for the facility. The value of Y shall not exceed 14.4 kilojoules per watt hour. Y shall be determined on a dry basis, at ISO conditions.

F = NO_x emission allowance for fuel-bound nitrogen as defined in Appendix C of this regulation.

APPENDIX C TO 401 KAR 59:018

Table of Fuel-Bound Nitrogen Levels versus
the Value of F as Used in Appendices A and B

Fuel-Bound Nitrogen (percent by weight)	F (NO_x percent by volume)
$N \leq 0.015$	0
$0.015 < N \leq 0.1$	0.04 (N)
$0.1 < N \leq 0.25$	0.004 + 0.0067 (N-0.1)
$N > 0.25$	0.005

Where:

N = the nitrogen content of the fuel (percent by weight).

APPENDIX D TO 401 KAR 59:018

Ambient Condition Correction Factor

$$NO_X = (NO_{X_{obs}})(P_{ref}/P_{obs})^{0.5} e^{19(H_{obs}-0.00633)(288°K/T_{AMB})^{1.53}}$$

Where:

NO_X = emissions of NO_X at fifteen (15) percent oxygen and ISO standard ambient conditions.

$NO_{X_{obs}}$ = measured NO_X emissions at fifteen (15) percent oxygen ppmv.

P_{ref} = reference combustor inlet absolute pressure at 101.3 kilopascals ambient pressure at 59°F.

P_{obs} = measured combustor inlet absolute pressure at test ambient pressure.

H_{obs} = specific humidity of ambient air at test.

e = transcendental constant (2.718).

T_{AMB} = temperature of ambient air at test.

JACKIE SWIGART, Secretary
ADOPTED: July 27, 1982
RECEIVED BY LRC: July 28, 1982 at 4 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution
Amended After Hearing

401 KAR 59:212. New graphic arts facilities using rotogravure and flexography.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the [Department for] Natural Resources and Environmen-

tal Protection *Cabinet* to prescribe regulations for the prevention, abatement and control of air pollution. This regulation provides for the control of volatile organic compound emissions from new graphic arts facilities which use rotogravure and flexography.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced on or after the classification date defined below which is located:

(1) In an urban county designated non-attainment for ozone under 401 KAR 51:010; or

(2) In any other county and is a part of a major source of volatile organic compounds.

(3) The provisions of this regulation shall not apply to affected facilities in the following counties: Garrard, Graves, Hopkins, Laurel, Montgomery, Nelson, Pulaski, Scott, Taylor, Trigg, and Union prior to designation of such counties non-attainment for ozone under 401 KAR 51:010.

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a printing line for packaging rotogravure, publication rotogravure, *specialty rotogravure,* and flexographic printing.

(2) "Applicator" means the mechanism or device used to apply the ink.

(3) "Flashoff area" means the space between the applicator and the oven.

(4) "Printing line" means a series of equipment and/or operations used to apply, dry, or cure any inks containing volatile organic compounds. This shall include, but is not limited to:

(a) Mixing operations;

(b) Process storage;

(c) Applicators;

(d) Drying operations including, but not limited to, flashoff area evaporation, oven drying, baking, curing, and polymerization;

(e) Clean up operations;

(f) Leaks, spills and disposal of volatile organic compounds;

(g) Processing and handling of recovered volatile organic compounds;

(h) For the purposes of determining compliance with this regulation, if any equipment or operation could be considered to be a part of more than one (1) printing line, its volatile organic compound emissions shall be assigned to each printing line of which it is a part proportionally to the throughput of volatile organic compounds it receives from or distributes to each printing line;

(i) If any portion of the series of equipment and/or operations qualify for an exemption according to Section 6, then that portion shall be considered to be a separate printing line;

(j) All units in a machine which has both coating and printing units will be considered as performing a printing operation.

(5) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one-tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.

(6) "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain inks, volatile organic compounds, or recovered volatile organic compounds; but does not mean storage tanks which are subject to 401 KAR 59:050 or 401 KAR 61:050.

(7) "Printing" means the formation of words, designs and pictures, usually by a series of application rolls each with only partial coverage. It applies to flexographic and rotogravure processes as applied to publication, *specialty,* and packaging printing.

(8) "Coating" means the application of a uniform layer of material across the entire width of a web.

(9) "Classification date" means *February 4, 1981* [the effective date of this regulation].

(10) "Volatile organic compounds net input" means the total amount of volatile organic compounds input to the affected facility minus the amount of volatile organic compounds that are not emitted into the atmosphere. Volatile organic compounds that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining volatile organic compounds net input. When the nature of any operation or design of equipment is such as to permit more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emissions shall apply.

(11) "Packaging rotogravure printing" means rotogravure printing upon paper, paper board, metal foil, plastic film, and other substrates, which are, in subsequent operations, formed into packaging products and labels for articles to be sold.

(12) "Publication rotogravure printing" means rotogravure printing upon paper which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements, and other types of printed materials.

(13) "Flexographic printing" means the application of words, designs and pictures to a substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of rubber or other elastomeric materials.

(14) "Rotogravure printing" means the application of words, designs, and pictures to a substrate by means of a roll printing technique which involves intaglio or recessed image areas in the form of cells.

(15) "Roll printing" means the application of words, designs and pictures to a substrate usually by means of a series of hard rubber or steel rolls each with only partial coverage.

(16) "Specialty rotogravure printing" means all rotogravure printing except packaging rotogravure and publication rotogravure printing. It includes, but is not limited to, rotogravure printing on paper cups and plates, patterned giftwrap, wallpaper and floor coverings.

Section 3. Standard for Volatile Organic Compounds. (1) No person shall cause, allow, or permit an affected facility for publication rotogravure printing to discharge into the atmosphere more than twenty-five (25) percent by weight of the volatile organic compounds net input into the affected facility.

(2) No person shall cause, allow, or permit an affected facility for packaging rotogravure printing *or specialty rotogravure printing* to discharge into the atmosphere more than thirty-five (35) percent by weight of the volatile organic compounds net input into the affected facility.

(3) No person shall cause, allow, or permit an affected facility for flexographic printing to discharge into the atmosphere more than forty (40) percent by weight of the volatile organic compounds net input in the affected facility.

Section 4. Compliance. (1) In all cases the design of any control system is subject to approval by the department.

(2) Compliance with the standard in Section 3 shall be demonstrated by a material balance except in those cases where the department determines that a material balance is not possible. For those cases where a material balance is not possible, compliance will be determined based upon an engineering analysis by the department of: the control system design, control device efficiency, control system capture efficiency, and any other factors that could influence the performance of the system. If so requested by the department, performance tests as specified by the department shall be conducted in order to determine the efficiency of the control device.

(3) With the prior approval of the department, the owner or operator may elect to effect such changes in the affected facility as are necessary to qualify for an exemption under Section 5.

(4) Whenever deemed necessary by the department, the department shall obtain samples of the inks used at an affected facility to verify that the inks meet the requirements in Section 5. The following methods of analyses, filed by reference in 401 KAR 50:015, for inks shall be used as applicable except in those cases where the department determines that other methods would be more appropriate:

(a) ASTM D 1644-75 Method A;
(b) ASTM D 1475-60(74);
(c) ASTM D 2369-73; or
(d) Federal Standard 141 a, Method 4082.1.

Section 5. Exemptions. Any affected facility shall be exempt from the provisions of Section 3 if the printing systems:

(1) Utilize a water-borne ink whose volatile portion consists of seventy-five (75) volume percent water and twenty-five (25) volume percent organic solvent (or a lower volatile organic compound content) in all printing units;

(2) Achieve a seventy (70) volume percent overall reduction of solvent usage (compared to all solvent-borne ink usage); or

(3) Utilize inks which, *excluding water,* contain sixty (60) percent or more *by volume* non-volatile material *as applied to the substrate.*

Section 6. Variances. Variation with the standards and limitations contained in this regulation, when supported by adequate technical information, will be considered by the department on a case-by-case basis to allow for technological or economic circumstances which are unique to a source.

JACKIE SWIGART, Secretary
ADOPTED: July 27, 1982
RECEIVED BY LRC: July 28, 1982 at 4 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution
Amended After Hearing

401 KAR 61:122. Existing graphic arts facilities using rotogravure and flexography.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the [Department for] Natural Resources and Environmental Protection *Cabinet* to prescribe regulations for the prevention, abatement and control of air pollution. This regulation provides for the control of volatile organic compound emissions from existing graphic arts facilities which use rotogravure and flexography.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the classification date defined below which is located:

(1) In an urban county designated non-attainment for ozone under 401 KAR 51:010; or

(2) In any county which is designated non-attainment or unclassified for ozone under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.

(3) The provisions of this regulation shall not apply to affected facilities in the following counties: Garrard, Graves, Hopkins, Laurel, Montgomery, Nelson, Pulaski, Scott, Taylor, Trigg, and Union prior to designation of such counties non-attainment for ozone under 401 KAR 51:010.

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a printing line for packaging rotogravure, publication rotogravure, *specialty rotogravure,* and flexographic printing.

(2) "Applicator" means the mechanism or device used to apply the ink.

(3) "Flashoff area" means the space between the applicator and the oven.

(4) "Printing line" means a series of equipment and/or operations used to apply, dry, or cure any inks containing volatile organic compounds. This shall include, but is not limited to:

(a) Mixing operations;
(b) Process storage;
(c) Applicators;
(d) Drying operations including, but not limited to, flashoff area evaporation, oven drying, baking, curing, and polymerization;
(e) Clean up operations;
(f) Leaks, spills and disposal of volatile organic compounds;
(g) Processing and handling of recovered volatile organic compounds;
(h) For the purposes of determining compliance with this regulation, if any equipment or operation could be considered to be a part of more than one (1) printing line, its volatile organic compound emissions shall be assigned to each printing line of which it is a part proportionally to the throughput of volatile organic compounds it receives from or distributes to each printing line;
(i) If any portion of the series of equipment and/or operations qualify for an exemption according to Section

6, then that portion shall be considered to be a separate printing line;

(j) All units in a machine which has both coating and printing units will be considered as performing a printing operation.

(5) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one-tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.

(6) "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain inks, volatile organic compounds, or recovered volatile organic compounds; but does not mean storage tanks which are subject to 401 KAR 59:050 or 401 KAR 61:050.

(7) "Printing" means the formation of words, designs and pictures, usually by a series of application rolls each with only partial coverage. It applies to flexographic and rotogravure processes as applied to publication, *specialty* and packaging printing.

(8) "Coating" means the application of a uniform layer of material across the entire width of a web.

(9) "Classification date" means *February 4, 1981* [the effective date of this regulation].

(10) "Volatile organic compounds net input" means the total amount of volatile organic compounds input to the affected facility minus the amount of volatile organic compounds that are not emitted into the atmosphere. Volatile organic compounds that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining volatile organic compounds net input. When the nature of any operation or design of equipment is such as to permit more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emissions shall apply.

(11) "Packaging rotogravure printing" means rotogravure printing upon paper, paper board, metal foil, plastic film, and other substrates, which are, in subsequent operations, formed into packaging products and labels for articles to be sold.

(12) "Publication rotogravure printing" means rotogravure printing upon paper which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements, and other types of printed materials.

(13) "Flexographic printing" means the application of words, designs and pictures to a substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of rubber or other elastomeric materials.

(14) "Rotogravure printing" means the application of words, designs, and pictures to a substrate by means of a roll printing technique which involves intaglio or recessed image areas in the form of cells.

(15) "Roll printing" means the application of words, designs and pictures to a substrate usually by means of a series of hard rubber or steel rolls each with only partial coverage.

(16) "Specialty rotogravure printing" means all rotogravure printing except packaging rotogravure and publication rotogravure printing. It includes, but is not limited to, rotogravure printing on paper cups and plates, patterned giftwrap, wallpaper and floor coverings.

Section 3. Standard for Volatile Organic Compounds. (1) No person shall cause, allow, or permit an affected facility for publication rotogravure printing to discharge into the atmosphere more than twenty-five (25) percent by weight of the volatile organic compounds net input into the affected facility.

(2) No person shall cause, allow, or permit an affected facility for packaging rotogravure printing *or specialty rotogravure printing* to discharge into the atmosphere more than thirty-five (35) percent by weight of the volatile organic compounds net input into the affected facility.

(3) No person shall cause, allow, or permit an affected facility for flexographic printing to discharge into the atmosphere more than forty (40) percent by weight of the volatile organic compounds net input in the affected facility.

Section 4. Compliance. (1) In all cases the design of any control system is subject to approval by the department.

(2) Compliance with the standard in Section 3 shall be demonstrated by a material balance except in those cases where the department determines that a material balance is not possible. For those cases where a material balance is not possible, compliance will be determined based upon an engineering analysis by the department of: the control system design, control device efficiency, control system capture efficiency, and any other factors that could influence the performance of the system. If so requested by the department, performance tests as specified by the department shall be conducted in order to determine the efficiency of the control device.

(3) With the prior approval of the department, the owner or operator may elect to effect such changes in the affected facility as are necessary to qualify for an exemption under Section 6.

(4) Whenever deemed necessary by the department, the department shall obtain samples of the inks used at an affected facility to verify that the inks meet the requirements in Section 6. The following methods of analyses, filed by reference in 401 KAR 50:015, for inks shall be used as applicable except in those cases where the department determines that other methods would be more appropriate:

(a) ASTM D 1644-75 Method A;
(b) ASTM D 1475-60(74);
(c) ASTM D 2369-73; or
(d) Federal Standard 141 a, Method 4082.1.

Section 5. Compliance Timetable. The owner or operator of an affected facility shall be required to complete the following:

(1) Submit a final control plan for achieving compliance with this regulation no later than April 15, 1981.

(2) Award the control system contract or the exempt inks and any other accompanying process change contracts no later than June 15, 1981.

(3) Initiate on-site construction or installation of emission control equipment or process changes for exempt inks no later than December 1, 1981.

(4) On-site construction or installation of emission control equipment or process changes for exempt inks shall be completed no later than December 1, 1982.

(5) Final compliance shall be achieved no later than December 31, 1982.

Section 6. Exemptions. Any affected facility shall be ex-

empt from the provisions of Section 3 if the printing systems:

(1) Utilize a water-borne ink whose volatile portion consists of seventy-five (75) volume percent water and twenty-five (25) volume percent organic solvent (or a lower volatile organic compound content) in all printing units;

(2) Achieve a seventy (70) volume percent overall reduction of solvent usage (compared to all solvent-borne ink usage); or

(3) Utilize inks which, *excluding water,* contain sixty (60) percent or more *by volume* non-volatile material *as applied to the substrate.*

Section 7. Variances. Variation with the standards and limitations contained in this regulation, when supported by adequate technical information, will be considered by the department on a case-by-case basis to allow for technological or economic circumstances which are unique to a source.

JACKIE SWIGART, Secretary
ADOPTED: July 27, 1982
RECEIVED BY LRC: July 28, 1982 at 4 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
Amended After Hearing

806 KAR 7:090. Custodial accounts for investment securities of insurance companies.

RELATES TO: KRS 304.7-360
PURSUANT TO: KRS 13.082, 304.2-110, 304.7-360
NECESSITY AND FUNCTION: KRS 304.7-360 requires the Commissioner of Insurance to promulgate regulations governing the deposit by insurers of securities with clearing corporations, the Federal Reserve book-entry system, or custodian banks.

Section 1. Definitions. Terms defined in KRS 304.7-360 shall have the same meaning when used herein.

Section 2. Standards for Custodial Agreements. Pursuant to KRS 304.7-360, an insurance company may provide by agreement for the custody of its securities with a custodian bank meeting the qualifications set forth in Section 3 of this regulation which securities may be held by the custodian bank, its nominee, in a clearing corporation, or in the Federal Reserve book-entry system. Such securities, whether held by the custodian bank, its nominee, in a clearing corporation, in the Federal Reserve book-entry system, or in any combination of these entities, are referred to herein as "custodied securities." Any such agreement shall contain provisions to comply with the following standards:

(1) The agreement shall be in writing and shall be authorized by a resolution of the Board of Directors of the insurance company or of an authorized committee thereof.

(2) Certificated securities held by the custodian bank may be so held separate from the securities of the custodian bank and of all its other customers or in a fungible bulk of securities as part of a Filing of Securities by Issue (FOSBI) arrangement.

(3) Securities so held in a fungible bulk by the custodian bank and securities in a clearing corporation or the Federal Reserve book-entry system shall be separately identified on the custodian bank's official records as being owned by the insurance company. Said records shall identify which custodied securities are held by the custodian bank or by its nominee and which securities are in a clearing corporation or the Federal Reserve book-entry system. If the securities are in a clearing corporation or the Federal Reserve book-entry system, said records shall also identify where the securities are and, if in a clearing corporation, the name of the clearing corporation or, if held in nominee name, the name of the nominee.

(4) All custodied securities that are registered shall be registered in the name of the insurance company, in the name of a nominee of the insurance company, in the name of the custodian bank or its nominee, or, if in a clearing corporation, in the name of the clearing corporation or its nominee.

(5) Custodied securities shall be held subject to the instructions of the insurance company and shall be withdrawable upon the demand of the insurance company.

(6) The custodian bank shall arrange for execution of transactions in custodied securities in accordance with the insurance company's instructions and shall not exercise discretionary authority to effect transactions in custodied securities except in such limited or special circumstances as the insurance company may authorize.

(7) The custodian bank shall be required to send or cause to be sent to the insurance company a confirmation of all transfers of custodied securities to or from the account of the insurance company. In addition, the custodian bank shall be required to furnish the insurance company with reports of holdings of custodied securities at such times and containing such information as may be reasonably requested by the insurance company, but not less frequently than monthly.

(8) During the course of the custodian bank's regular business hours, any officer or employee of the insurance company, any independent accountant selected by the insurance company, or any representative of the Commissioner shall be entitled to examine, on the premises of the custodian bank, the custodian bank's records relating to custodied securities and the custodied securities, but only upon furnishing the custodian bank with written instructions to that effect from an appropriate officer of the insurance company or the Commissioner.

(9) The custodian bank and its nominee shall be required to send to the insurance company:

(a) All reports which they receive from a clearing corporation or the Federal Reserve book-entry system on their respective systems of internal accounting control; and

(b) Reports prepared by outside auditors with respect to the respective systems of internal accounting control of the custodian bank and its nominee pertaining to custodial record keeping as the insurance company may reasonably request from time to time.

(10) The custodian bank shall maintain records sufficient to determine and verify information relating to custodied securities that may be reported in the insurance company's annual statement and supporting schedules as filed with various regulatory authorities and in connection with any audit of the financial statements of the insurance company.

(11) The custodian bank shall provide upon request appropriate affidavits substantially in the form attached hereto (Appendix A) with respect to custodied securities.

(12) The custodian bank shall be obligated to indemnify the insurance company for any loss of custodied securities, except that the custodian bank shall not be so obligated to the extent that such loss was caused by other than the negligence or dishonesty of the custodian bank.

(13) In the event that there is a loss of custodied securities for which the custodian bank shall be obligated to indemnify the insurance company as provided in subsection (12) of this section, the custodian bank shall promptly replace the securities or the value thereof and the value of any loss of rights or privileges resulting from said loss of securities.

(14) The agreement may provide that the custodian bank will not be liable for any failure to take any action required to be taken under the agreement in the event and to the extent that the taking of such action is prevented or delayed by war (whether declared or not and including existing war), revolution, insurrection, riot, civil commotion, act of God, accident, fire, explosion, stoppage of labor, strikes or other differences with employees, laws, regulations, orders or other acts of any governmental authority, or any other cause whatever beyond its reasonable control.

(15) In the event that entry in a clearing corporation or in the Federal Reserve book-entry system is gained through a direct participant or a member bank, there shall be an agreement between the custodian and the direct participant or member bank under which the direct participant or member bank shall be subject to the same liability for loss of custodied securities as the custodian bank; provided, however, that, if the direct participant or member bank shall be subject to regulation under the laws of a jurisdiction which is different from the jurisdiction the laws of which regulate the custodian bank, the commissioner may accept a standard of liability applicable to the direct participant or member bank which is different from the standard of liability applicable to the custodian bank.

(16) The agreement must be terminable by the insurance company on not more than thirty (30) days' notice.

Section 3. Qualifications of Custodian Banks. Any custodian bank selected by an insurance company to act as custodian under an agreement authorized by KRS 304.7-360 shall possess the following qualifications:

(1) Its custodial functions for the insurance company shall be carried out under its trust department;

(2) It shall be audited annually by independent public accountants whose audit report, together with the related financial statements, and whose report on internal controls are made available to the insurance company and the commissioner;

(3) It must be organized under the laws recognizing that the custodied securities are "special deposits" rather than "general deposits," remain the specific property of the insurance company, and are not subject to any creditor relationship of the custodian bank.

(4) It must maintain blanket bond coverage relating to its custodial functions with limits equal to or exceeding those suggested by the American Bankers Association.

(5) Its capital and surplus funds shall equal or exceed $25,000,000 *unless it is licensed and regulated by the Commonwealth of Kentucky, in which case its capital and surplus funds shall equal or exceed $10,000,000*; and

(6) It must have demonstrated sufficient experience in handling custodial accounts.

Section 4. Effective Date. This regulation shall become effective upon its approval pursuant to KRS Chapter 13.

APPENDIX A

CUSTODIAN AFFIDAVIT

STATE OF _____)
) SS:
COUNTY OF _____)

_____, being duly sworn deposes and says that he is _____ of _____, a banking corporation organized under and pursuant to the laws of the _____ with its principal place of business at _____ (hereinafter called the "Bank"):

That his duties involve supervison of activities of the Bank as custodian and records relating thereto;

That the Bank is custodian for certain securities of _____, having its principal place of business at _____ (hereinafter called the "insurance company") pursuant to an agreement between the Bank and the insurance company;

A. With respect to any securities entrusted to Bank's care and not redeposited elsewhere:

1. That the schedule attached hereto is a true and complete statement of securities (other than those caused to be deposited with The Depository Trust Company or like entity or a Federal Reserve Bank under the Federal Reserve book-entry procedure) which were in the custody of the Bank for the account of the insurance company as of the close of business on _____; that, unless otherwise indicated on the schedule, the next maturing and all subsequent coupons were then either attached to coupon bonds or in the process of collection; and that, unless otherwise shown on the schedule, all such securities were in bearer form or in registered form in the name of the insurance company or its nominee or of the Bank or its nominee, or were in the process of being registered in such form; and

2. That the Bank as custodian has the responsibility for the safekeeping of such securities as that responsibility is specifically set forth in the agreement between the Bank as custodian and the insurance company; and

B. With respect to any securities entrusted to Bank's care and redeposited with a clearing corporation:

1. That the Bank has caused certain of such securities to be deposited with _____, and that the schedule attached hereto is a true and complete statement of the securities of the insurance company of which the Bank was custodian as of the close of business on _____, and which were so deposited on such date; and

2. That the Bank as custodian has the responsibility for the safekeeping of such securities both in the possession of the Bank or deposited with _____, as is specifically set forth in the agreement between the Bank as custodian and the insurance company; and

C. With respect to any securities entrusted to Bank's care and evidenced by a book entry at a Federal Reserve Bank:

1. That it has caused certain securities to be credited to its book-entry account with the Federal Reserve Bank of _____ under the Federal Reserve book-entry procedure; and that the schedule attached hereto is a true and complete statement of the securities of the insurance company of which the Bank was custodian as of the close of business on _____ which were in a "General" book-entry account maintained in the name of the Bank on

the books and records of the Federal Reserve Bank of _____ at such date; and

2. That the Bank has the responsibility for the safekeeping of such securities both in the possession of the Bank or in said "General" book-entry account as is specifically set forth in the agreement between the Bank as custodian and the insurance company; and

That, to the best of his knowledge and belief, unless otherwise shown on the schedules, said securities were the property of said insurance company and were free of all liens, claims or encumbrances whatsoever.

Subscribed and sworn to before me this _____ day of _____, 19 _____.

_____ (L.S.)
Vice President or other
authorized officer

DANIEL D. BRISCOE, Commissioner
ADOPTED: August 12, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: August 13, 1982 at 3 p.m.

Proposed Amendments

LEGISLATIVE RESEARCH COMMISSION
(Proposed Amendment)

1 KAR 3:005. Capital Construction and Equipment Purchase Oversight Committee; procedure; records.

RELATES TO: KRS 45.750 to 45.800, [Executive Order 80-285,] HB 931 (1980 Regular Session)*; HB 295 (1982 Regular Session)*

PURSUANT TO: KRS 7.320, 13.082

NECESSITY AND FUNCTION: Implementation of review procedure established under KRS 45.750 to 45.800, [Executive Order 80-285,] HB 931 of the 1980 Regular Session, *HB 295 (1982 Regular Session).*

Section 1. The following governs only those capital construction projects estimated to cost $200,000 or more, and those major items of equipment estimated to cost $50,000 or more, as provided by KRS 45.750 to 45.800.

Section 2. A permanent subcommittee of the Legislative Research Commission, to be known as the Capital Construction and Equipment Purchase Oversight Committee (hereinafter, "committee"), shall be composed of seven (7) members which shall include members of the minority party as nearly proportional to their membership in the General Assembly as mathematically possible.

(1) The Legislative Research Commission shall appoint from the membership of the General Assembly to the committee:

(a) Four (4) members from the House of Representatives; and

(b) Three (3) members from the Senate.

(2) A quorum shall require at least four (4) members present and the vote shall be by majority.

(3) The committee shall meet at least monthly at such time and place as the chairman may determine.

(4) The members of the committee shall serve a term of two (2) years.

(5) The members so appointed shall elect one (1) of their members to serve as chairman.

(6) A vacancy shall be filled by the Legislative Research Comission at its next regularly scheduled meeting after the occurence of the vacancy.

(7) The committee shall act on or review any construction project or proposed action on a project properly submitted, within thirty (30) days of its submission.

Section 3. *For any action or proposed action on a project to be reviewed by the committee at its next regularly scheduled meeting, it must be submitted to the Legislative Research Commission on or before the last day of the month preceding the meeting. All projects received after the end of the month will be deferred to the next regularly scheduled meeting.* [Within thirty (30) days after the transfer of an amount equal to fifteen (15) percent or less of the estimated cost of an authorized project from the capital construction and equipment purchase contingency fund to the allotment account of that project, the Department of Finance shall report the transfer to the committee. This report shall include documentation of:]

[(1) The amount transferred;]

[(2) The amount expended on the project prior to the current biennium;]

[(3) The amount expended on the project during the current biennium;]

[(4) All alterations made in the project since its consideration by the General Assembly during the most recent regular session; and]

[(5) All alterations planned for the project since its consideration by the General Assembly during the most recent regular session.]

Section 4. Transfers from *a* [the] capital construction

and equipment purchase contingency *account* [fund] to the allotment account of an authorized project of an amount *not* greater than fifteen (15) percent [but not greater than twenty-five (25) percent] of the estimated cost of that project shall comply with the following procedure:

(1) Prior to the transfer the [Department of] Finance *and Administration Cabinet and/or the appropriate university authority* shall present the proposed transfer to the committee for review.

(2) Information presented to the committee for its *authorized* review of the proposed transfer shall include:

(a) The amount of the proposed transfer;

(b) Documentation of the necessity for the proposed transfer;

(c) The amount expended on the project prior to the current biennium;

(d) The amount expended on the project during the current biennium;

(e) All alterations made in the project since its consideration by the General Assembly during the most recent regular session; and

(f) All alterations planned for the project since its consideration by the General Assembly during the most recent regular session.

(3) Within thirty (30) days after submission to the committee of a proposed transfer under Section 3, the committee shall determine whether the amount of the proposed transfer:

(a) Is reasonable;

(b) Is consistent with KRS 45.770;

(c) Is necessary;

(d) Whether alterations made in the project materially change the project as considered and authorized by the General Assembly; and

(e) Whether alterations planned for the project will materially change the project as considered and authorized by the General Assembly.

(4) The Legislative Research Commission shall promptly transmit the committee's findings and determination concerning a proposed transfer under Section 3 to the [Department of] Finance *and Administration Cabinet and/or appropriate university official.*

(5) The [Department of] Finance *and Administration Cabinet and/or appropriate university official* shall promptly inform the committee in writing of its action on the proposed transfer in light of the committee's findings and determination.

[(6) A determination or finding by the committee that a proposed transfer under Section 3:]

[(a) Is not reasonable;]

[(b) Is inconsistent with KRS 45.770;]

[(c) Is unnecessary; or]

[(d) That an alteration already made in or planned for a project materially changes the project as considered and approved by the General Assembly, shall be transmitted, along with the written response to the committee's findings or determination by the Department of Finance to the appropriate interim joint committee, and to the General Assembly when it next convenes, by the Legislative Research Commission.]

Section 5. Transfer of an amount greater than *fifteen (15)* [twenty-five (25)] percent of the estimated cost of a project from *a* [the] capital construction and equipment purchase contingency *account* [fund] to the allotment account of that project shall not be made unless the cost overrun is due to an unforeseen decision by a federal or state court or regulatory agency.

(1) Prior to the transfer the [Department of] Finance *and Administration Cabinet and/or appropriate university official* shall present the proposed transfer to the committee for review.

(2) Information presented to the committee for its review of the proposed transfer shall include:

(a) The amount of the proposed transfer;

(b) Documentation of the necessity for the proposed transfer;

(c) The amount expended on the project prior to the current biennium;

(d) The amount expended on the project during the current biennium;

(e) All alterations made in the project since its consideration by the General Assembly during the most recent regular session;

(f) All alterations planned for the project since its consideration by the General Assembly during the most recent regular session; and

(g) Written certification by the Commissioner of the Bureau of Facilities Management of the [Department of] Finance *and Administration Cabinet* that the cost overrun was due to an unforeseen decision by a federal or state court or regulatory agency.

Section 6. An amount no greater than *fifteen (15)* [ten (10)] percent of the estimated cost of a major item of equipment as approved by the General Assembly may be transferred from the capital construction and equipment purchase contingency *account* [fund] to the allotment account of that item of equipment.

(1) Prior to the transfer the [Department of] Finance *and Administration Cabinet and/or appropriate university official* shall present the proposed transfer to the committee for review.

(2) Information presented to the committee for its review of the proposed transfer shall include:

(a) The amount of the proposed transfer;

(b) Documentation of the necessity for the proposed transfer;

(c) The amount expended on the project prior to the current biennium;

(d) The amount expended on the project during the current biennium;

(e) All alterations made in the item of equipment since its consideration by the General Assembly during the most recent regular session; and

(f) All alterations planned for the item of equipment since its consideration by the General Assembly during the most recent regular session.

(3) Within thirty (30) days after submission to the committee of a proposed transfer under Section 3, the committee shall determine whether the amount of the proposed transfer:

(a) Is reasonable;

(b) Is consistent with KRS 45.770;

(c) Is necessary;

(d) Whether alterations made in the item of equipment materially change the project as considered and authorized by the General Assembly; and

(e) Whether alterations made in the item of equipment will materially change the item of equipment as considered and authorized by the General Assembly;

(4) The Legislative Research Commission shall promptly transmit the committee's findings and determination concerning a proposed transfer under Section 3 to the [Department of] Finance *and Administration Cabinet.*

(5) The [Department of] Finance *and Administration*

Cabinet and/or appropriate university official shall promptly inform the committee in writing of its action on the proposed transfer in light of the committee's findings and determination.

[(6) A determination or finding by the committee that a proposed transfer under Section 3:]

[(a) Is not reasonable;]

[(b) Is inconsistent with KRS 45.770;]

[(c) Is unnecessary; or]

[(d) That an alteration already made in or planned for an item of equipment materially changes the item of equipment as considered and approved by the General Assembly, shall be transmitted, along with the written response of the Department of Finance to the committee's findings or determination, to the appropriate interim joint committee and to the General Assembly when it next convenes by the Legislative Research Commission.]

Section 7. An amount in excess of *fifteen (15)* [ten (10)] percent of the estimated cost of a major item of equipment shall not be transferred unless it is due to an unforeseen decision by a federal or state court or regulatory agency.

(1) Prior to the transfer the [Department of] Finance *and Administration Cabinet and/or the appropriate university official* shall present the proposed transfer to the committee for review.

(2) Information presented to the committee for its review of the proposed transfer shall include:

(a) The amount of the proposed transfer;

(b) Documentation of the necessity for the proposed transfer;

(c) The amount expended on the project prior to the current biennium;

(d) The amount expended on the project during the current biennium;

(e) All alterations made in the project since its consideration by the General Assembly during the most recent regular session;

(f) All alterations planned for the project since its consideration by the General Assembly during the most recent regular session; and

(g) Written certification by the Commissioner of the Bureau of Facilities Management of the [Department of] Finance *and Administration Cabinet and/or the appropriate university official* that the cost overrun is due to an unforeseen decision by a federal or state court or regulatory agency.

Section 8. A transfer from emergency repair, maintenance and replacement fund to the allotment account of an emergency repair, maintenance or replacement project shall be reported to the committee by the [Department of] Finance *and Administration Cabinet and/or the appropriate university official* within thirty (30) days of the transfer. This report shall include certification and explanation of the emergency by the Secretary of the [Department of] Finance *and Administration Cabinet.*

Section 9. Each purchase of a major item of equipment to be used for medical, scientific or research purposes that is not specifically listed in the biennial budget report and an appropriation act shall be reported to the committee within thirty (30) days after the purchase. Each report shall include:

(1) A description of the item;

(2) The purpose for which the item is to be used;

(3) A statement of the reasons the purchase was necessary;

(4) The amount expended for the purchase of the item; and

(5) The source or sources of the funds expended for the purchase of the item.

Section 10. The committee shall make findings and recommendations on the costs of state capital construction projects based upon a review of:

(1) Charges to the state by contractors;

(2) Land acquisition costs;

(3) Costs and availability of materials;

(4) Cost and availability of labor; and

(5) Laws, regulations and purchasing procedures governing state projects, but not applicable to private sector construction project.

Section 11. The Legislative Research Commission shall maintain reports of:

(1) Purchases of major items of equipment used for medical, scientific or research equipment;

(2) Transfers under Section 8;

(3) Transfers from the emergency repair, maintenance and replacement fund; and

(4) Committee findings or recommendations relating to these purchases and transfers.

Section 12. Within thirty (30) days after the final acceptance of a project or major item of equipment, the available balance in the project or equipment account shall be transferred to the appropriate but unallotted account within the capital construction fund. The account shall be closed and within thirty (30) days following the closing of the account the [Department of] Finance *and Administration Cabinet and/or appropriate university official* shall report to the committee:

(1) Project or item account number and a brief description of the project or item;

(2) Date of final acceptance;

(3) Available balance in account on date of final acceptance;

(4) Amount transferred from account to appropriate but unallotted account; and

(5) The date account was closed.

Section 13. Within thirty (30) days after purchase or other acquisition of a major item of equipment under a lease-purchase contract or agreement, or any arrangement equivalent to a lease-purchase contract or agreement, the [Department of] Finance *and Administration Cabinet* or any agency division, bureau or other unit of state government involved in such a purchase, shall report to the committee:

(1) A description of the equipment purchased;

(2) Date of purchase;

(3) Unit of state government for which the equipment was purchased, will be used, or by which the equipment was purchased;

(4) Copies of the voucher, dealer invoice, department inventory log number; and

(5) Where the equipment will be used or its permanent location.

Section 14. Upon the completion of the initial draft of a prospectus for the issuance of bonds to be funded by the Economic Development Bond Authorization established by HB 931 (Part V, 1980 regular session) *and HB 295 (Part V, 1982 regular session)*, the prospectus shall be submitted to the committee.

(1) Information submitted to the committee under this section shall include a list of projects to be covered by the issuance of bonds.
(2) Notice of the termination of a project or substitution of a project reviewed by the committee under this section shall be forwarded to the committee.

Section 15. Capital construction projects at institutions of higher education that do not involve state or federal funds, and are proposed to be authorized between regular sessions of the General Assembly, shall be submitted to the committee within thirty (30) days of the approval of these projects by the Council on Higher Education and the [Department of] Finance *and Administration Cabinet*. Information submitted under this section shall include:
(1) Complete description of the project;
(2) Source of funding; and
(3) Source of operating and maintenance expenses after completion.

Section 16. Funds advanced to projects authorized to be financed by bond proceeds and funds advanced to finance feasibility studies for projects as provided by HB *295* [931] shall be reported to the committee. Within thirty (30) days of the advancement of these funds a report shall be made to the committee to include:
(1) Copy of the agency request;
(2) Estimated cost of the feasibility study or project;
(3) Amount of bond issue and date of issue; and
(4) Method of financing operating costs of projects.

Section 17. The following information concerning projects within the Governor's recommended program approved by the General Assembly shall be forwarded to the committee within thirty (30) days of determination by the appropriate agency and the [Department of] Finance *and Administration Cabinet*.
(1) The scope, estimated cost, starting date for construction, completion date, and the date set for bids on the project; and
(2) Quarterly reports stating the percentage of completion of each project and the cost to date.

Section 18. The Department of Transportation shall report monthly any emergency construction, new construction, or improvement to its maintenance and equipment barns, district office buildings, storage sheds, and other highway type buildings initiated each fiscal year, above $100,000. Information submitted under this section to the committee shall include:
(1) Complete description of the project;
(2) Estimated cost of the project by phase;
(3) Source of funding; and
(4) Estimated completion date.

VIC HELLARD, JR., Director
ADOPTED: August 11, 1982
RECEIVED BY LRC: August 12, 1982 at 11 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Director, Legislative Research Commission, Capitol Building, Frankfort, Kentucky 40601.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 61:080. Steel plants using existing basic oxygen process furnaces.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the [Department for] Natural Resources and Environmental Protection *Cabinet* to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for control of emissions from steel plants using existing basic oxygen process furnaces.

Section 1. Applicability. Provisions of this regulation are applicable to the following affected facilities commenced before the classification date defined below: basic oxygen process furnaces, associated metallurgical equipment, and dust-handling equipment.

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given them in 401 KAR 50:010.
(1) "Basic oxygen process furnaces (BOPF)" means any furnace producing steel by charging scrap steel, hot metal and flux materials into a vessel and introducing a high volume of an oxygen-rich gas.
(2) "Dust-handling equipment" means any equipment used to handle particulate matter collected by *a* [the] control device [and located at or near the control device] for a BOPF and/or associated equipment subject to this regulation.
(3) "Control device" means the air pollution control equipment used to remove from the effluent gas stream, particulate matter generated by a BOPF and/or associated equipment.
(4) "Steel production cycle" means the operations required to produce each batch of steel and includes the following major functions: scrap preheating, scrap charging, hot metal charging, oxygen blowing, *dumping slag* and tapping.
(5) "Charge" means the addition of steel scrap, *molten iron and* [or] other materials into a BOPF [followed by molten pig iron].
(6) "Tap" means the pouring of molten steel from a BOPF.
(7) "Shop" means the building or bay which houses one (1) or more BOPFs and associated *metallurgical* equipment.
[(8) "Shop opacity" means the arithmetic average of twenty-four (24) or more opacity observations of emissions from the shop taken in accordance with Reference Method 9 of Appendix A of 40 CFR 60, filed by reference in 401 KAR 50:015, for the applicable time periods.]
(8) [(9)] "Classification date" means June 11, 1973.
(9) "Associated metallurgical equipment" means process equipment located in the shop used in conjunction with external desulfurization of molten iron, hot metal transfer, and transfer of slag and kish.

Section 3. Standard for Particulate Matter. (1) On and after the date on which the performance test required to be conducted by 401 KAR 61:005 is completed, no owner or operator subject to the provisions of this regulation shall

cause to be discharged into the atmosphere from a basic oxygen process furnace and/or associated metallurgical equipment located in the same shop any gases which:

(a) *Exit from a control device and exhibit opacity of twenty (20) percent or more. The owner or operator may elect to substitute an alternative opacity standard, in lieu of the above opacity standard prescribed in this subsection, provided that the following mass emissions standards are not exceeded:* [Exit from a control device and contain particulate matter in excess of .048 gr/dscf;]

1. A maximum particulate concentration of 0.030 gr/dscf from the control device associated with the BOPF as measured only during the main oxygen blowing period; and

2. A maximum particulate concentration of 0.010 gr/dscf from a control device associated with any other BOPF shop metallurgical equipment as measured only during operation of such equipment; or

[(b) Exit from a control device and exhibit opacity of forty (40) percent or more;]

(b) [(c)] Exit from a shop, due to operations of a BOPF and/or associated metallurgical equipment, and exhibit opacity of *twenty (20)* [fifteen (15)] percent or more *for more than eleven (11) times as observed at fifteen (15) second intervals over a period of any sixty (60) consecutive minutes. Reference Method 9 of Appendix A to 40 CFR 60, filed by reference in 401 KAR 50:015, shall be used for determining opacity in this paragraph, except for averaging time and number of observations.*

(2) On and after the date on which the performance test required to be conducted by 401 KAR 61:005 is completed, no owner or operator subject to the provisions of this regulation shall cause to be discharged into the atmosphere from dust-handling equipment any gases which exhibit ten (10) percent opacity or greater.

Section 4. Monitoring of Operations. The owner or operator of an affected facility shall maintain a single time-measuring instrument which shall be used in recording daily the time and duration of each steel production cycle, and the time and duration of any diversion of exhaust gases from the main stack servicing the BOPF.

Section 5. Test Methods and Procedures. (1) Reference methods in Appendix A of 40 CFR 60, except as provided under 401 KAR 50:045, shall be used to determine compliance with the standards prescribed under Section 3 as follows:

(a) Reference Method 5 for the concentration of particulate matter and associated moisture content;

(b) Reference Method 1 for sample and velocity traverses;

(c) Reference Method 2 for velocity and volumetric flow rate;

(d) Reference Method 3 for gas analysis; and

(e) Reference Method 9 for opacity determination *for emissions discharged through a control device and from dust-handling equipment.* For the purpose of this regulation, opacity observation taken at fifteen (15) second intervals immediately before and after a diversion of exhaust gases from the stack may be considered to be consecutive for the purpose of computing an average opacity for a six (6) minute period. Observations taken during a diversion shall not be used in determining compliance with the opacity standard.

(2) For Reference Method 5, the sampling for each run shall continue for an integral number of cycles with total duration of at least sixty (60) minutes. The sampling rate shall be at least 0.9 dscm/hr (0.53 dscf/min) except that shorter sampling times when necessitated by process variables or other factors may be approved by the department. *For the purpose of testing the control device associated with the BOPF* a cycle shall start at the beginning of [either the scrap preheat or] the *primary* oxygen blow and shall terminate *at the end of the primary oxygen blow* [immediately prior to tapping].

(3) Sampling of flue gases during each steel production cycle shall be discontinued whenever all flue gases are diverted from the stack and shall be resumed after each diversion period.

Section 6. Compliance Timetable. The owner or operator of an affected facility shall demonstrate compliance with Section 3(1) on or before December 31, 1982. Compliance with all other provisions of this regulation shall have been demonstrated on or before June 6, 1979.

Section 7. Variances. The department may grant a variance from the control requirements of this regulation. Requests for such a variance shall be supported by adequate technical and economic documentation, provided that any alternative strategy shall result in at least an equivalent overall reduction in particulate emissions from the source as would be required by this regulation.

JACKIE SWIGART, Secretary
ADOPTED: August 13, 1982
RECEIVED BY LRC: August 13, 1982 at 2 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Larry Wilson, Manager, Development and Evaluation Branch, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control
(Proposed Amendment)

804 KAR 11:010. Equipment and supplies.

RELATES TO: KRS 244.500
PURSUANT TO: KRS 13.082, 241.060
NECESSITY AND FUNCTION: KRS 244.500 expressly prohibits any premiums, gifts or prizes for any purpose in connection with the sale of malt beverages. Under the authority of that general statute, this regulation contains specific items which can be furnished to a retailer by a brewer or distributor, and designates those items which cannot be furnished to a retailer.

Section 1. A brewer or distributor may furnish the following equipment to retail licensees that sell draft malt beverages; tapping accessories, rods, vents, taps, hoses, washers, couplings, vent tongues, check valves, and tap knobs. When tap knobs, or similar devices, bearing brand names are furnished they shall not be used to dispense malt beverages of a different brand from that designated on the knob. No other equipment may be furnished to retail malt beverage licensees.

Section 2. A brewer or distributor may furnish vats, tubs, [or] tanks, *or portable dispensing units* to special temporary licensees, picnics, bazaars and carnivals. The

equipment *may* [shall not] bear a tradename, trademark, trade slogan or a facsimile of a product, container or display, associated with a particular brand that is visible to the consumer.

Section 3. A brewer or distributor is prohibited from supplying coil-cleaning service to a retailer either directly or indirectly.

RICHARD H. LEWIS, Commissioner
ADOPTED: August 9, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: August 13, 1982 at 9 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Alcoholic Beverage Control Board, 123 Walnut Street, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Proposed Amendment)

806 KAR 2:080. Public hearings.

RELATES TO: KRS 304.2-330
PURSUANT TO: KRS 13.082, 304.2-110
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This regulation sets out basic procedures for public hearings before the commissioner.

Section 1. Public hearings shall proceed as in Sections 2 and 3 unless the hearing officer, for special reasons, otherwise directs.

Section 2. Preliminary Matters. (1) Upon timely written application showing good cause therefor, filed with the commissioner at least forty-eight (48) hours prior to the hearing dates, the commissioner may permit any person who has a valid interest in the proceeding to intervene, appear, and be heard, at the meeting.

(2) Formal rules of pleading or evidence will not be observed unless agreed to by all parties to the hearing. Upon proper notice, depositions may be taken and introduced as evidence.

(3) Motions relating to procedural matters may be made at any time before or during the hearing.

(4) Amendments to or data supplementing rate or form filings may be made at any time before or during the hearing. The hearing officer, in his discretion, may deem such amendments or supplementing data to be of such significance as to constitute a new filing so that statutory requirements as to time will begin to run from the time of submission of such amendments or supplementing data.

(5) A hearing docket will be maintained by the department for public inspection in which will be recorded, in summary form, each step taken in regard to hearings before the Commissioner of Insurance.

(6) A mailing list for hearing notices will be maintained by the department with an annual charge of twenty-five dollars ($25) for subscription rights thereto.

Section 3. Order of Proceeding. (1) Appearances will be entered for the record.

(2) Each person who proposes to testify will be identified and sworn.

(3) The Department of Insurance will introduce the documents constituting the filing or other matter to be considered at the hearing into the record to be marked as exhibits.

(4) The hearing officer will rule on motions theretofore made.

(5) Parties having the burden of proof in regard to the filing or other matters to be considered at the hearing, in the order in which the applications have been filed, may briefly state their position and the evidence by which they expect to sustain it.

(6) Parties in opposition, in the order in which their applications have been filed, may then briefly state their position and the evidence by which they expect to sustain it.

(7) The party on whom rests the burden of proof must first produce his evidence. Upon the completion of the testimony of each witness, such witness may be cross-examined by other parties and by the Department of Insurance. The party in opposition will then produce his evidence. Upon the completion of the testimony of each witness, such witness may be cross-examined by other parties and by the Department of Insurance. The party who begins the case must ordinarily exhaust his evidence before the other begins. The parties will then be confined to rebutting evidence, unless the hearing officer permits them to offer evidence in chief.

(8) Counsel shall have the right, at any time, for good cause shown, to move to strike evidence which is not germane to the hearing.

(9) Parties desiring to preserve demonstrative evidence in or as an attachment to the record shall so indicate prior to its introduction and shall, if reasonably possible, offer photographic or other reproduction of the exhibit if it is cumbersome in size.

(10) The parties may submit or argue the case. In the argument, the party having the burden of proof shall have the conclusion and the party in opposition the opening. If numerous parties desire to speak, the hearing officer shall arrange the relative order of argument.

(11) Members of the public at large deserving to be heard shall be permitted to make statements for the record and to file petitions or communications germane to the matter at issue, but they shall not be permitted to otherwise participate unless they shall have first attained the status of a formal party by intervention pursuant to Section 2(1) of this regulation.

(12) The hearing officer, in his discretion, may continue any hearing for the purpose of receiving additional evidence or argument in the form of written briefs.

(13) Any public hearing held pursuant to the provisions of KRS Chapter 304 shall not be deemed to be terminated until the commissioner has received the complete record of the hearing (including but not limited to the hearing officer's proposed findings of fact and conclusions of law and any exceptions thereto filed by the parties), as well as any additional evidence or briefs required by the commissioner to be filed in the record, whichever later occurs.

(14) The proposed findings of fact and conclusions of law of a hearing officer appointed by the commissioner must be filed with the department no later than fourteen (14) days after the receipt of the court reporter's transcript of any hearing over which the hearing officer had presided

and which is the subject of the proposed findings of fact and conclusions of law.

DANIEL D. BRISCOE, Commissioner
ADOPTED: July 14, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: August 10, 1982 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Daniel D. Briscoe, Commissioner, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Proposed Amendment)

806 KAR 2:090. Fee for collecting city or urban county government insurance tax.

RELATES TO: KRS *91A.080* [92.285]
PURSUANT TO: KRS 13.082, 304.2-110
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and regulations necessary for and as an aid to the effectuation of any provision of the Kentucky Insurance Code. This regulation provides for a reasonable collection fee to be charged by an insurance company or its agent for collecting or remitting to a city or urban county government such taxes or fees required by its ordinances for the privilege of engaging in the business of insurance within that city or urban county government.

Section 1. A reasonable collection fee shall be an amount equal to thirty percent (30%) of the license fee or tax collected and remitted to the city or urban county government or two percent (2%) of the premium subject to the license fee or tax, whichever is less. The license fees or taxes to be collected and remitted may be rounded off to the nearest whole dollar.

DANIEL D. BRISCOE, Commissioner
ADOPTED: August 12, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: August 13, 1982 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Daniel D. Briscoe, Commissioner, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Proposed Amendment)

806 KAR 2:095. Accounting and reporting requirements for collecting insurance tax.

RELATES TO: KRS *91A.080* [92.285]
PURSUANT TO: KRS 13.082, 304.2-110
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and regulations necessary for and as an aid to the effectuation of any provision of the Kentucky Insurance Code. This regulation provides for the accounting and reporting procedures to be used by every insurance company or its agent, to which this regulation applies, for the collection and reporting of the fees or taxes and the collection fee herein provided by ordinance of a city or urban county government for engaging in the business of insurance therein.

Section 1. Every insurance company to which this Act applies shall provide, in accordance with the ordinance of each city or urban county government, an accounting, to the commissioner, only on a form to be prescribed by the commissioner, with a copy or abstract thereof to each such governmental unit, which shall include all premiums collected for which the tax or license fee is payable together with the amount of such tax or license fee collected and remitted to each city or urban county government. Every such insurance company shall maintain records which shall be adequate to substantiate such accounting. The accounting required herein shall be filed with the commissioner and each such city or urban county government on or before April 1 of each year following the calendar year to which the accounting applies.

DANIEL D. BRISCOE, Commissioner
ADOPTED: August 12, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: August 13, 1982 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Daniel D. Briscoe, Commissioner, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Proposed Amendment)

806 KAR 14:080. Premium must show municipal taxes.

RELATES TO: KRS 304.14-030
PURSUANT TO: KRS 13.082, 304.2-110
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This regulation requires that policies issued for the first time must contain a notice that the premium charged includes a municipal or county fee or tax.

Section 1. Whenever by city ordinance or by county fiscal court resolution a fee or tax is imposed upon insurers for the privilege of engaging in business in said county or city, the premium charge shall make provision for such fee or tax. The amount of such fee or tax may, at the option of the insurer, be shown on the policy.

Section 2. Each policy issued to an insured for the first time shall include a notice that the premium includes a charge for the fee or tax. Such notice shall be placed upon the title sheet of the policy by use of a typewriter, stamp,

sticker or any reasonable means approved by the commissioner. Such notice may, at the option of the insurer, be placed on renewal certificates and billings issued subsequent to the original policy.

Section 3. In accordance with KRS *91A.080* [92.285], the governmental unit which has imposed such a tax shall file a copy of such ordinance or resolution, and any amendments thereto, with the Commissioner of Insurance.

DANIEL D. BRISCOE, Commissioner
ADOPTED: August 12, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: August 13, 1982 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Daniel D. Briscoe, Commissioner, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Proposed Amendment)

806 KAR 39:030. Kentucky no-fault rejection form.

RELATES TO: KRS 304.39-060
PURSUANT TO: KRS 13.082, 304.2-110, 304.39-300
NECESSITY AND FUNCTION: KRS 304.39-060 requires the Department of Insurance to prescribe a form whereby any person may reject limitations on his tort rights and liabilities. This regulation prescribes such form and its use.

Section 1. Any person may refuse to consent to the limitation of his tort rights and liabilities by filing with the Department of Insurance a Kentucky No-Fault Rejection Form which is made a part of this regulation (Ky. NF 1), as Appendix A.

Section 2. Members of the same household may indicate their rejections on the same form, but each individual must execute the form on his own behalf unless he is under legal disability.

Section 3. Where a guardian or committee has been appointed for a person under a legal disability, in order to reject, the guardian or committee must execute the rejection on behalf of the ward.

Section 4. A rejection for a minor under eighteen (18) years of age must be executed by a parent, if there is no guardian or committee.

Section 5. A rejection is effective upon receipt by the Department of Insurance, and remains effective for five (5) years from the date unless revoked by submission of such revocation of the rejection on the form made a part of this regulation, or is superseded by the filing of a subsequent rejection form. The Department of Insurance shall maintain sufficient data to assure its capacity to notify each person who has rejected limitations on his tort rights and liabilities sixty (60) days prior to the expiration of the most current rejection.

Section 6. Each policyholder of an automobile liability insurance policy must send to his insurance company a copy of any rejection form filed with the Department of Insurance, involving any member of his household who is not himself a policyholder.

Section 7. Motorcycles. (1) Motorcycle owners/operators shall be furnished the Kentucky No-Fault Rejection Form (Appendix A) with each policy providing coverage with respect to accidents arising from the maintenance, ownership, or use of a motorcycle.

(2) Insurers may use a form other than the Kentucky No-Fault Rejection Form if such other form is filed with and approved by the commissioner.

DANIEL D. BRISCOE, Commissioner
ADOPTED: July 14, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: August 13, 1982 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Daniel D. Briscoe, Commissioner, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602.

(See Appendix A to 806 KAR 39:030 on following page.)

Insurance Dept. Use Only

KENTUCKY NO-FAULT
REJECTION FORM

APPENDIX A

Insurance Dept. Use Only

ACCEPTANCE OF NO-FAULT INSURANCE DENIES THE APPLICANT THE RIGHT TO SUE A NEGLIGENT MOTORIST UNLESS CERTAIN REQUIREMENTS CONTAINED IN THE POLICY OF INSURANCE ARE MET. YOU AND ANY MEMBER OF YOUR HOUSEHOLD CAN RETAIN THE RIGHT TO SUE AND GIVE UP THE NO-FAULT BENEFITS BY COMPLETING THIS FORM AND MAILING IT TO THE DEPARTMENT OF INSURANCE, FRANKFORT, KENTUCKY 40601.

DO NOT COMPLETE THIS FORM if all members of the household want to accept benefits of the No-Fault Law in return for giving up some rights to sue.

Any member of the household who does not accept the No-Fault benefits, must complete this form.

The policyholder and the following members of this household have decided on the OPTION NUMBER entered in the block by their name. Each member of the household has a choice.

OPTIONS - Indicate option selection number in the box next to your name.

1. I want to keep my right to sue or be sued so I reject my No-Fault benefits.
2. I accept my No-Fault benefits but other members of the household want to keep their right to sue or to be sued.
3. As to my ownership and operation of motorcycles only, I want to keep my right to sue or be sued so I reject my No-Fault benefits.
4. I previously rejected my No-Fault benefits and I want to cancel that rejection.

POLICYHOLDER AND OTHER MEMBERS OF THE HOUSEHOLD
OPTION SELECTION

☐	Policyholder Name in Full (Type or Print)	Date of Birth / Soc. Sec. No.	Signature
☐	Name in Full (Type or Print)	Date of Birth / Soc. Sec. No.	Signature (Person, Parent, Guardian)
☐	Name in Full (Type or Print)	Date of Birth / Soc. Sec. No.	Signature (Person, Parent, Guardian)
☐	Name in Full (Type or Print)	Date of Birth / Soc. Sec. No.	Signature (Person, Parent, Guardian)
☐	Name in Full (Type or Print)	Date of Birth / Soc. Sec. No.	Signature (Person, Parent, Guardian)
☐	Name in Full (Type or Print)	Date of Birth / Soc. Sec. No.	Signature (Person, Parent, Guardian)

Address Street or Route City County Zip Code

Insurance Company Policy Number Date Signed

NOTE: MAILING INSTRUCTIONS

1. White copy to be mailed to Kentucky Department of Insurance.
2. Yellow copy to be mailed to your insurance company.
3. Pink copy to be mailed to your insurance agent.
4. Gold copy to be kept for your record.

Ky. NF 1 (7-75)

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 4:030. Tests for inborn errors of metabolism.

RELATES TO: KRS 214.155
PURSUANT TO: KRS 13.082, 194.050, 211.090
NECESSITY AND FUNCTION: The *Cabinet* [Department] for Human Resources is authorized by KRS 214.155 to require infants to be tested for inborn errors of metabolism, *including but not limited to phenylketonuria (PKU), and to establish a schedule of fees to cover the actual costs to the Cabinet for testing samples for errors of inborn metabolism.* The purpose of this regulation is to require infants to be tested for phenylketonuria (PKU), galactosemia, and hypothyroidism, which are inborn errors of metabolism, *and to establish the schedule of fees to cover actual costs of testing.*

Section 1. Tests for Inborn Errors of Metabolism for Newborn Babies. (1) Except as otherwise provided in KRS 214.155(2), the administrative officer, or other person in charge of the hospital or other institution caring for infants twenty-eight (28) days or less of age and the attending physician or midwife shall cause to have administered to every such infant in its or his care a blood test to detect phenylketonuria, galactosemia, and hypothyroidism. In the event a baby is not born in a hospital or institution, the attending physician or midwife shall be solely responsible for causing such test*s* to be administered.

(2) Hospitals and institutions may submit blood samples to the *Cabinet* [Department] for Human Resources, *Department* [Bureau] for Health Services, Laboratory Services, 275 East Main Street, Frankfort, Kentucky 40621, [where tests shall be performed without charge] or in lieu thereof conduct their own testing program, in which event the *cabinet* [department] shall be notified and the laboratory procedures approved. A private laboratory shall be required by the *cabinet* [department] to demonstrate its proficiency in the performance of such tests. Positive results of such tests shall be reported within twenty-four (24) hours to the *cabinet* [department] and to the attending physician.

(3) Fees are to be assessed for each test according to the following schedule:

PKU only	*$ 2.25 per test*
Galactosemia only	*$ 2.00 per test*
Hypothyroidism	*$ 5.75 per test*
Combination test for all three	*$10.00 per test*

All fees due the Cabinet for Human Resources shall be collected through a prepaid stamp system.

DAVID T. ALLEN, Commissioner
ADOPTED: August 13, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: August 13, 1982 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

Proposed Regulations

DEPARTMENT OF STATE
Division of Corporations

30 KAR 1:030. Business address.

RELATES TO: KRS Chapters 271A, 272, 273, 274
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: To codify as a regulation the needed information of the business address of each corporation transacting business in the Commonwealth. The business address is needed to determine if a new corporation will have its principal place of business near an existing corporation with a similar name. It is also needed for service of process of corporations which no longer have a designated process agent listed with the corporation division of the Secretary of State's Office.

Section 1. A newly formed corporation shall have in its articles of incorporation, in addition to its registered office address, a business address which shall be the principal place of business of the corporation; should such address be undetermined when the articles of incorporation are filed, the articles shall state in which county the principal place of business will be located.

Section 2. Corporations presently transacting business in Kentucky on the effective date of this regulation are not required to amend their articles to include the business address. Such corporations shall include the business address on the next annual report which they submit to the Office of the Secretary of State.

FRANCES JONES MILLS, Secretary of State
ADOPTED: July 23, 1982
RECEIVED BY LRC: July 23, 1982 at 2:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Gary D. Payne, Office of Secretary of State, Capitol Building, Frankfort, Kentucky 40601.

STATE BOARD OF ELECTIONS

31 KAR 1:030. Medical emergency special ballot.

RELATES TO: KRS 117.075
PURSUANT TO: KRS 117.015
NECESSITY AND FUNCTION: This regulation sets forth the procedure to be followed by voters who have a medical emergency within seven (7) days of an election and desire to vote by special ballot.

Section 1. A voter who qualifies to apply for a medical emergency special ballot must use the application provided by the county clerk. Such application shall set forth the

following: applicant's name; precinct or ward; county or city of residence; political party if applicable; the date of the election in which the ballot will be used; the name of the qualified person who will receive the ballot, if not the applicant. The application shall be signed by the applicant and notarized.

Section 2. The state Board of Elections will cause to be printed the applications for medical emergency special ballots and will supply the applications to the county clerks.

Section 3. The application will be issued by the county clerk to the applicant or a qualified person named by the applicant. A qualified person must be the applicant's spouse, parent or child.

Section 4. Only the applicant or qualified person shall receive the special ballot after the completed application has been returned to the county clerk.

Section 5. The special ballot must be returned by mail or in person by the applicant or the applicant's spouse, parent or child.

BRADY A. MIRACLE, Executive Director
ADOPTED: August 11, 1982
RECEIVED BY LRC: August 13, 1982 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Gary D. Payne, State Board of Elections, Office of the Secretary of State, Capitol Building, Frankfort, Kentucky 40601.

REVENUE CABINET

103 KAR 40:035. Alcoholic beverages; tax exemptions.

RELATES TO: KRS 243.710, 243.720, 243.884
PURSUANT TO: KRS 13.082, 131.130
NECESSITY AND FUNCTION: To clarify the application of taxes imposed pursuant to KRS Chapter 243 to alcoholic beverage sales to federal agencies and instrumentalities, including sales which occur on federal military reservations.

Section 1. Sales of alcoholic beverages to agencies and instrumentalities of the federal government, including the military, are not subject to the case sales tax, the gallonage tax or the wholesale sales tax levied under KRS Chapter 243.

Section 2. 103 KAR 40:030, Malt beverage tax, is hereby repealed.

RONALD G. GEARY, Secretary of Revenue
ADOPTED: July 28, 1982
RECEIVED BY LRC: July 29, 1982 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary of Revenue, Capitol Annex Building, Frankfort, Kentucky 40620.

COMMERCE CABINET
Department of Fish and Wildlife Resources

301 KAR 2:044. Taking of migratory wildlife.

RELATES TO: KRS 150.300, 150.305, 150.320, 150.330, 150.340, 150.360
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: In accordance with KRS 150.015, this regulation is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource for the purpose of furnishing sport and recreation for present and future residents of the state. The function of this regulation is to provide for the prudent taking of migratory wildlife within reasonable limits based upon an adequate supply.

Section 1. Seasons. (1) Doves: September 1 through October 16; December 1 through December 24.
(2) Woodcock: October 2 through December 5.
(3) Common snipe: October 2 through December 5.
(4) Experimental September duck: September 8 through September 12.

Section 2. Limits.

Species	Bag Limits	Possession Limits
Doves	12	24
Woodcock	5	10
Common snipe	8	16
Experimental September duck, wood duck, teal and other ducks	*4	*8

*Daily bag limit is four (4) ducks, no more than one (1) of which may be a species other than teal or wood duck, and the possession limit is double the daily bag limit.

Section 3. Bag and Possession Limits. (1) After two (2) or more days of shooting, possession limits apply to transporting, but do not permit a double bag limit in the field.
(2) The above species (except doves) dressed in the field, or being prepared for transportation, must have one (1) fully feathered wing or head attached to the bird for identification purposes. For further information on the above species, consult Title 50, Code of Federal Regulations, Part 20.

Section 4. Shooting Hours. (1) Doves: from twelve (12) o'clock noon until one-half (½) hour before sunset prevailing time.
(2) Common snipe and woodcock: from one-half (½) hour before sunrise to sunset prevailing time.
(3) Experimental September duck: sunrise to sunset prevailing time.

Section 5. Free Permit for Experimental September Duck Season. Persons hunting during the experimental September duck season should obtain a free permit from any conservation officer or other authorized agents before hunting. The free permit contains a request for harvest information to be furnished on a self-addressed, stamped post card.

Section 6. Falconry Hunting. The wildlife species listed

in this regulation may be pursued and taken by a licensed falconer with any legal hunting raptor during the regular hunting dates listed for each species. All bag and possession limits apply to falconry hunting.

Section 7. Exceptions to Statewide Migratory Bird Seasons on Specified Wildlife Management Areas. Unless excepted below, all sections of this regulation apply to the following areas:

(1) Ballard Wildlife Management Area, located in Ballard County:

(a) Doves: September 1 through October 14. No firearms permitted on this area except during shooting hours.

(b) Woodcock and snipe: Seasons closed.

(2) West Kentucky Wildlife Management Area, located in McCracken County: Doves: September 1 through October 16.

(3) Central Kentucky Wildlife Management Area, located in Madison County:

(a) Doves: September 1 through October 16.

(b) Woodcock and snipe: Seasons closed.

(4) Curtis Gates Lloyd Wildlife Management Area, located in Grant County: Doves: September 1 through October 14.

(5) Land Between the Lakes Wildlife Management Area, located in Lyon and Trigg Counties:

(a) Doves: September 1 through September 30; December 1 through December 24.

(b) Woodcock and snipe: December 1 through December 5.

(6) Fort Campbell Wildlife Management Area, located in Christian and Trigg Counties:

(a) Doves: September 1 through September 24; September 25 through October 16 in designated areas only; December 1 through December 3; December 4 through December 24 in designated areas only.

(b) Shooting hours for doves: from twelve (12) o'clock noon until sunset prevailing time.

(c) Woodcock and snipe: November 25 through December 3.

(7) Closed areas: The hunting of doves, woodcock, common snipe, and ducks is prohibited on the following wildlife management areas: Grayson Wildlife Management Area, located in Carter and Elliott Counties; Beaver Creek Wildlife Management Area, including all private inholdings, located in Pulaski and McCreary Counties; Robinson Forest Wildlife Management Area, located in Breathitt, Perry, and Knott Counties; Redbird Wildlife Management Area, including all private inholdings, located in Leslie and Clay Counties; Dewey Lake Wildlife Management Area, located in Floyd County; Cane Creek Wildlife Management Area, including all private inholdings, located in Laurel County; Mill Creek Wildlife Management Area, located in Jackson County.

CARL E. KAYS, Commissioner
ADOPTED: June 11, 1982
APPROVED: CHARLES E. PALMER, JR., Chairman
RECEIVED BY LRC: July 28, 1982 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Commissioner, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, No. 1 Game Farm Road, Frankfort, Kentucky 40601.

ENERGY AND AGRICULTURE CABINET
Department of Agriculture
Division of Weights and Measures

302 KAR 35:060. Contracts.

RELATES TO: KRS 251.480
PURSUANT TO: KRS 13.082, 251.420
NECESSITY AND FUNCTION: Establishes the minimum provisions for forward pricing and storage contracts used by grain storage establishments licensed under KRS Chapter 251.

Section 1. (1) All contracts under which grain is stored or sold on a forward pricing (delayed pricing) basis shall be in writing and in a form approved by the Kentucky State Department of Agriculture, Division of Weights and Measures. Such forms shall at a minimum provide:

(a) Terms sufficient to comply with relevant requirements of KRS Chapter 355.

(b) The following language in bold type not less than twelve (12) points in size located on the face of the contract:

"In selling commodities under this agreeement, I, the seller, fully understand that I am transferring title to the undersigned buyer upon delivery, and that after delivery I am an unsecured creditor of the buyer for the market value of commodities so delivered until the price is established and settlement is completed. If the buyer defaults in his obligation for settlement I am a common (unsecured) creditor of the buyer for the value of commodities not settled for."

(2) Applicants for a grain storage establishment license or renewal of a grain storage establishment license shall submit with the application all forms of contracts used by the grain storage establishment for storage or forward pricing (delayed pricing) of grain unless the only contracts utilized for storage or forward pricing (delayed pricing) of grain are standard forms approved and supplied by the Kentucky Department of Agriculture.

(3) A grain storage establishment may store grain under a warehouse receipt as defined in KRS 355.7-101 et seq. without such prior approval of such contract or receipt.

(4) A grain storage establishment may until June 30, 1983, comply with the provisions of paragraph (b) of subsection (1) by attaching security to the statement required in paragraph (b) of subsection (1) to a preprinted contract otherwise approved by the department under the provisions of paragraph (a) of subsection (1).

(5) Forms appended hereto are approved for use in storage or forward pricing (delayed pricing) of grain and need not be submitted for approval.

ALBEN W. BARKLEY, II, Commissioner
ADOPTED: August 11, 1982
RECEIVED BY LRC: August 11, 1982 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Department of Agriculture, Alben W. Barkley, II, Commissioner, 7th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

(See Appendix A to 302 KAR 35:060 on following page)

APPENDIX A

DELAYED PRICE AGREEMENT

DATE: _____ Agreement No. _____

Commodities under agreement: _____

It is hereby agreed that I, the undersigned seller, may from time to time, by my own choice, sell and deliver to the undersigned buyer, agricultural commodities as listed above, on which the price is to be established at a later date. I pledge that the commodities delivered pursuant to this agreement shall be free of any lien or encumbrance.

In selling commodities under this agreement, I, the seller, fully understand that I am transferring title to the undersigned buyer upon delivery, and that after delivery I am a creditor of the buyer for the market value of commodities so delivered until the price is established and settlement is completed. If the buyer defaults in his obligation for settlement I am a common (unsecured) creditor of the buyer for the value of commodities not settled for.

Upon demand by the seller, the buyer is obligated to pay his regular bid price upon the date of demand for the commodities being priced by the seller which have been delivered under this agreement, less any service charge which is due and payable to the buyer. The buyer shall pay the same price as he is bidding for like commodities being delivered to him for sale on that date by other sellers.

For services rendered in connection with this agreement the seller shall be liable to the buyer for delayed price charges as printed on the back of the scale ticket.

Each scale ticket, which is marked for delayed price, hereby becomes a part of this agreement.

_____	_____
Seller	Buyer
_____	_____
Address	Address
_____	_____
Authorized Signature	Authorized Signature

ENERGY AND AGRICULTURE CABINET
Department of Agriculture
Division of Weights and Measures

302 KAR 35:070. Bookkeeping.

RELATES TO: KRS 251.480
PURSUANT TO: KRS 13.082, 251.420
NECESSITY AND FUNCTION: The General Assembly enacted legislation in 1982 which requires all grain storage establishments to utilize the bookkeeping system approved by the Department of Agriculture. This regulation implements that law.

Section 1. All books and records of grain storage establishments located within the Commonwealth of Kentucky and licensed by the Commonwealth of Kentucky must maintain all books and records utilizing generally accepted accounting principles as determined by generally accepted auditing standards.

Section 2. The books and records of grain storage establishments maintained under these regulations shall accurately state, if any, the liens or encumbrances upon grain.

Section 3. A grain storage establishment located within and licensed by the Commonwealth of Kentucky shall furnish the Department of Agriculture, as an attachment to its application for licensure or renewal licensure, a certified financial statement accurately disclosing the financial condition of the grain storage establishment.

Section 4. A grain storage establishment located within and licensed by the Commonwealth of Kentucky, where grain is sold under a forward price (delayed pricing) contract shall post at or near any scale used to weigh grain received for purchase, a notice describing the legal rights of the seller which shall be provided by the Department of Agriculture.

ALBEN W. BARKLEY, II, Commissioner
ADOPTED: August 12, 1982
RECEIVED BY LRC: August 12, 1982 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Department of Agriculture, Alben W. Barkley, II, Commissioner, 7th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department of Environmental Protection
Division of Air Pollution

401 KAR 59:260. New blast furnace casthouses.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of emissions from new blast furnace casthouses.

Section 1. Applicability. The provisions of this regulation shall apply to blast furnace casthouses commenced on or after the classification date defined below.

Section 2. Definitions. As used in this regulation all terms not defined herein shall have the meaning given them in 401 KAR 50:010.
(1) "Blast furnace casthouses" means the building or buildings which houses the following operations:
(a) Pouring of hot metal from a blast furnace from an opening at the bottom of the furnace through a runner into a torpedo car; and
(b) Pouring of the slag from a blast furnace from an opening at the bottom of the furnace into runner(s).
(2) "Blast furnace" means a furnace producing pig iron by introducing iron-bearing materials, coke, and flux materials into a vessel and introducing heated combustion air to form a reducing gas which is passed counter current to the descending raw materials.
(3) "Classification date" means the effective date of this regulation.
(4) "Control device" means the air pollution control equipment used to remove particulate matter generated in the blast furnace casthouses from the effluent gas stream.

Section 3. Standard for Particulate Matter. No owner or operator of a blast furnace casthouse subject to the provisions of this regulation shall cause to be discharged into the atmosphere from the blast furnace casthouse any gases which:
(1) Contain particulate matter in excess of 0.010 gr/dscf as tested during pouring of hot metal and slag, if such gases exit from a control device; or
(2) Exhibit an average opacity in excess of twenty (20) percent.

Section 4. Test Methods and Procedures. Reference methods in Appendix A of 40 CFR 60, except as provided in subsection (5) of this section or in 401 KAR 50:045, shall be used to determine compliance with the standards prescribed under Section 3 as follows:
(1) Reference Method 5 for the concentration of particulate matter and associated moisture content;
(2) Reference Method 1 for sample and velocity traverses;
(3) Reference Method 2 for velocity and volumetric flow rate;
(4) Reference Method 3 for gas analysis; and
(5) Reference Method 9 for the determination of opacity, except for averaging time and number of observations. For the purpose of determining compliance with Section 3(2), a series of consecutive observations taken at fifteen (15) second intervals shall be made during the entire period of time that hot metal is being poured. Determination of compliance shall be based on a comparison of the standards in Section 3(2) with the highest average opacity occurring over any six (6) consecutive minutes during the period of observation.

Section 5. Variances. The department may grant a variance from the control requirements of this regulation. Requests for such a variance shall be supported by adequate technical and economic documentation, provided that any alternative strategy shall result in at least an equivalent overall reduction in particulate emissions from the source as would be required by this regulation.

JACKIE SWIGART, Secretary
ADOPTED: August 13, 1982
RECEIVED BY LRC: August 13, 1982 at 2 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Larry Wilson, Manager, Development and Evaluation Branch, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601.

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution

401 KAR 61:170. Existing blast furnace casthouses.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of emissions from existing blast furnace casthouses.

Section 1. Applicability. The provisions of this regulation shall apply to blast furnace casthouses commenced before the classification date defined below.

Section 2. Definitions. As used in this regulation all terms not defined herein shall have the meaning given them in 401 KAR 50:010.
(1) "Blast furnace casthouses" means the building or buildings which houses the following operations:
(a) Pouring of hot metal from a blast furnace from an opening at the bottom of the furnace through a runner into a torpedo car; and
(b) Pouring of the slag from a blast furnace from an opening at the bottom of the furnace into runner(s).
(2) "Blast furnace" means a furnace producing pig iron by introducing iron-bearing materials, coke, and flux materials into a vessel and introducing heated combustion air to form a reducing gas which is passed counter current to the descending raw materials.
(3) "Classification date" means the effective date of this regulation.
(4) "Control device" means the air pollution control equipment used to remove particulate matter generated in the blast furnace casthouses from the effluent gas stream.

Section 3. Standard for Particulate Matter. No owner or operator of a blast furnace casthouse subject to the pro-

visions of this regulation shall cause to be discharged into the atmosphere from the blast furnace casthouse any gases which:

(1) Contain particulate matter in excess of 0.010 gr/dscf as tested during pouring of hot metal and slag, if such gases exit from a control device; or

(2) Exhibit an average opacity in excess of twenty (20) percent.

Section 4. Test Methods and Procedures. Reference methods in Appendix A of 40 CFR 60, except as provided in subsection (5) of this section or in 401 KAR 50:045, shall be used to determine compliance with the standards prescribed under Section 3 as follows:

(1) Reference Method 5 for the concentration of particulate matter and associated moisture content;

(2) Reference Method 1 for sample and velocity traverses;

(3) Reference Method 2 for velocity and volumetric flow rate;

(4) Reference Method 3 for gas analysis; and

(5) Reference Method 9 for the determination of opacity, except for averaging time and number of observations. For the purpose of determining compliance with Section 3(2), a series of consecutive observations taken at fifteen (15) second intervals shall be made during the entire period of time that hot metal is being poured. Determination of compliance shall be based on a comparison of the standards in Section 3(2) with the highest average opacity occurring over any six (6) consecutive minutes during the period of observation.

Section 5. Compliance Timetable. The owner or operator of a blast furnace casthouse subject to the provisions of this regulation shall demonstrate compliance with Section 3 on or before December 31, 1982.

Section 6. Variances. The department may grant a variance from the control requirements of this regulation. Requests for such a variance shall be supported by adequate technical and economic documentation, provided that any alternative strategy shall result in at least an equivalent overall reduction in particulate emissions from the source as would be required by this regulation.

JACKIE SWIGART, Secretary

ADOPTED: August 13, 1982
RECEIVED BY LRC: August 13, 1982 at 2 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Larry Wilson, Manager, Development and Evaluation Branch, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 13:006. Repeal of 806 KAR 13:005.

RELATES TO: KRS 13.082, 304.2-110
PURSUANT TO: KRS 13.082, 304.2-110
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. KRS 304.13-330 (repealed effective July 15, 1982) requires the Commissioner to approve certain premium rates before they can be used. 806 KAR 13:005 sets forth the procedure for obtaining this approval. Because KRS 304.13-330 is being repealed, 806 KAR 13:005 is no longer necessary.

Section 1. 806 KAR 13:005, Procedure for rate revision filing, is hereby repealed.

Section 2. This regulation shall become effective upon its approval pursuant to KRS Chapter 13.

DANIEL D. BRISCOE, Commissioner

ADOPTED: July 14, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: August 10, 1982 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Daniel D. Briscoe, Commissioner of Insurance, 151 Elkhorn Court, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Banking and Securities

808 KAR 1:090. Stay of notice of intention to remove from office.

RELATES TO: KRS 287.690(10)
PURSUANT TO: KRS 13.082, 287.011
NECESSITY AND FUNCTION: To define the procedures necessary to apply for a stay of a notice of intention to remove from office an officer or director of a bank. Such right to apply for a stay is provided by KRS 287.690(10).

Section 1. To obtain a stay of a Notice of Intention to Remove from Office, issued by the Commissioner pursuant to KRS 287.690(8), parties aggrieved by such Notice must follow the procedures set forth in Civil Rule 65 of the Kentucky Rules of Civil Procedure.

TRACY FARMER, Secretary

ADOPTED: August 5, 1982
RECEIVED BY LRC: August 13, 1982 at 1 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Andrew J. Palmer, General Counsel, Department of Banking and Securities, 911 Leawood Drive, Frankfort, Kentucky 40601.

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 8:011. Repeal of 902 KAR 8:010.

RELATES TO: KRS Chapter 212
PURSUANT TO: KRS 13.082, 194.050, 211.090
NECESSITY AND FUNCTION: The 1982 regular session of the Kentucky General Assembly set forth in KRS

212.855 the manner in which the membership of district boards of health is to be selected. The purpose of this regulation is to repeal that regulation on membership of the district boards in place prior to the effective date of KRS 212.855.

Section 1. 902 KAR 8:010, Membership; executive committee, is hereby repealed.

DAVID T. ALLEN, Commissioner
ADOPTED: August 11, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: August 13, 1982 at 2:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary, Cabinet for Human Resources, 275 E. Main Street, Frankfort, Kentucky 40601.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the July 28, 1982 Meeting

(Subject to subcommittee approval at the August 25 meeting.)

The Administrative Regulation Review Subcommittee held its monthly meeting on Wednesday, July 28, 1982, at 10 a.m., in Room 103 of the Capitol Annex. Present were:

Members: Representative William T. Brinkley, Chairman; Senators James Bunning and Helen Garrett; Representatives Albert Robinson and Gregory Stumbo.

Guests: Gene Hodges, Dennis Scala and Jean Collier, Administrative Office of the Courts; Ronda Paul, Banking and Securities; J. H. Voige and Joseph T. Elmes, Board of Pharmacy; Dr. Joseph P. Leone, Board of Podiatry; Ben McCray, Jayne Fairchild, Donna Smith, John Walker, Greg Lawther, Terry Morrison, Dudley Conner, Dr. David Allen, Pat Loar, Ked Fitzpatrick, Sharon Perry and Sharon Rodriguez, Cabinet for Human Resources; John Smiley and James Fries, Natural Resources and Environmental Protection Cabinet; Alex Broderick, Corrections Cabinet; Robert Spillman, Eugene Robinson, Don Hunter, Conley Manning and Gary Bale, Department of Education; Don McCormick, Department of Fish and Wildlife Resources; Elwood Harris and Tarleton Rogers, Department of Revenue; Charles E. McCoy, Bob Easton, Carl Palmore and Steven Forbes, Department of Labor; William Stephens and Charles Wickliffe, Finance and Administration Cabinet; Lornette Steenrod, Kentucky Association for Gifted Education; Tony Sholar, Kentucky Chamber of Commerce; Jay Runyon, Kentucky Power Company; and Katie Neinaber.

Press: Sy Ramsey, Associated Press; Tom Loftus, Kentucky Post.

Staff: Susan Harding, Dan Risch, June Mabry, Shirley Hart, Debbie McGuffey, Paula Payne, Karen Garrison, Scott Payton, Bonnie Brinly, Sandy Deaton, Cathy Campbell and Janie Jones.

Chairman Brinkley announced that a quorum was present and called the meeting to order. On motion of Representative Stumbo, seconded by Representative Robinson, the minutes of the June 25 meeting were approved.

On motion of Representative Stumbo, seconded by Representative Robinson, Representative Brinkley was re-elected to chair the subcommittee.

The following regulations were deferred by the subcommittee until the August 25 meeting.

CABINET FOR HUMAN RESOURCES
Department for Health Services
State Confinement Facilities
902 KAR 9:010. Environmental health.
Certificate of Need and Licensure Board
902 KAR 20:006. Certificate of need process.
Department for Social Services
Spouse Abuse Shelters and Crisis Centers
905 KAR 5:010. Standards.

The subcommittee recommended that no action be taken on the following emergency regulation:

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Bureau of Surface Mining Operations and Enforcement
Surface Coal Mining and Operation of Two (2) Acres or Less
405 KAR 26:001E. Operations of two (2) acres or less.

The following regulations were approved by the subcommittee and ordered filed:

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Division of Water
401 KAR 6:060. Water sample analysis fees.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Medical Assistance
904 KAR 1:004. Resource and income standard of medically needy.
904 KAR 1:011. Technical eligibility requirements.

The subcommittee recommended that the following regulations be approved for filing:

LEGISLATIVE RESEARCH COMMISSION
Administrative Regulations
1 KAR 1:010. Form of administrative regulations; Administrative Register; codification. (As amended.)

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
KHEAA Grant Programs
11 KAR 5:010. Authority, purpose, name of grant programs.

KENTUCKY HIGHER EDUCATION STUDENT LOAN CORPORATION
Guaranteed Student Loans and Loans to Parents
15 KAR 1:010. Qualifications of applicants.
15 KAR 1:020. Lending and purchasing policies.

DEPARTMENT OF REVENUE
Income Tax; Withholding
103 KAR 18:110. Withholding methods.

FINANCE AND ADMINISTRATION CABINET
Department of Administration
Division of County and Municipal Accounting
Accounts
200 KAR 8:020. Reimbursement to law enforcement officers for certain expenses.
Division of Occupations and Professions
Board of Pharmacy
201 KAR 2:020. Examinations.
201 KAR 2:050. Licenses and permits; fees.
201 KAR 2:105. Permits for drug manufacturers and wholesalers.
Board of Hairdressers and Cosmetologists
201 KAR 12:030. License required.
Board of Podiatry
201 KAR 25:011. Approved schools; examination application, fees.
201 KAR 25:012. Licensing examinations.
201 KAR 25:031. Continuing education.
201 KAR 25:051. Procedure for denial, suspension, nonrenewal or revocation hearings.
201 KAR 25:061. Reciprocity.
201 KAR 25:071. Residency and examination results.

COMMERCE CABINET
Department of Fish and Wildlife Resources
Fish
301 KAR 1:055. Angling; limits and seasons.
Game
301 KAR 2:080. Propagation of game; pet permits.
Wildlife
301 KAR 4:040. Sale of abandoned mounted specimens by taxidermists.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Bureau of Nautral Resources
General Coal Mining Practices
405 KAR 2:010. Waiving liens against privately owned lands.

DEPARTMENT OF EDUCATION
Bureau of Administration and Finance
General Administration
702 KAR 1:005. Textbook program.
Bureau of Instruction
Instructional Services
704 KAR 3:285. Programs for the gifted and talented. (Senator James Bunning abstained.)
Representative Stumbo moved to recommend approval of 704 KAR 3:285 in light that the agency continue this program for the upcoming school year, and that they meet with appropriate LRC staff and co-counsel and report back to the subcommittee at its next meeting.
704 KAR 3:314. Repeal of 704 KAR 3:312.
Kindergartens and Nursery Schools
704 KAR 5:011. Repeal of 704 KAR 5:010.
704 KAR 5:050. Public school programs.
Bureau of Vocational Education
Administration
705 KAR 1:010. Annual program plan.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
Labor Standards; Wages and Hours
803 KAR 1:075. Exclusions from minimum wage and overtime.
Occupational Safety and Health
803 KAR 2:090. Unwarranted inspections; complaint.
803 KAR 2:190. Employees refusal to work when dangerous conditions exist.
Department of Banking and Securities
Credit Unions
808 KAR 3:050. Conduct. (As amended.)
Securities
808 KAR 10:090. Issuer's reports.
Department of Housing, Buildings and Construction
Plumbing
815 KAR 20:070. Plumbing fixtures.
815 KAR 20:080. Waste pipe size.
815 KAR 20:100. Joints and connections.
815 KAR 20:120. Water supply and distribution.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Emergency Medical Services
902 KAR 14:010. EMS personnel funding assistance. (As amended.)
902 KAR 14:020. Allocation of funding assistance for purchase of EMS equipment.
Certificate of Need and Licensure Board
902 KAR 20:008. License and fee schedule. (Senator James Bunning abstained.)
902 KAR 20:126. Licensure hearings.
902 KAR 20:127. Certificate of need hearings. (As amended.)
902 KAR 20:131. Repeal of 902 KAR 20:130.
902 KAR 20:150. Alternate birth centers.

Department for Social Insurance

Medical Assistance

904 KAR 1:033. Payments for dual licensed pediatric facility services.

904 KAR 1:037. Payments for skilled nursing and intermediate care facility services.

904 KAR 1:042. Amounts payable for hospital furnished skilled nursing and intermediate care facility service.

Public Assistance

904 KAR 2:105. Summer energy program; eligibility criteria.

Food Stamp Program

904 KAR 3:045. Coupon issuance procedures.

Department for Social Services

Block Grants

905 KAR 3:010. Limitations on use of grant funds.

905 KAR 3:020. Technical eligibility.

905 KAR 3:030. Matching requirements.

Upon request of LRC staff in reviewing agency regulations, Chairman Brinkley moved to notify agencies submitting regulations adopting material by reference that they shall include a summary of the material and/or changes in the material being adopted.

Chairman Brinkley moved to set the regular meeting date for the subcommittee every fourth Wednesday of each month.

Upon motion of Chairman Brinkley, the meeting was adjourned at 2:00 p.m. until August 25.

Administrative Register of Kentucky

Cumulative Supplement

Locator Index—Effective Dates

NOTE: Emergency regulations expire upon being repealed or replaced.

Volume 8

Regulation	8 Ky.R. Page No.	Effective Date
401 KAR 2:170		
Withdrawn	1110	8-2-82
401 KAR 6:050		
Repealed	1197	7-28-82
401 KAR 6:060	1197	7-28-82
401 KAR 50:010		
Amended	1420	
401 KAR 50:055		
Amended	1041	
401 KAR 51:010		
Amended	1044	
401 KAR 59:005		
Amended	1422	
401 KAR 59:010		
Amended	1425	
401 KAR 59:175		
Amended	1050	
Withdrawn		8-2-82
401 KAR 59:210		
Amended	910	
401 KAR 61:005		
Amended	1427	
401 KAR 61:015		
Amended	1434	
401 KAR 61:020		
Amended	1437	
401 KAR 61:075		
Amended	1438	
401 KAR 61:085		
Amended	1054	
Withdrawn		8-2-82
401 KAR 61:120		
Amended	913	
401 KAR 61:128		
Amended	915	
401 KAR 61:140		
Amended	1441	
401 KAR 63:010		
Amended	1443	
405 KAR 1:005	1460	
405 KAR 3:005	1461	
405 KAR 7:020	1462	
405 KAR 7:030	1468	
405 KAR 7:040	1469	
405 KAR 7:060	1471	
405 KAR 7:080	1472	
405 KAR 7:090	1475	
405 KAR 7:095	1480	
405 KAR 7:100	1482	
405 KAR 7:110	1482	
405 KAR 8:010	1483	
405 KAR 8:020	1492	
405 KAR 8:030	1494	
405 KAR 8:040	1503	
405 KAR 8:050	1511	
405 KAR 10:010	1515	
405 KAR 10:020	1517	
405 KAR 10:030	1518	
405 KAR 10:040	1519	
405 KAR 10:050	1521	
405 KAR 12:010	1522	
405 KAR 12:020	1523	
405 KAR 12:030	1526	
405 KAR 16:010	1527	
405 KAR 16:020	1528	
405 KAR 16:030	1529	
405 KAR 16:040	1529	
405 KAR 16:050	1530	
405 KAR 16:060	1531	
405 KAR 16:070	1533	
405 KAR 16:080	1534	
405 KAR 16:090	1535	
405 KAR 16:100	1537	
405 KAR 16:110	1538	
405 KAR 16:120	1538	
405 KAR 16:130	1541	
405 KAR 16:140	1545	
405 KAR 16:150	1546	
405 KAR 16:160	1547	
405 KAR 16:170	1547	
405 KAR 16:180	1548	
405 KAR 16:190	1549	
405 KAR 16:200	1551	
405 KAR 16:210	1553	
405 KAR 16:220	1554	
405 KAR 16:250	1557	
405 KAR 18:010	1557	
405 KAR 18:020	1558	
405 KAR 18:030	1558	
405 KAR 18:040	1559	
405 KAR 18:050	1560	
405 KAR 18:060	1561	
405 KAR 18:070	1563	
405 KAR 18:080	1564	
405 KAR 18:090	1565	
405 KAR 18:100	1566	
405 KAR 18:110	1567	
405 KAR 18:120	1568	
405 KAR 18:130	1571	
405 KAR 18:140	1574	
405 KAR 18:150	1576	
405 KAR 18:160	1576	
405 KAR 18:170	1577	
405 KAR 18:180	1577	
405 KAR 18:190	1578	
405 KAR 18:200	1579	
405 KAR 18:210	1582	
405 KAR 18:220	1583	
405 KAR 18:230	1584	
405 KAR 18:260	1586	
405 KAR 20:010	1587	
405 KAR 20:020	1588	
405 KAR 20:030	1589	
405 KAR 20:040	1590	
405 KAR 20:050	1591	
405 KAR 20:060	1591	
405 KAR 20:070	1592	
405 KAR 20:080	1593	
405 KAR 24:020	1594	
405 KAR 24:030	1595	
405 KAR 24:040	1597	
723 KAR 1:005		
Amended	522	
902 KAR 25:010	1224	
904 KAR 1:011		
Amended	1148	7-28-82
904 KAR 1:013		
Amended	1063	

Volume 9

Emergency Regulation	9 Ky.R. Page No.	Effective Date
101 KAR 1:030E	305	7-16-82
101 KAR 1:055E	306	7-16-82
101 KAR 1:110E	310	7-16-82
101 KAR 1:130E	311	7-16-82
101 KAR 1:140E	314	7-16-82
101 KAR 1:150E	318	7-16-82
101 KAR 1:200E	318	7-16-82
103 KAR 18:110E	107	6-23-82
Replaced		8-11-82
103 KAR 40:035E	322	7-30-82
201 KAR 9:020E	323	7-16-82
301 KAR 2:044E	324	7-30-82
302 KAR 45:010E	325	7-16-82
405 KAR 26:001E	2	5-24-82
601 KAR 9:072E	326	7-26-82
902 KAR 6:050E	330	7-16-82
902 KAR 10:060E	332	7-16-82
904 KAR 1:036E	333	7-16-82
904 KAR 1:045E	337	7-16-82
904 KAR 2:105E	108	6-16-82
Replaced		8-11-82
904 KAR 3:045E	110	6-16-82
Replaced		8-11-82
905 KAR 3:010E	112	6-16-82
Replaced		8-11-82
905 KAR 3:020E	112	6-16-82
Replaced		8-11-82
905 KAR 3:030E	113	6-16-82
Replaced		8-11-82

Regulation	9 Ky.R. Page No.	Effective Date
1 KAR 1:010		
Amended	9	
Amended	339	8-11-82
1 KAR 3:005		
Amended	377	
1 KAR 4:005	280	
1 KAR 4:010	75	
Withdrawn		7-7-82
Resubmitted	283	
11 KAR 5:010		
Amended	10	8-11-82
15 KAR 1:010	75	
15 KAR 1:020	76	
30 KAR 1:030	386	
31 KAR 1:030	386	
101 KAR 1:030		
Amended	225	
101 KAR 1:055		
Amended	225	
101 KAR 1:110		
Amended	230	
101 KAR 1:130		
Amended	231	
101 KAR 1:140		
Amended	233	
101 KAR 1:150	283	
101 KAR 1:200		
Amended	238	
102 KAR 1:038		
Amended	241	
102 KAR 1:050		
Amended	242	
102 KAR 1:110		
Amended	242	
102 KAR 1:122		
Amended	243	
102 KAR 1:125		
Amended	244	
102 KAR 1:200	284	
102 KAR 1:210	284	
103 KAR 18:110		
Amended	10	8-11-82
103 KAR 40:035	387	
106 KAR 1:030		
Amended	244	
108 KAR 1:010		
Amended	246	
200 KAR 8:020		
Amended	10	8-11-82
201 KAR 1:095		
Amended	247	
201 KAR 2:020		
Amended	11	8-11-82

Regulation	9 Ky.R. Page No.	Effective Date
201 KAR 2:040		
Amended	247	
201 KAR 2:050		
Amended	12	8-11-82
201 KAR 2:056	285	
201 KAR 2:105	77	8-11-82
201 KAR 2:110	285	
201 KAR 2:115	285	
201 KAR 2:120	285	
201 KAR 2:125	286	
201 KAR 2:130	286	
201 KAR 2:135	286	
201 KAR 2:140	286	
201 KAR 2:145	287	
201 KAR 2:150	287	
201 KAR 2:155	288	
201 KAR 9:020		
Amended	248	
201 KAR 11:030		
Amended	249	
201 KAR 11:070		
Amended	249	
201 KAR 11:095		
Amended	250	
201 KAR 11:110		
Amended	250	
201 KAR 11:135		
Amended	250	
201 KAR 11:165	288	
201 KAR 12:030		
Amended	12	8-11-82
201 KAR 18:140	288	
201 KAR 20:070		
Amended	251	
201 KAR 20:085	289	
201 KAR 20:230	289	
201 KAR 20:240	290	
201 KAR 25:011		
Amended	12	8-11-82
201 KAR 25:012	77	8-11-82
201 KAR 25:031		
Amended	13	8-11-82
201 KAR 25:051	78	8-11-82
201 KAR 25:061	80	8-11-82
201 KAR 25:071	80	8-11-82
201 KAR 26:120	291	
301 KAR 1:055		
Amended	14	8-11-82
301 KAR 1:145		
Amended	252	
301 KAR 2:044	387	
301 KAR 2:060		
Repealed	14	8-11-82
301 KAR 2:080		
Amended	14	8-11-82
301 KAR 4:040		
Amended	16	8-11-82
302 KAR 35:060	388	
302 KAR 35:070	389	
302 KAR 45:010	292	
401 KAR 2:050		
Amended	126	
401 KAR 2:060		
Amended	132	
401 KAR 2:063		
Amended	150	
401 KAR 2:070		
Amended	195	
401 KAR 2:073		
Amended	201	
401 KAR 2:075		
Amended	203	
401 KAR 50:015		
Amended	345	
401 KAR 50:035		
Amended	347	
401 KAR 51:017		
Amended	350	
401 KAR 51:052		
Amended	358	

Regulation	9 Ky.R. Page No.	Effective Date
401 KAR 51:055		
Amended	363	
401 KAR 59:018		
Amended	368	
401 KAR 59:101		
Amended	208	
401 KAR 59:212		
Amended	371	
401 KAR 59:260	390	
401 KAR 61:055		
Amended	210	
401 KAR 61:056		
Amended	211	
401 KAR 61:080		
Amended	380	
401 KAR 61:122		
Amended	373	
401 KAR 61:170	390	
401 KAR 63:031		
Amended	212	
405 KAR 2:010	81	8-11-82
405 KAR 26:001	81	
405 KAR 30:010		
Amended	17	
405 KAR 30:020		
Amended	21	
405 KAR 30:130		
Amended	23	
405 KAR 30:160	82	
405 KAR 30:190		
Amended	28	
405 KAR 30:200		
Amended	30	
405 KAR 30:250		
Amended	31	
405 KAR 30:320		
Amended	34	
405 KAR 30:360	84	
405 KAR 30:370	85	
405 KAR 30:390		
Amended	35	
601 KAR 9:072	293	
603 KAR 5:096		
Amended	253	
701 KAR 1:020		
Amended	253	
702 KAR 1:005		
Amended	36	8-11-82
702 KAR 1:025	87	
702 KAR 1:110	296	
702 KAR 2:020		
Amended	253	
702 KAR 3:030		
Amended	254	
704 KAR 3:010		
Amended	255	
704 KAR 3:285		
Amended	40	8-11-82
704 KAR 3:304		
Amended	256	
704 KAR 3:312		
Repealed	88	8-11-82
704 KAR 3:314	88	8-11-82
704 KAR 5:010		
Repealed	88	8-11-82
704 KAR 5:011	88	8-11-82
704 KAR 5:050		
Amended	41	8-11-82
Amended	256	
704 KAR 10:022		
Amended	257	
705 KAR 1:010		
Amended	42	8-11-82
705 KAR 2:030		
Amended	257	
705 KAR 4:010		
Amended	259	

Regulation	9 Ky.R. Page No.	Effective Date
705 KAR 4:200	297	
705 KAR 7:050		
Amended	261	
707 KAR 1:100		
Amended	214	
707 KAR 1:110		
Amended	215	
803 KAR 1:050		
Repealed	42	8-11-82
803 KAR 1:075		
Amended	42	8-11-82
803 KAR 2:090		
Amended	43	8-11-82
803 KAR 2:190	89	8-11-82
804 KAR 1:100		
Amended	261	
804 KAR 4:230	297	
804 KAR 11:010		
Amended	381	
806 KAR 2:080		
Amended	382	
806 KAR 2:090		
Amended	383	
806 KAR 2:095		
Amended	383	
806 KAR 7:090	89	
Amended	375	
806 KAR 9:161	91	
806 KAR 13:006	391	
806 KAR 13:016	91	
806 KAR 13:031	91	
806 KAR 13:040		
Amended	44	
806 KAR 13:051	92	
806 KAR 13:061	92	
806 KAR 13:070		
Amended	45	
806 KAR 13:081	92	
806 KAR 14:005		
Amended	45	
806 KAR 14:080		
Amended	383	
806 KAR 39:030		
Amended	384	
807 KAR 5:002	298	
807 KAR 5:006		
Amended	217	
808 KAR 1:090	391	
808 KAR 3:010		
Repealed	92	8-11-82
808 KAR 3:050	92	
Amended	340	8-11-82
808 KAR 10:090		
Amended	46	8-11-82
815 KAR 20:070		
Amended	46	8-11-82
815 KAR 20:080		
Amended	47	8-11-82
815 KAR 20:100		
Amended	48	8-11-82
815 KAR 20:120		
Amended	49	8-11-82
815 KAR 45:035		
Amended	51	8-11-82
900 KAR 2:010	299	
902 KAR 4:030		
Amended	386	
902 KAR 6:050		
Amended	262	
902 KAR 8:011	391	
902 KAR 9:010		
Amended	53	
902 KAR 10:060	300	
902 KAR 14:010	94	
Amended	341	8-11-82
902 KAR 14:020	94	8-11-82
902 KAR 20:006		
Amended	55	
902 KAR 20:008		
Amended	61	8-11-82
902 KAR 20:126		
Amended	62	8-11-82
902 KAR 20:127		
Amended	63	
Amended	342	8-11-82
902 KAR 20:130		
Repealed	95	8-11-82
902 KAR 20:131	95	8-11-82
902 KAR 20:150	95	8-11-82
902 KAR 45:110	300	
902 KAR 45:120	300	
904 KAR 1:004		
Amended	6	7-28-82
904 KAR 1:012		
Amended	223	
904 KAR 1:033		
Amended	66	8-11-82
904 KAR 1:036		
Amended	263	
904 KAR 1:037	99	8-11-82
904 KAR 1:042	99	8-11-82
904 KAR 1:045		
Amended	268	
904 KAR 2:015		
Amended	269	
904 KAR 2:016		
Amended	271	
904 KAR 2:100		
Repealed	100	8-11-82
904 KAR 2:105	100	8-11-82
904 KAR 3:010		
Amended	275	8-11-82
904 KAR 3:020		
Amended	277	
904 KAR 3:035		
Amended	279	
904 KAR 3:045		
Amended	67	8-11-82
904 KAR 5:121	301	
904 KAR 5:250	301	
905 KAR 2:010		
Amended	68	
905 KAR 3:010	101	8-11-82
905 KAR 3:020	102	8-11-82
905 KAR 3:030	103	8-11-82
905 KAR 5:010	103	

KRS Index

KRS Section	Regulation
Chapter 13	1 KAR 1:010
13.082	806 KAR 13:006
18A.005	101 KAR 1:110
18A.030	101 KAR 1:055
	101 KAR 1:110
	101 KAR 1:140
18A.045	101 KAR 1:030
18A.070	101 KAR 1:030
18A.075	101 KAR 1:055
	101 KAR 1:130
	101 KAR 1:140
18A.095	101 KAR 1:110
	101 KAR 1:130
18A.100	101 KAR 1:130
18A.110	101 KAR 1:055
	101 KAR 1:110
	101 KAR 1:140
	101 KAR 1:150
18A.115	101 KAR 1:110
18A.155	101 KAR 1:200
18A.165	101 KAR 1:055
18A.202	101 KAR 1:150
29A.180	200 KAR 8:020
44.070	108 KAR 1:010
44.080	108 KAR 1:010
44.086	108 KAR 1:010
44.090	108 KAR 1:010
45.350 to 45.359	1 KAR 4:005
45.352	1 KAR 4:010
45.750 to 45.800	1 KAR 3:005
91A.080	806 KAR 2:090
	806 KAR 2:095
Chapter 95A	815 KAR 45:035
117.075	31 KAR 1:030
Chapter 138	601 KAR 9:072
141.310	103 KAR 18:110
141.370	103 KAR 18:110
150.010	301 KAR 1:145
150.025	301 KAR 1:055
	301 KAR 1:145
	301 KAR 2:080
	301 KAR 4:040
150.120	301 KAR 1:145
150.170	301 KAR 1:145
150.175	301 KAR 1:145
	301 KAR 4:040
150.180	301 KAR 2:080
	301 KAR 4:040
150.280	301 KAR 2:080
150.290	301 KAR 2:080
150.300	301 KAR 2:044
150.305	301 KAR 2:044
	301 KAR 2:080
150.320	301 KAR 2:044
	301 KAR 2:080
150.330	301 KAR 2:044
	301 KAR 2:080
150.340	301 KAR 2:044
150.360	301 KAR 2:044
	301 KAR 2:080
150.370	301 KAR 2:080
150.411	301 KAR 4:040
150.445	301 KAR 1:145
150.450	301 KAR 1:145
150.470	301 KAR 1:055
	301 KAR 2:080
150.990	301 KAR 1:055
156.022	702 KAR 2:020
156.030	701 KAR 1:020
	704 KAR 3:314
156.035	701 KAR 1:020
	705 KAR 7:050
156.070	704 KAR 3:314
	705 KAR 2:030
	705 KAR 7:050
156.112	705 KAR 1:010
	705 KAR 4:010
	705 KAR 7:050
156.160	704 KAR 3:304
	704 KAR 10:022
156.400 to 156.476	702 KAR 1:005
157.100 to 157.190	702 KAR 1:005
157.312	704 KAR 5:050
157.315	704 KAR 5:050
157.360	702 KAR 1:110
	704 KAR 3:010
	704 KAR 5:050
	705 KAR 2:030
157.390	702 KAR 1:025
158.030	704 KAR 5:050
158.090	704 KAR 5:050
158.300	704 KAR 5:011
158.310	704 KAR 5:011
158.320	704 KAR 5:011
158.330	704 KAR 5:011
158.340	704 KAR 5:011
158.350	704 KAR 5:011
158.600 to 158.620	704 KAR 3:285
160.105	702 KAR 3:030
161.515	102 KAR 1:050
161.545	102 KAR 1:038
	102 KAR 1:110
161.560	102 KAR 1:125
	102 KAR 1:210
161.620	102 KAR 1:200
161.705	102 KAR 1:122
163.020	705 KAR 1:010
	705 KAR 2:030
	705 KAR 4:010
163.030	705 KAR 1:010
	705 KAR 2:030
	705 KAR 4:010
164.740 to 164.764	11 KAR 5:010
164.780	11 KAR 5:010
164.785	11 KAR 5:010
164A.060	15 KAR 1:010
	15 KAR 1:020
167.150	707 KAR 1:100
	707 KAR 1:110
189.222	603 KAR 5:096
194.050	904 KAR 2:105
	904 KAR 3:010
	904 KAR 3:020
	904 KAR 3:035
	904 KAR 3:045
199.420	905 KAR 3:010
	905 KAR 3:020
	905 KAR 3:030
199.892 to 199.896	905 KAR 2:010
205.200	904 KAR 2:016
205.204	905 KAR 3:010
	905 KAR 3:020
	905 KAR 3:030
205.210	904 KAR 2:016
205.245	904 KAR 2:015
205.520	904 KAR 1:004
	904 KAR 1:012
	904 KAR 1:033
	904 KAR 1:036
	904 KAR 1:037
	904 KAR 1:042
	904 KAR 1:045
209.030	905 KAR 3:010
	905 KAR 3:020
	905 KAR 3:030
	905 KAR 5:010
209.160	905 KAR 5:010
210.420	902 KAR 6:050
210.440	902 KAR 6:050
211.350	902 KAR 10:060
211.920 to 211.945	902 KAR 9:010
211.950 to 211.958	902 KAR 14:010
	902 KAR 14:020
Chapter 212	902 KAR 8:011
214.155	902 KAR 4:030
216.540	900 KAR 2:010
216B.010 to 216B.130	902 KAR 20:006
	902 KAR 20:008
	902 KAR 20:126
	902 KAR 20:127
	902 KAR 20:131
	902 KAR 20:150
216B.990	902 KAR 20:006
	902 KAR 20:008
	902 KAR 20:126
	902 KAR 20:127
	902 KAR 20:131
	902 KAR 20:150
Chapter 217	201 KAR 2:110
	201 KAR 2:115
	201 KAR 2:120
	201 KAR 2:125
	201 KAR 2:130
	201 KAR 2:135
	201 KAR 2:140
	201 KAR 2:145
	201 KAR 2:150
	201 KAR 2:155
217.025	902 KAR 45:110
217.035	902 KAR 45:110
217.037	902 KAR 45:110
217.125	902 KAR 45:110
219.031	902 KAR 45:120
219.041	902 KAR 45:120
Chapter 224	401 KAR 50:015
	401 KAR 50:035
	401 KAR 51:017
	401 KAR 51:052
	401 KAR 51:055
	401 KAR 59:018
	401 KAR 59:101
	401 KAR 59:212
	401 KAR 59:260
	401 KAR 61:055
	401 KAR 61:056
	401 KAR 61:080
	401 KAR 61:122
	401 KAR 61:170
	401 KAR 63:031
224.033	401 KAR 2:050
	401 KAR 2:060
	401 KAR 2:063
	401 KAR 2:073
224.036	401 KAR 2:060
224.071	401 KAR 2:060
	401 KAR 2:063
	401 KAR 2:070
224.087	401 KAR 2:060
224.255	401 KAR 2:050
	401 KAR 2:060
	401 KAR 2:063
	401 KAR 2:070
	401 KAR 2:073
224.855	401 KAR 2:060
	401 KAR 2:063
	401 KAR 2:073
224.855 to 224.884	401 KAR 2:050
224.860	401 KAR 2:060
	401 KAR 2:063
	401 KAR 2:073
224.862	401 KAR 2:060
224.864	401 KAR 2:060
	401 KAR 2:070
	401 KAR 2:075
224.866	401 KAR 2:060
	401 KAR 2:063
	401 KAR 2:073
224.868	401 KAR 2:060
	401 KAR 2:075
224.871	401 KAR 2:060
224.873	401 KAR 2:060
224.874	401 KAR 2:060
224.876	401 KAR 2:060
	401 KAR 2:075

KRS Section	Regulation
224.877	401 KAR 2:060
224.880	401 KAR 2:060
	401 KAR 2:063
	401 KAR 2:073
243.050	804 KAR 4:230
243.710	103 KAR 40:035
243.720	103 KAR 40:035
243.884	103 KAR 40:035
244.130	804 KAR 1:100
244.500	804 KAR 11:010
246.650	302 KAR 45:010
246.660	302 KAR 45:010
251.480	302 KAR 35:060
	302 KAR 35:070
Chapter 271A	30 KAR 1:030
Chapter 272	30 KAR 1:030
Chapter 273	30 KAR 1:030
273.453 to 273.466	1 KAR 4:005
273.458	1 KAR 4:010
Chapter 274	30 KAR 1:030
Chapter 278	807 KAR 5:002
	807 KAR 5:006
287.690	808 KAR 1:090
290.020	808 KAR 3:050
290.030	808 KAR 3:050
290.040	808 KAR 3:050
290.050	808 KAR 3:050
Chapter 292	808 KAR 10:090
304.2-110	806 KAR 9:161
	806 KAR 13:006
	806 KAR 13:016
	806 KAR 13:031
	806 KAR 13:051
	806 KAR 13:061
	806 KAR 13:081
304.2-330	806 KAR 2:080
304.4-010	806 KAR 14:005
304.7-360	806 KAR 7:090
304.13-121	806 KAR 13:040
304.13-151	806 KAR 13:070
304.14-030	806 KAR 14:080
304.14-120	806 KAR 14:005
304.14-190	806 KAR 14:005
304.39-060	806 KAR 39:030
311.420	201 KAR 25:011
	201 KAR 25:012
	201 KAR 25:071
311.450	201 KAR 25:031
311.475	201 KAR 25:061
311.490	201 KAR 25:051
311.530 to 311.620	201 KAR 9:020
311.990	201 KAR 9:020
314.041	201 KAR 20:070
	201 KAR 20:085
	201 KAR 20:230
	201 KAR 20:240
314.042	201 KAR 20:240
314.051	201 KAR 20:070
	201 KAR 20:085
	201 KAR 20:230
	201 KAR 20:240
314.071	201 KAR 20:230
	201 KAR 20:240
314.073	201 KAR 20:085
	201 KAR 20:230
	201 KAR 20:240
314.131	201 KAR 20:240
314.161	201 KAR 20:240
Chapter 315	201 KAR 2:020
	201 KAR 2:040
	201 KAR 2:050
	201 KAR 2:105
317A.010	201 KAR 12:030
317A.020	201 KAR 12:030
317A.060	201 KAR 12:030
Chapter 318	815 KAR 20:070
	815 KAR 20:080
	815 KAR 20:100
	815 KAR 20:120
319.040	201 KAR 26:120
319.055	201 KAR 26:120
319.065	201 KAR 26:120
322.050	201 KAR 18:140
322.180	201 KAR 18:140
322.190	201 KAR 18:140
322.200	201 KAR 18:140
322.290	201 KAR 18:140
322.350	201 KAR 18:140
322.430	201 KAR 18:140
324.045	201 KAR 11:070
	201 KAR 11:135
324.115	201 KAR 11:070
324.160	201 KAR 11:095
	201 KAR 11:110
324.330	201 KAR 11:030
325.340	201 KAR 1:095
337.275	803 KAR 1:075
337.285	803 KAR 1:075
337.520	803 KAR 1:075
338.121	803 KAR 2:090
	803 KAR 2:190
341.415	904 KAR 5:250
Chapter 350	405 KAR 26:001
350.575	405 KAR 2:010
350.600	405 KAR 30:010
	405 KAR 30:020
	405 KAR 30:130
	405 KAR 30:160
	405 KAR 30:190
	405 KAR 30:200
	405 KAR 30:250
	405 KAR 30:320
	405 KAR 30:360
	405 KAR 30:370
	405 KAR 30:390
c. 109, 1980 Acts	1 KAR 3:005
c. 398, 1982 Acts	1 KAR 3:005
	702 KAR 1:110
	704 KAR 5:050
	905 KAR 5:010
E.O. 78-356	106 KAR 1:030

Subject Index