Administrative Register of Kentucky

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

VOLUME 9, NUMBER 5

MONDAY, NOVEMBER 1, 1982

IN THIS ISSUE

NOTE: The November meeting of the Administrative Regulation Review Subcommittee will be a TWO-DAY meeting—dates undetermined at this time. Call 564-8100, ext. 334 for further information.

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

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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.

Public Hearings Scheduled

CABINET FOR HUMAN RESOURCES

A public hearing has been scheduled on November 4, 1982 at 9 a.m. in the Vital Statistics Conference Room, 1st Floor, DHR Building, 275 East Main Street, Frankfort, Kentucky, on the following regulation:

900 KAR 2:020. Appeals. [9 Ky.R. 527]

DEPARTMENT OF INSURANCE

A public hearing has been scheduled on November 1, 1982, at 9:30 a.m. at 151 Elkhorn Court, Frankfort, Kentucky, on the following regulation:

806 KAR 43:010. Prepaid dental plan organization agent license. [9 Ky.R. 526]

A public hearing has been scheduled on November 15, 1982, at 9:30 a.m. at 151 Elkhorn Court, Frankfort, Kentucky, on the following regulation:

806 KAR 38:020. Agents' licenses. [9 Ky.R. 496]

CABINET FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

A public hearing has been scheduled on November 3, 1982, at 10:00 a.m. in the Auditorium, Capital Plaza Tower, Frankfort, Kentucky, on the following regulations:

401 KAR 2:180. General planning and management provisions for solid waste. [9 Ky.R. 512]
401 KAR 2:185. Submission of area plan. [9 Ky.R. 514]
401 KAR 2:190. Designation as a solid waste management area. [9 Ky.R. 516]

A public hearing has been scheduled on December 7, 1982, at 10 a.m. in Room G-II, Capital Plaza Tower, Frankfort, Kentucky, on the following regulation:

405 KAR 7:050. Coal processing waste disposal sites. [9 Ky.R. 634]

Emergency Regulations Now In Effect

(NOTE: Emergency regulations expire upon being repealed or replaced.)

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-814
September 27, 1982

EMERGENCY REGULATION
State Board of Elections

WHEREAS, under KRS 117.015 the State Board of Elections has been vested with the authority to administer the election laws of the Commonwealth of Kentucky and to issue necessary regulations; and

WHEREAS, the General Assembly enacted Chapter 360 of the 1982 Kentucky Acts, now codified as KRS 117.375 et seq.; and

WHEREAS, two counties have requested that the provisions of KRS 117.375 be invoked for the general election occurring on November 2, 1982; and

WHEREAS, the State Board of Elections has determined that due to the time limitations imposed under KRS 13.085, it is impossible to implement the regulations by November 2, 1982; and

WHEREAS, the State Board of Elections has determined in a letter dated September 23, 1982, that an emergency exists; and

WHEREAS, KRS 13.088(1) provides that in the event there is a determination by the Governor that an emergency exists, regulations may be filed pursuant to KRS 13.088(1) and be effective upon filing with the Legislative Research Commission;

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, by authority vested in me by Section 13.088(1) of the Kentucky Revised Statutes, hereby acknowledge the finding of the State Board of Elections 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

STATE BOARD OF ELECTIONS

31 KAR 2:010E. Electronic voting systems.

RELATES TO: KRS 64.300, 65.170, 66.050, 67.260, 67A.020, 68.540, 81A.030, 81A.420, 81A.430, 83A.100, 83A.120, 83A.170, 96.183, 96.360, 96.540, 96.543, 96.640, 96,860, 96A.350, 97.610, 107.360, 108.100, 108.160, 116.025, 116.065, 117.075, 117.255, 117.375, 117.377, 117.379, 117.381, 117.383, 117.385, 117.387, 117.389, 117.391, 117.393, 118.015, 118A.010, 119.005, 132.120, 132.380, 160.220, 160.230, 160.250, 160.260, 160.470, 160.597, 165.175, 173.470, 173.610, 173.620, 173.630, 212.080, 212.720, 215.120, 215.140, 216.317, 216.318, 242.050, 242.070, 242.080, 242.120, 242.125, 242.129, 242.1292, 242.1294, 247.487, 247.560, 247.660, 247.760, 247.860, 262.120, 262.130, 262.220, 262.370, 262.540, 262.730, 262.735, 262.748, 262.778, 424.290, 436.165

PURSUANT TO: KRS 117.383

EFFECTIVE: October 14, 1982

NECESSITY AND FUNCTION: KRS Chapter 117.383 requires the State Board of Elections to prescribe rules and regulations to achieve and maintain the maximum degree of correctness, impartiality, and efficiency of the procedures of voting. KRS Chapter 117 also permits the use of automatic tabulating equipment or data processing equipment during elections. This regulation sets forth the rules to be followed to comply with KRS Chapter 117.

Section 1. Definitions. An expansion of definitions offered by KRS 117.375 and additional definitions required by this regulation follows:

(1) "Absent voter ballot card" means a ballot card attached to a backing that aids a voter to punch out the scored position on the ballot card.

(2) "Absent voter card" means a ballot card with the names of candidates, issues and questions to be voted on, printed on the card.

(3) "Accuracy test" means a test conducted to determine that the program and the computer being used to tabulate the results of the election count the votes in the manner prescribed by the act.

(4) "Act" refers to Chapter 360 of the Kentucky Acts 1982, which sets forth all of the statutes which this regulation relates to.

(5) "Approved computer" means a manufacturer model which has been approved by the State Board of Elections to tabulate ballot cards in this state.

(6) "Ballot card" means a data processing card approved by the State Board of Elections.

(7) "Ballot label assembly" means the assembled unit containing ballot labels and mask.

(8) "Chad" means the scored portion of the ballot card which is punched out of the ballot card by the voter when casting a vote.

(9) "Computer" means one (1) or more pieces of automatic tabulating equipment which examines, tabulates, and counts votes recorded on ballot cards or magnetic tapes and prints results.

(10) "Console log" means a listing of the computer responses to program instructions and of instructions to the computer by the operator.

(11) "Correction tape" means a tape designed solely for use in correcting errors on data processing cards.

(12) "Demonstration ballot card" means a ballot card of a distinctive color used to instruct voters on the use of the voting device. The card shall have the word "DEMONSTRATION" printed or stamped on it.

(13) "Demonstrator model" means a voting device on which voters are instructed in the use of the device.

(14) "Duplicate ballot card" means a ballot card on which the word "DUPLICATE" is printed, stamped, or written and which is used to transfer a voter's valid selections from the original ballot card.

(15) "End card" means a data processing card which instructs the computer that all ballots of a precinct have been counted.

(16) "Header card" means a data processing card which contains the necessary data to identify a precinct to the computer. A header card may be an end card for the preceding precinct.

(17) "Mask" means a piece of material with defined areas for each voting position, into which holes are punched corresponding only to the voting positions appearing on the ballot label.

(18) "Overvote" means a combination of votes, including write-in votes, which exceeds the number for which the elector is entitled to vote.

(19) "Program" means the operating instructions for a computer by which it examines, counts, tabulates and prints the results of the votes cast on a ballot card.

(20) "Receiving station" means a site which is located at a building or place other than where the counting center is located.

(21) "Specialized computer" means automatic tabulating equipment constructed primarily for the purpose of tabulating ballots and printing results.

(22) "Spoiled ballot" means a ballot card which has been returned by a voter and for which a new ballot card has been issued.

(23) "Template" means a piece of material containing precisely located holes, conical in shape and positioned so that a stylus tip can penetrate only the scored areas of the ballot card.

(24) "Transfer case" means a metal container used for transporting and storing voted ballot cards. The container shall be capable of being sealed with a metal seal and be approved.

(25) "Valid punch" means a punch of a ballot card such that the chad is completely removed or is hanging by one (1) or two (2) corners.

(26) A term defined in the act has the same meaning when used in these rules.

Section 2. General Provisions. (1) The procedures in the general election laws shall be applicable in elections in which electronic voting systems are used, except where such laws are superseded by specific provisions of the act or these rules.

(2) A precinct in which electronic voting systems are used may contain more than the number or registered voters recommended by statute in precincts using voting machines.

(3) Nothwithstanding any other provisions of these rules, the county board of elections and local units of government may enter into a mutual agreement for the joint use of a computer. Such an agreement shall state that the county clerk has control of the programs to be used for election purposes.

Section 3. Ballot Preparation. (1) The ballot cards used after the effective date of these rules, shall have the words "OFFICIAL BALLOT CARD" printed on the face of the stubs.

(2) One (1) corner of the ballot card shall be cut.

(3) The following statement may be printed or stamped

on the back of the stub on official ballot cards in bold face capital letters:

STOP
WRONG SIDE
TURN CARD OVER

(4) A combination ballot card and write-in ballot to be used in an election shall be approved by the State Board of Elections.

(5) A ballot envelope to be used in an election shall be approved by the State Board of Elections and shall satisfy all of the following requirements:

(a) Be of sufficient size, weight, and design to preserve the secrecy of the ballot card.

(b) Have an inner pocket into which the ballot card shall be inserted.

(c) Display printed instructions as to the method of inserting the ballot card after voting, and if the ballot envelope is to be used for write-ins, shall display instructions and space for casting a write-in vote.

(6) The number of ballot cards and envelopes required to be printed and distributed to each precinct shall:

(a) For the general election, be a number equal to the number of registered voters as of the close of registration.

(b) For a primary election, be not less than a number equal to the total number of votes cast in the most recent corresponding primary election.

(c) For a special or local election, be a number determined by the local clerk.

(7) A question, proposal, or proposition shall be placed last on the ballot label following the names of candidates and shall be placed in the following order: state, county, local. An exemption from this requirement may be obtained prior to the election from the State Board of Elections in writing.

(8) For a general election, the name of the party which a candidate represents shall be printed along with the name of the candidate.

(9) Voting instructions shall be printed on the first page of the ballot label. The ballot label shall contain instructions as to where the voter is to continue voting. Additional instructions which conform with the act may be printed on the ballot label.

Section 4. Absentee Ballots: Issuance, Processing and Tabulation. (1) In a community in which electronic voting devices are used and absentee votes are cast on regular paper ballots, the absentee ballots shall be counted by absent voter counting boards as paper ballots.

(2) In a community in which electronic voting devices are used and absentee votes are cast on absent voter ballot cards, the absentee ballots shall be sent to the county clerk to be tabulated with the precinct ballot cards or to an absent voter counting board to be processed and tabulated.

(3) In a county using voting machines, absentee votes may be cast on absent voter ballot cards. The absentee ballot cards shall be sent to county clerk, tabulated, and added to the other precinct returns.

(4) If the voter is to vote by means of an absent voter ballot card, the clerk shall prepare and issue an absent voter ballot packet consisting of the following, when required by the system being used:

(a) Absentee voter ballot card;

(b) Punching tool;

(c) Absent voter instruction ballot;

(d) Ballot envelope for the voter to insert the voted portion of the ballot card after voting;

(e) Return envelope as required in Section 761 of the Act;

(f) A copy of Section 758 of the Act; and

(g) Absent voting instructions prescribed by the State Board of Elections.

(5) Absent voter instruction ballots where used in conjunction with a ballot card shall be printed in plain, clear type and contain instructions for voting. There shall be printed in boldface type alongside each candidate's name and the choice for each measure, a number which corresponds to the respective position number on the ballot card. The words "ABSENT VOTER INSTRUCTION BALLOT" shall appear at the head of the absent voter instruction ballot. An absent voter instruction ballot may be facsimile of the ballot label used in the absent voter's precinct. Arrows placed on the ballot labels may be omitted from the absent voter instruction ballot.

Section 5. Preparation of Program. (1) A program shall be written so as to accurately tabulate a voter's choice for each candidate, office, and measure for which the voter is lawfully entitled to vote, in conformity with the act and these rules.

(2) A program shall include an instruction requiring that header card precede the deck of ballot cards for each precinct. In programs to be used on a specialized computer, one (1) header card is required, unless the function of the header card is performed by the program.

(3) An end card shall follow the ballots of each precinct. The program may provide that if a header card contains instructions to the computer that all ballots of the preceding precinct have been counted, a separate end card is not required. In a program to be used in a specialized computer, an end card is not required.

(4) A program may be maintained by a generally accepted method, within the computer industry, of input or output or a combination of methods.

(5) Two (2) edit listings shall be prepared and, not less than three (3) days before the preliminary accuracy test, shall be delivered to the county board of elections responsible for supplying the program.

(6) The county board of elections responsible for supplying the program shall provide necessary information to the person or company designated to write or prepare the program.

(7) The program for an election and a duplicate copy shall be completed and delivered to the county board of elections responsible for supplying the program not less than three (3) days before the preliminary accuracy test. A duplicate is not required where a specialized computer is used.

(8) If a program is written to be used on a general purpose computer, the person or company providing the program shall, at the time the program is delivered, submit to the county board of elections a certificate stating that the program was prepared from all relevant input data, describing the procedures which were used to determine its accuracy, and stating that the program has been written pursuant to the act and these rules.

(9) The person preparing the program shall submit to the county board of elections, responsible for supplying the program, instructions containing the information and procedures required to operate the program. The county board of elections shall make the instructions available to the computer operators.

(10) The vote tabulation portion of the program shall be written:

(a) In statewide races to reflect the rotation sequence of the candidate's names and ballot position numbers (when required by the system being used) as they appear on the

ballot labels in the various congressional districts.

(b) To count valid votes cast by a voter for candidates of an office.

(c) To count valid votes cast by a voter for or against any question.

(d) So as not to count votes cast by a voter for an office or question if the number of votes cast by a voter exceeds the number which the voter is entitled to vote for on that office or question.

(e) To ignore punches in a ballot card in positions where a candidate's name or questions do not appear on the official ballot. These punches shall not have effect on the ballot.

(f) So that the partisan, nonpartisan, and proposal sections of the ballot are considered separate sections of the ballot. The action of a voter in one (1) section on the ballot shall not affect the voter's action on another section of the ballot.

(11) For a partisan primary election, the vote tabulation section of the program shall be written to determine if a voter has cast votes for candidates of more than one (1) political party.

(12) For a general election, the vote tabulation section of the program shall be written so that a vote shall be counted for each candidate of the political party indicated by the voter's straight ticket vote.

Section 6. Preparation of Official Test Deck. (1) The county board of elections providing the program or its authorized assistant shall prepare a test deck with predetermined results.

(2) The test deck shall consist of ballot cards of the same type to be used in the election.

(3) A document, record, chart or listing shall be prepared indicating the punches, recorded in the test ballot card. This documentation shall indicate each valid or invalid vote.

(4) A duplicate of the test deck shall be prepared. The duplicate of the test deck may consist of standard data processing cards.

(5) The approved test deck by the company providing the services may be used for this purpose.

Section 7. Preliminary Accuracy Test. (1) The county board of elections providing the program or its authorized assistant shall conduct a preliminary accuracy test of the computers and programs for all precincts prior to the accuracy test.

(2) The preliminary accuracy test shall be conducted using the test decks prepared under the direction of the board. For the purpose of this test, the test deck may be reproduced onto standard data processing cards.

Section 8. Accuracy Test. (1) The county board of elections providing the program shall designate a time and place for an accuracy test, which shall be held not less than five (5) days before the election.

(2) The accuracy test shall be conducted by an accuracy board, which shall be the county board of elections supplying the program. A member of the board may designate a person to serve in his or her place on the accuracy board. A member of the county board of elections who so designates a person to serve at the accuracy test shall notify the clerk before the test. The clerk or the designated representative of the clerk shall be chairperson.

(3) The clerk in charge of the program may limit the number of persons who may be in the computer room and the duration of their stay in the computer room.

(4) The initial testing of the computers and programs shall be with the test deck prepared under the direction of the county board of elections. The number of precincts to be tested shall be determined by the accuracy board. The members of the accuracy board may prepare or cause to have prepared additional ballot cards to be included in the test deck.

(5) Each program and test deck shall be tested on the computer on which it is to be used for the election.

(6) After demonstrating the accuracy of the programs and computers, the following persons may prepare test ballot cards for testing:

(a) The county chairperson of each political party appearing on the ballot or a designated representative.

(b) A candidate whose name appears on the ballot or a designated representative.

(c) A representative from each group interested in a proposal or measure who has informed the board in writing of that person's intent to participate in the testing procedure.

(7) The number of cards each eligible person is allowed to prepare shall be determined by the board, except that an eligible person shall not be limited to less than ten (10) cards.

(8) The county board of elections supplying the program shall provide the following items at the accuracy test:

(a) An edit listing.

(b) Test ballot cards.

(c) At least one (1) set of ballot labels for sample ballots for each precinct.

(9) If an error is detected in the testing, the cause shall be ascertained, the error shall be corrected, and an errorless count shall be made for all precincts. If determined by the board, the meeting may be adjourned to a time and date certain.

(10) The State Board of Elections or designated representative may provide a test deck for a program. If so, it shall be delivered at the accuracy test. At the discretion of the State Board of Elections, it may be used in place of, or in addition to, the test deck prepared by the county board of elections.

(11) The county board of elections shall certify the accuracy of the test. The certification may be attached to, or written on, the computer results of the accuracy test.

(12) The county board of elections shall secure all programs, test decks, certified computer results of the test and the predetermined results in a metal container which shall be sealed with a metal seal in a manner so that the container cannot be opened without breaking the seal. Attached to or inside the container shall be a certificate describing its contents and on which the number of the seal has been recorded. The certificate shall be signed by the members of the board and, if attached to the container in a plastic envelope, it shall be attached in such a manner that it cannot be removed without breaking the seal.

(13) The board shall immediately deliver to the clerk in charge of the election the metal case containing the programs and the test decks. The clerk shall retain and secure the programs.

Section 9. Preparation of Voting Device. The following rules apply to those systems which require a special voting device to be used during the election:

(1) The clerk or an authorized assistant shall prepare each voting device pursuant to the provisions of these rules.

(2) A voting device shall be identified with the precinct number in which it shall be used.

(3) A ballot label page used in the voting device shall be

firmly attached for insertion and positioning in the ballot frame. A person shall not attach a ballot label by tape to a rod, or place a ballot label into a clear plastic envelope through which a rod is inserted.

(4) The ballot label assembly shall be inserted and sealed into each voting device so that the ballot label assembly cannot be removed without breaking the seal.

(5) The ballot label of each voting device of a precinct shall be compared against the edit listing and instruction ballot for the precinct to ascertain that the offices, candidates' names, and ballot position numbers are the same and appear in the same position.

(6) The ballot labels of each device shall be examined to ascertain that holes in the mask appear directly opposite each arrow, that other holes do not appear in the mask, and that the ballot labels are in proper sequence.

(7) An assembled voting device shall be tested to determine if it is operating properly.

(8) The identifying number of the voting device and the seal number used to seal the ballot label assembly to the device shall be recorded on the certificate in the poll book for the precinct in which the device is to be used. The clerk or an authorized assistant who sealed the device shall sign the certificate.

(9) When a voting device has been prepared for the election, the county board of elections shall execute a certificate in writing, which shall be filed with the county board of elections of the jurisdiction in which they are authorized to act. The certificate shall contain the precinct number, the identifying number of the device, and the number of the seal or seals used to seal the device, and state that the ballot labels have been compared against the edit list for that precinct and that the candidates' names and ballot numbers agree and appear in the same position and that the device has been properly prepared and tested. If the certificate is signed by other than the county board of elections, the county board of elections shall be offered an opportunity to inspect the voting devices to determine whether they are properly prepared.

(10) If a system is being used which has the candidates' names, issues and questions printed on the ballot, in such instances the ballot itself will be inspected prior to issuing the ballots to the precincts, in lieu of inspecting the voting device.

Section 10. Preparation and Delivery of Election Supplies. (1) The clerk of the unit of government providing the voting devices or an authorized assistant may place into a transfer case the ballot cards, envelopes and ballot frames for each precinct. The transfer case shall be secured with a seal and contain a certificate signed by the clerk or an authorized assistant setting forth the number of ballots in the case and that the ballots were counted and sealed by the clerk or by an authorized assistant. Ballot cards not issued to a precinct or assigned for absentee voting shall be secured and accounted for by the clerk. The clerk shall maintain a record of the number of ballot cards and serial numbers issued to each precinct. The ballot cards shall be delivered to a member or judge of the precinct election officers in the proper precinct.

(2) Precinct supplies shall include the following items:

(a) A specimen ballot for posting.

(b) A pencil for each voting device.

(c) A set of instructions for operating the precinct on election day.

(d) An envelope labeled "SPOILED BALLOT CARDS."

(e) An envelope labeled "ORIGINAL BALLOT CARDS FOR WHICH DUPLICATES HAVE BEEN MADE FOR ANY REASON" if the duplication is to be done at the precinct.

(3) If the precinct header card is sent to the precinct, it shall be contained in an envelope for that purpose and included in the transfer case for the precinct.

(4) The voting devices, demonstration voting devices, voting booths, ballot cards, ballot envelopes, transfer case, and all other necessary supplies shall be delivered to the precinct not later than 5:45 a.m. on election day.

(5) A ballot box shall be provided to each precinct for the deposit of voted ballot cards. The ballot box shall be capable of being locked or sealed during elelction day.

Section 11. Precinct Election Officers' Duties Prior to Opening the Polls. (1) Voting devices shall be used in voting booths or in self-contained voting stations.

(2) If voting devices are used in self-contained voting stations, the stations shall be arranged so that the secrecy of the ballot is not violated.

(3) The precinct election officers shall do all the following if it is applicable to the system being used in the precinct:

(a) Compare the seal number and identifying numbers on the devices with the numbers recorded in the poll book.

(b) Compare the names, proposals, and ballot position printed on the ballots or ballot labels, edit listing, and precinct instruction ballot to ascertain that the offices, proposals, and candidate names are the same.

(c) Verify that the ballot label pages are in the proper order.

(d) Check the mask to see that holes only appear directly opposite each arrow and that the arrow points directly to the hole opposite it.

(e) On a mechanical punch system, a sufficient number of votes shall be voted with demonstration cards to assure that the machine is functioning properly.

(f) Verify that there is a pencil or pen provided for each device for general elections only.

(g) If a stylus is used, check each stylus to assure that it is not broken.

(h) Determine that there is adequate lighting.

(4) In the event of a discrepancy, the election inspectors shall notify the clerk immediately and the voting device shall not be used until the discrepancy is resolved.

(5) The demonstration voting device shall be placed so as to afford each voter an opportunity to use it prior to voting.

Section 12. Conduct of Election and Manner of Voting. (1) Before being issued a ballot, each voter shall be instructed by the use of a demonstration ballot on the device to be used in that particular precinct. Training instructions shall also be displayed for the voters to see.

(2) The precinct election officers having charge of the ballots shall deliver to the voter an official ballot card and envelope or folder.

(3) The ballot card number issued to the voter shall be placed beside the voter's name in the poll book or precinct roster.

(4) Upon being issued a ballot card and envelope, the voter shall enter a voting station and record his or her selections on the ballot card. Before leaving the booth, the voter shall insert the ballot card in the ballot holder with the detachable stub on the outside in such a manner that the voting portion of the ballot card is not exposed.

(5) The precinct election officers designated to receive the ballot from the voter may ascertain by comparing the number on the ballot with the number recorded on the precinct list whether the ballot given to the precinct election officer/or deposited is the same ballot furnished to the voter. If it is the same ballot, the voter or the precinct election officer shall remove the detachable stub and in the presence of the voter deposit the ballot into the ballot box or insert it in the counter for tallying.

(6) The precinct election officers shall frequently check the seals and ballot label pages of the voting devices to ensure that none have been altered or defaced. If the officers find that the ballot pages of a device have been altered, multilated, or damaged in such a manner that the precinct election officers cannot correct them without doing damage to the offices, names and proposals appearing on the pages, the device shall not be used until the condition is corrected. A note of the occurrence shall be made in the remarks section of the precinct roster.

(7) A ballot card found in a booth or device shall be marked with the words "FOUND IN BOOTH." The card shall be placed in an envelope which shall be placed in the transfer case. A note of the occurrence shall be made in the remarks section of the precinct roster.

Section 15. Precinct Election Officers; Duties After Polls are Closed. (1) The ballot labels and seals of each voting device shall be inspected to ensure that they have not been altered and are intact and that seal numbers agree with the numbers as verified at the opening of the polls. A discrepancy shall be noted in the remarks section of the poll book.

(2) If the votes are tabulated at the precincts, the precinct election officers shall open the ballot box and remove the ballots. Prior to removing the ballots from their envelopes, they shall be counted to determine the total number. If the number of ballots counted is less than the number of voters according to the poll lists, the reason for the discrepancy shall be noted in the remarks section of the poll book. If the precinct election officers are unable to explain the discrepancy, they shall so state in the remarks section of the poll book. The inspectors' determination shall constitute conclusive and sufficient explanation for purposes of recount.

(3) At an election where a candidate's name has been written in on the ballot, the election inspectors shall identify each ballot card and its corresponding official ballot envelope.

(4) At the discretion of the county board of elections in charge of the election, the examination of ballot cards for damage, hanging chads, distinguishing marks made by the voter, and for indications of write-in votes may be done at the precinct or at the counting center.

(5) When the ballot cards have been processed and checked, the precinct election officers shall determine that the number of ballot cards which they are submitting to the counting center for tabulation agrees with the number of names recorded on the precinct roster less discrepancies for which notations have been made in the precinct roster the number of ballot cards which are being submitted for tabulation shall be entered in the appropriate place on the certification prepared by the precinct election officers.

(6) The precinct election officers shall prepare a certificate indicating the number of ballot cards issued to the precinct, number of ballot cards issued to the voters, number of spoiled ballot cards, and the number of unused ballot cards. The certificate shall be placed in the transfer case or included on the precinct roster.

(7) The precinct election officers shall place into the transfer case and/or ballot box for delivery, as directed, all of the following, if required by the system being used:

(a) Voted ballot cards.

(b) Ballot envelopes used in the election, unless they are placed and sealed in a separate metal container at which time they may be delivered to a place other than the counting center at the direction of the clerk.

(c) An envelope marked "ORIGINAL BALLOT CARDS FOR WHICH DUPLICATES HAVE BEEN MADE FOR ANY REASON" and containing those ballots, if used.

(d) An envelope containing spoiled ballot cards.

(e) Envelopes with notations and contents, containing any other issued ballot cards which are not to be counted.

(f) A certificate signed by the precinct election officers indicating the number of ballot cards issued, spoiled, and unused, unless included in the precinct roster.

(g) The write-in tally return sheet, unless included in poll book or precinct roster.

(h) Unused ballot cards, unless sealed in a separate container.

(8) All of the precinct election officers shall sign a certificate stating the following if it applies to the system being used in their precinct:

(a) The number of voters who voted as shown by the poll list.

(b) That the challenged and disable voter list is correct.

(c) That prior to opening the polls, each device was examined and found to be sealed with metal seals bearing the same number as certified by the county board of elections.

(d) That the ballot labels were in their proper places and conformed to the instruction ballots.

(e) That the position of candidate names and ballot numbers on the ballot labels was the same and appeared in the same position as indicated on the edit listing.

(f) That at the close of the polls, each device was examined and found to be sealed with the same numbers as verified at the opening of the polls and that the ballot labels were in their correct position.

(g) The number of ballot cards submitted for tabulation.

(h) That if the number of ballots being submitted for tabulation does not agree with the number of voters as indicated by the precinct roster, the discrepancy is noted in the remarks section of the precinct roster.

(i) That ballot cards with write-in votes have been identified to their corresponding ballot envelopes.

(j) That ballot cards required to be duplicated by the precinct election officers have been properly duplicated.

(k) That write-in votes if counted at the precinct have been properly recorded, that ballot cards, duplicated cards, and ballot envelopes used in the election have been placed in the transfer case and/or ballot box and that the case or box was securely sealed with an official metal seal in such a manner as to render it impossible to open the case without breaking the seal.

(l) The number of the seal used to seal the transfer case and/or ballot box.

(9) The precinct election officers shall either place the precinct roster in the envelope, seal it with a red paper seal, and deliver it with the transfer case or insert the precinct roster into the transfer case for delivery.

(10) If the space in one (1) transfer case is inadequate, a second transfer case or metal container of a type approved by the county board of elections for the storage of ballots shall be used and the sealing and security handled in the same manner as the transfer case.

(11) The transfer case shall be sealed with a metal seal in

a manner as to render it impossible to open the case or insert or remove ballots without breaking the seal. The seal number shall be recorded in the certificate of the precinct election officers in the poll book.

(12) The poll book and the transfer case containing the required items shall be delivered by two (2) precinct election officers to the location designated by the clerk.

Section 16. Hanging Chads. (1) A ballot card with a hanging chad shall be processed by not less than two (2) precinct election officers of differing political party preference.

(2) A ballot card with a hanging chad shall be processed as follows:

(a) When a chad is found attached to the card by one (1) or two (2) corners, the chad shall be removed by the election officer and the ballot card placed with the other ballot cards to be tabulated.

(b) When a chad is found attached to the card by three (3) corners, the number not punched shall be circled on the original card. The original ballot card shall then be placed in the envelope for "ORIGINAL BALLOT CARDS FOR WHICH DUPLICATES HAVE BEEN MADE FOR ANY REASON;" and the duplicate ballot card, if made, placed with the other ballot cards to be tabulated. A chad hanging by three (3) corners may be covered with a piece of correction tape instead of being duplicated. The originial ballot card, after being corrected, shall be placed with the other ballot cards to be tabulated.

Section 17. Processing Write-In Ballots. Write-in ballots shall be processed by not less than two (2) precinct election officers of differing political party preference.

Section 18. Duplication of Ballot Cards. (1) When a ballot card is duplicated, the duplication process shall be performed by not less than two (2) precinct election officers of differing political party preference.

(2) A duplicate ballot card shall be marked "DUPLICATE #_____." The number to be recorded on the duplicate card shall be the same identifying number recorded on the original card by the precinct election officer. The precinct number shall be recorded on the duplicate card.

(3) A duplicate ballot card shall be compared against the original ballot card to ensure that it has been accurately duplicated.

(4) An original ballot card which required duplication shall be placed in the envelope marked "ORIGINAL BALLOT CARDS FOR WHICH DUPLICATES HAVE BEEN MADE FOR ANY REASON." The duplicate ballot cards shall be placed with the ballot cards to be tabulated.

Section 19. Receiving Station. (1) At the option of the clerk in charge of the election, a transfer case and/or ballot box may be delivered by the precinct election officers to a receiving station instead of directly to the counting center. If a receiving station is used, the clerk shall appoint at least one (1) receiving board.

(2) The county board of elections in charge of the election shall determine the number of precincts which may be received by a receiving station (stationary or mobile).

(3) Upon receipt of the transfer case and/or ballot box from the precinct election officers, the receiving board shall verify that the seal number on the transfer case and/or ballot box is the same as that recorded by the precinct election officers.

(4) The receiving board shall issue a receipt for the transfer case and/or ballot box to the precinct election officers delivering the case. The receipt shall indicate in general terms the condition of the transfer case and be made in duplicate. The original copy shall be given to the precinct election officers delivering the transfer case and/or ballot box and the duplicate retained for delivery to the clerk in charge of the election.

(5) The receiving board shall deliver the transfer case and/or ballot box to the counting center.

(6) The transfer case and/or ballot box identification tag shall be attached to the transfer case or ballot box by the seal.

(7) The receiving station certificate section of the precinct roster shall read substantially as follows:

RECEIVING STATION CERTIFICATE

We hereby certify that the transfer case and/or ballot box properly sealed, for this precinct was received by the receiving board. The seal number agreed with the number recorded in the precinct roster.

We further certify that after examining the transfer case and/or ballot box the original seal was attached to the transfer case and/or ballot box.

Section 20. Canvass. (1) The county board of elections may, for reasonable cause, require the person who prepared the program to appear before the board, to bring documents pertinent to the program, and to answer questions relevant to the program.

(2) The county board of elections may, for reasonable cause, require the person having the custody of the program to appear with the program before the board. A board of canvassers may conduct a test to determine the accuracy of the program.

(3) After testing, if it is found that the program which was used to tabulate the ballots produced incorrect returns, a board of elections may require the person who prepared and supplied the program to correct the portions of the program found to be in error and submit to it a corrected program to be used to retabulate the ballots. In that event, an accuracy test shall be held under the direction of the board of elections at which time the corrected program shall be tested and certified as provided in these rules. The ballots of the precincts shall be retabulated using the corrected program in the same manner as prescribed. A board of elections may summon the certifying board which originally certified the returns to retabulate the ballots and make correct returns. The board of elections shall canvass the votes from the corrected returns.

(4) When an examination of documents or programs is completed or the ballots have been counted or retabulated, they shall be returned to the transfer case or containers and shall be sealed and delivered to their legal custodian. The number of the seal shall be recorded on a certificate to be filed with the clerk of the board of elections.

Section 21. Challengers/Party Inspectors. Challengers designated pursuant to KRS 117.315(5) may be at the counting center and a receiving station, including one (1) challenger for each separate receiving, ballot inspection, duplicating and certifying board for each computer being used to tabulate the ballots.

Section 22. Counting Center; Election Inspectors; Appointment. (1) If a counting center is used, the county board of elections of a local unit of government using that counting center shall appoint not less than one (1) receiving board and one (1) certifying board.

(2) If the county owns the devices and supplies the program, and when more than one (1) local unit of government shares a computer center and a mutual agreement exists with the county, the county board of elections shall appoint not less than one (1) receiving board and one (1) certifying board. In this case, the county clerk shall be in charge of the counting center.

(3) The county board of elections may appoint a separate board for the purpose of examining, processing and duplicating ballot cards. The board shall consist of not less than two (2) members of differing political party preference.

(4) The county board of elections in charge of the computer counting center may appoint the same persons to the receiving, certifying and other boards.

(5) The county board of elections supplying the program shall appoint a person knowledgeable and capable of operating the computer on which the ballots shall be tabulated. They may, in addition, appoint another person to observe the operation of the computer. These persons shall be considered election officials. When more than one (1) local unit of government shares a computer and an agreement has been made with the county as provided, the county board of elections shall make the appointment.

(6) A member of the county board of elections which certifies all or part of the election shall not serve on any board established under this rule.

Section 23. Counting Center; Receiving, Tabulating and Certifying Ballots. (1) The county board of elections shall determine that the seal number on the container containing the programs, official test deck, and predetermined results agree with those recorded in the certificate of the accuracy board.

(2) The county board of elections shall test the program and computer as to accuracy prior to the tabulation of ballots and again after the last precinct has been counted, and shall certify the results. The accuracy test shall be conducted using the official test deck prepared under the direction of the county board of elections and certified by the accuracy board. The county board shall use the same test as was conducted by the accuracy board. The county board of elections shall ascertain that the results agree with the results as certified by the accuracy board. The computer results of the county board of elections accuracy test shall be identified as to date and time they were conducted. The county board of elections shall certify that the required tests have been performed. This certification shall be placed under seal with the program, test deck results, and other required materials and shall be delivered to the clerk in charge of the election.

(3) The county board of elections at least once during the tabulation of ballots must test the program and computer using the official test deck.

(4) A console log of the ballot tabulation shall be maintained and, at the completion of the count and accuracy test, certified by the computer operator and any observer appointed by the county board of elections. The console log shall be delivered to the clerk in charge of the election. If the computer used to tabulate the ballots is not capable of generating a console log, then a manual log of any abnormal events shall be maintained.

(5) Upon receipt of the transfer case and/or the ballot box from the stationary or mobile receiving board, the inspectors shall verify that the seal number on the transfer case and/or ballot box is the same as that recorded by the precinct election officers. The case or box shall then be opened and the computer center receiving board shall determine whether it contains ballot cards and other required items. A discrepency in the seal number or contents shall be noted and explained in the remarks section of the precinct roster by the election inspectors delivering the transfer case and/or ballot box.

(6) The computer center receiving board shall issue a receipt for the transfer case and/or ballot box to the election inspectors delivering the case. The receipt shall indicate in general terms the contents of the transfer case or box and shall be made in duplicate. The original copy shall be given to the inspectors delivering the transfer case or box and the duplicate retained for delivery to the clerk in charge of the election.

(7) The computer center receiving board shall place the metal seal with which the case was sealed inside the transfer case or ballot box. The receiving board shall complete the certificate in the poll book, which shall read substantially as follows:

RECEIVING BOARD CERTIFICATE

We hereby certify that the transfer case and/or ballot box, properly sealed, containing the ballot cards for this precinct was received by the counting center receiving board. The seal number agreed with the number recorded on the transfer case or ballot box identification tag and in the precinct roster.

(8) The computer center receiving board shall place the cards in a sealed file.

(9) The clerk in charge of the election, the designated representatives of the clerk, the observer appointed by the county board of elections, computer personnel, data processing installation employees, authorized challengers, and the certifying board shall be allowed in the immediate area of the computer. The immediate area of the computer shall be defined by the clerk, but the clerk shall provide the public with a means of observing the computer.

(10) The clerk in charge of the election or the designated representative of the clerk shall be present in the computer room until the count is completed and all items required to be sealed have been sealed.

(11) The certifying board shall determine if the number of ballot cards tabulated by the computer agrees with the number of ballot cards submitted by the inspectors as indicated by the poll book. If a discrepancy exists, the board shall endeavor to correct it. If the discrepancy cannot be resolved, a notation of the pertinent facts shall be made in the remarks section of the poll book.

(12) The certifying board shall complete and certify a statement of returns in duplicate. The certificate of the statement of returns shall read substantially as follows:

STATEMENT OF RETURNS CERTIFICATE

We hereby certify that this is a statement of votes cast in this precinct as indicated by the tabulating equipment and that upon completion of the count, all ballots were placed in the transfer case or ballot box, that the case was sealed with seal number _____, and that the seal number was recorded in the poll book.

(13) County board of election members may serve as members of the certifying board at the discretion of the clerk in charge of the election.

(14) Upon the completion of the count of a precinct, the ballot cards shall be returned to a transfer box or ballot box. The transfer case or ballot box shall be either secured by a metal seal or placed in a secured place so as to render it impossible to open the case or box, to insert or remove ballots without breaking the seal, or impossible to enter the secured area where the ballots are stored. If the transfer case or ballot box is identified as to political unit and precinct, the identification tag shall be placed in the

transfer case or ballot box or attached to the case or box in some manner.

(15) The precinct statement of returns and precinct roster shall be delivered to the persons authorized by statute to receive them. If permitted by the clerk of the board of elections, precinct statements of returns from one (1) or more precincts and poll books may be included in a single envelope or package.

(16) The clerk in charge of the counting center may require that a manual count of one (1) or more proposals in a precinct be conducted by the certifying board prior to certification of the computer tabulated results for that precinct.

(17) If the manual count and the computer count tabulated results do not agree, the certifying board shall not certify the results until the discrepancy has been reconciled.

(18) After the last precinct has been counted and the final accuracy test has been conducted, the certifying board shall secure all programs, test decks, certified results of accuracy tests, and other related material in a metal container, or in a secured place that cannot be entered by anyone without authority to do so. If these documents are placed in a container, the container must be sealed and have a certificate, signed by the certifying board, attached to it describing the contents. If these documents are placed in a secured place other than a sealed metal container, a certificate shall be attached to the container and the secured place shall not be entered unless two (2) members of the county board of elections of differing political parties are present.

(19) The clerk in charge of the election shall secure the container containing the programs, test decks, accuracy test results, and other related materials, and the original edit listing until fifteen (15) days following the certification of the election if a recount has not been requested or until a date prescribed by the State Board of Elections.

(20) Ballots used at an election may be destroyed after fifteen (15) days following the final determination of the county board of elections with respect to the election, unless their destruction has been stayed by an order of the court. Ballots shall not be released for examination, review or research unless prior approval is obtained by the county board of elections.

BRADY A. MIRACLE, Executive Director
ADOPTED: September 20, 1982
RECEIVED BY LRC: October 14, 1982 at 4 p.m.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-766
September 17, 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 September 14, 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 2:087E. Migratory birds; limits and seasons for taking.

RELATES TO: KRS 150.010, 150.025, 150.170, 150.175, 150.235, 150.305, 150.330, 150.340, 150.360, 150.600

PURSUANT TO: KRS 13.082

EFFECTIVE: September 17, 1982

NECESSITY AND FUNCTION: This regulation pertains to the bag limits, possession limits, and seasons for the taking of certain migratory birds, including waterfowl. In accordance with KRS 150.015, this regulation is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource for the purpose of furnishing sport and recreation for present and future residents of the state. The framework of this regulation falls within the seasons and bag limits dictated by the U.S. Fish and Wildlife Service. The function of this regulation is to provide for the prudent taking of migratory birds within reasonable limits based upon an adequate supply.

Section 1. Seasons for Gun and Archery. (1) Ducks, Coots and Mergansers: December 2 through January 20.

(2) Geese: November 12 through January 20, except in the area west of the following boundary where the season is December 12 through January 20: Starting at the Kentucky-Tennessee border at Fulton, Kentucky, extending northerly along the Purchase Parkway to I-24, east on I-24 to U.S. 641, northerly on U.S. 641 to U.S. 60, northeasterly on U.S. 60 to U.S. 41 and then northerly on U.S. 41 to the Kentucky-Indiana border.

(3) Sora and Virginia Rails and Gallinules: November 12 through January 20.

Section 2. Limits for Gun and Archery. (1) Ducks, Coots and Mergansers:

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

1. Canvasback: 100 points;
2. Hen mallard, black duck, wood duck, hooded merganser and redhead: 70 points;
3. Pintail, blue-winged teal, cinnamon teal, green-winged teal, widgeon, gadwall, shoveler, scaup and mergansers except hooded merganser: 10 points;
4. Drake mallard and all other species of ducks not mentioned above: 25 points;
5. Coots, but limited to fifteen (15) daily and thirty (30) in possession: 0 points.

(b) The daily bag limit is reached when the point value of the last duck taken, added to the total of the point values of the other ducks already taken during that day, reaches or exceeds 100 points.

(c) Possession limits. The possession limit is the maximum number of ducks of those species and sexes which could have legally been taken in two (2) days.

(2) Geese:

(a) Bag limits, statewide. Five (5) with no more than two (2) Canada and two (2) white-fronted geese.

(b) Possession limits, statewide. Ten (10) in any combination of Canada, blue, snow or white-fronted geese, not to include more than four (4) Canada and four (4) white-fronted.

(3) Others:

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

Section 3. Shooting Hours. The shooting hours for ducks, geese, coots, mergansers, rails and gallinules shall be one-half (½) hour before sunrise to sunset.

Section 4. Shot Size Restrictions. No shot larger than BBs may be in possession while hunting the species listed in Section 1.

Section 5. Seasons for Falconry. All species listed in Section 1 of this regulation may be taken by means of falconry by licensed falconers. The falconry season begins on November 1 and extends through January 20.

Section 6. Limits for Falconry. Daily bag and possession limits shall not exceed three (3) and six (6) birds, respectively, of any species listed in Section 1 of this regulation, singly or in combination, during both the regular gun and archery hunting season or the extended falconry season.

Section 7. Hunting Hours for Falconry. The hunting hours will conform with those stated in Sections 3 and 9 of this regulation.

Section 8. Migratory Bird Shipping and Transporting Restrictions. Geese taken in the counties of Ballard, Hickman, Fulton and Carlisle may not be transported, shipped or delivered for transportation or shipment by common carrier, the Postal Service, or by any person except as the personal baggage of any licensed waterfowl hunter, provided that no hunter shall possess or transport more than the legally-prescribed possession limit of geese.

Section 9. Exceptions for Specified Wildlife Management Areas and Counties. Unless otherwise specified in this section, stipulations of preceding sections of this regulation apply.

(1) Ballard County Wildlife Management Area, except the Miller Tract, located in Ballard County.

(a) Species and seasons. The season for ducks, coots, mergansers, and geese is December 15 through January 20. No hunting on Sundays and Christmas Day.

(b) There will be a ten (10) shell limit per hunter when hunting geese. This does not apply when hunting ducks from pothole blinds or pits as separated from goose hunting areas. Shooting ducks is permitted in goose hunting areas but shooting geese in duck areas is prohibited. Any hunter under the age of eighteen (18) years must be accompanied by an adult. Any person whose transportation to and from pits and blinds is furnished by the Department of Fish and Wildlife Resources must have his gun encased.

(c) Shooting hours. The shooting hours are one-half (½) hour before sunrise to twelve (12) o'clock noon.

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

(a) Waterfowl hunting in accordance with statewide seasons and regulations is permitted from the Kentucky-Tennessee state line to Barkley Canal except Smith Bay, Energy Lake, and Long Creek Pond which are indicated by signs and are closed to hunting. Duncan Bay is closed to all activity. The Environmental Education Center is closed to waterfowl hunting. An annual LBL hunting permit is required for waterfowl hunting on all shoreline and inland areas.

(b) Shoreline areas are defined as all LBL areas along Kentucky and Barkley Lakes from the waters edge to twenty-five (25) yards above elevation 359 feet. Waterfowl hunting from shoreline areas along Lake Barkley is allowed according to Lake Barkley Wildlife Management Area regulations.

(c) Inland areas are defined as all areas above shoreline areas. No waterfowl hunting is permitted on inland areas during quota gun deer hunt days. Permanent pits and blinds are not permitted on inland areas nor along Kentucky Lake shoreline area. Temporary blinds and decoys may be used, but they must be removed at the end of each hunting day.

(3) Lake Barkley Wildlife Management Area.

(a) Refuge areas will be closed to all hunting, fishing, boating and molesting of waterfowl during the dates designated in this subsection and designated on signs posted along the boundaries. Refuges and closing dates are as follows: November 1 through February 15 within an area including a row of islands on the west side of the main channel as marked by buoys and signs between river mile 51 (Hayes Landing Light) and river mile 57.3 (Crooked Creek Light), excluding Taylor and Jake Fork Bays as marked by buoys and signs. Within the refuge area, Fulton Bay will remain closed until March 15 and Honker Bay until March 1, or later if marked by buoys and signs. Boating is allowed but hunting is prohibited within 200 yards of the area surrounded by a levee and located between river mile 68.4 and river mile 70.4 during the period October 15 through March 15. Recreation areas and access points are closed to hunting.

(b) Permanent blinds or pits must be registered on a permit issued by the Corps of Engineers. Applicants for blind or pit permits must show a current Kentucky hunting license to the registration clerk before a permit will be issued. Registration will be conducted at the Lake Barkley Maintenance Shop located at Barkley Dam off U.S. Highway 641-62 on October 4 from 8:00 a.m. to 9:00 a.m.

Applicants for permanent blinds or pits will take part in a special drawing to determine the order of blind registration. The drawing, which will close promptly at 9:00 a.m., will be followed by registration in which hunters with the lowest numbers will receive first choice of locations. Hunters who miss the special October 4 drawing will be registered on a first come-first served basis at the Resource Manager's Office from 8:00 a.m. to 3:00 p.m. weekdays, except federal holidays, from October 6 through November 11. A permit will be issued for each permanent blind or pit and only one (1) permit will be issued per hunter. No unregistered permanent pit or blind is allowed. Any blind remaining in a location over twenty-four (24) hours is considered permanent. Blind or pit permittees will have priority over their registered blinds or pits and may claim ownership by showing their permit. Permits are not transferable to other hunters. Permanent registered blinds or pits must not be locked to exclude other waterfowl hunters when not occupied. All blinds or pits must be erected or installed no later than the day before the opening of the goose hunting season. All pits and blinds must be 200 yards apart and 200 yards from any refuge as designated by signs. Permanent blinds or pits must be removed no later than thirty (30) days after the close of the waterfowl season or they become the property of the Department of Fish and Wildlife Resources. Any extension must be approved by the Lake Barkley Resource Manager.

(4) Barren Lake Wildlife Management Area, located in Barren, Allen and Monroe Counties. All recreation areas, operational areas and islands, except Mason Island, are closed to waterfowl hunting. Permanent blinds must be registered and a blind permit issued by the Corps of Engineers. Registration and a drawing for permanent blinds will be conducted at the Barren Lake Resource Manager's Office located near the dam off Kentucky Highway 252, on October 5 from 7:00 a.m. to 9:00 a.m. A permit will be issued for each permanent blind and only one (1) permit will be issued per hunter. All blinds must be 100 yards apart. Permanent blinds must be removed no later than thirty (30) days after the close of the waterfowl season or they become the property of the Department of Fish and Wildlife Resources.

(5) Green River Wildlife Management Area. All recreation and park areas are closed to waterfowl hunting. Permanent blinds must be registered and a blind permit issued by the Corps of Engineers. Registration for a drawing for blind permits will be conducted on October 2 from 8 a.m. to 10 a.m. at the Resource Manager's office located off Highway 55 between Campbellsville and Columbia. The drawing will be conducted at 10 a.m. Registrants must have a valid Kentucky hunting license. No more than one (1) blind permit will be issued per immediate family.

(6) Nolin, Rough River, and Buckhorn Wildlife Management Areas. All recreation and park areas are closed to waterfowl hunting. Permanent blinds must be registered and a blind permit issued by the Corps of Engineers. Registration will be conducted at each of the Resource Managers' offices located at or near the dam sites, from October 5 through December 31 during weekdays only, excluding federal holidays. A permit will be issued for each permanent blind and only one (1) permit will be issued per hunter. All blinds must be 100 yards apart. Permanent blinds must be removed no later than thirty (30) days after the close of the waterfowl season or they become the property of the Department of Fish and Wildlife Resources.

(7) Sloughs Wildlife Management Area located in Henderson and Union Counties.

(a) Grassy Pond-Powell's Lake Unit. Waterfowl hunting is permitted only from permanent pits or blinds registered by the Department of Fish and Wildlife Resources.

(b) Jenny Hole-Highland Creek Unit. Waterfowl hunting will be allowed from permanent pit or blind sites registered by the Department of Fish and Wildlife Resources and at any other above ground site provided there is a minimum of 200 yards between hunters or hunting parties.

(c) Shooting hours. The shooting hours on the Grassy Pond-Powell's Lake and Jenny Hole-Highland Creek Units shall be one-half (½) hour before sunrise until 2 p.m.

(d) Pit or blind registration. Applicants for a permanent pit or blind must show a current Kentucky hunting license before a permit will be issued. The drawing for blind registration order will occur September 28, from 6:00 p.m. until 8:00 p.m. at the Henderson Community and Youth Center in Atkinson Park, Henderson. The drawing will be followed by registration in which hunters with the lowest numbers will receive first choice of pit or blind locations. A hunter may designate one (1) other person as a partner for registration. Two (2) nontransferable permits will be issued for each permanent pit or blind and only one (1) permit per hunter will be issued. Either of the permittees for a location will have priority over other users of their registered pits or blinds and may claim ownership by showing their permit. Registered pits or blinds must not be locked to exclude other hunters when not occupied by the permittee. Any waterfowl hunter may occupy any unoccupied pit or blind until claimed by the permittee. Only four (4) persons may occupy a pit or blind at one (1) time. All blinds and pits must be 200 yards apart and at the designated locations. Permit holders who have not constructed their pit or blind at the designated location by November 30 will lose their location and the site may be assigned to another hunter. Blinds or pits and all construction materials must be removed from the area no later than thirty (30) days after the close of the waterfowl season or they become the property of the Department of Fish and Wildlife Resources.

(e) When the Ohio River reaches a level that requires boat access to the units, hunting will be allowed from boats spaced 200 yards apart, without regard to the registered pits or blinds.

(f) Sauerheber Unit of the Sloughs Wildlife Management Area located in Henderson County will be closed to all hunting, fishing, boating and trespassing during the period indicated on posted signs. This area includes all state-owned land north and south of Kentucky Highway 268 and privately-owned land south of Kentucky Highway 268 as designated by yellow waterfowl refuge signs. Hunting waterfowl is also prohibited from Kentucky Highway 268 and thirty (30) feet on either side on the center line where it lies adjacent to the refuge.

(8) Ohio River Islands Wildlife Management Area. This area consists of Twin Sisters, Pryor and Rondeau Islands and the mainland marsh area between Twin Sisters and Pryor Islands. Only temporary waterfowl blinds are permitted and they must be removed at the end of each day's hunting. All blinds must be 200 yards apart and only four (4) persons may occupy a blind at one (1) time.

(9) Ohio River Waterfowl Refuge located in Livingston County will be closed to all hunting and molesting of

waterfowl from October 15 through March 15. This area includes the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to a power line crossing the river at approximately river mile 911.5 and including Stewart Island.

(10) Dewey Lake Wildlife Management Area located in Floyd County is closed to all waterfowl hunting.

(11) Grayson Lake Wildlife Management Area located in Carter and Elliott Counties is closed to all waterfowl hunting.

(12) Bath, Rowan, Menifee and Morgan Counties, including Cave Run Lake, are closed to goose hunting. Breech and muzzle-loading shotguns may be used for duck hunting along the shoreline portion of Cave Run Lake bordering the Pioneer Weapons Wildlife Management Area.

(13) Beaver Creek Wildlife Management Area located in Pulaski and McCreary Counties is closed to all waterfowl hunting.

(14) Cane Creek Wildlife Management Area located in Laurel County is closed to all waterfowl hunting.

(15) Robinson Forest Wildlife Management Area located in Breathitt, Perry and Knott Counties is closed to all waterfowl hunting.

(16) Redbird Wildlife Management Area located in Leslie and Clay Counties is closed to all waterfowl hunting.

(17) Mill Creek Wildlife Management Area located in Jackson County is closed to all waterfowl hunting.

Section 10. 301 KAR 2:086, Seasons and limits for migratory birds, is hereby repealed.

CARL E. KAYS, Commissioner
ADOPTED: August 30, 1982
APPROVED: W. BRUCE LUNSFORD, Secretary
RECEIVED BY LRC: September 17, 1982 at 11:30 a.m.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-848
October 6, 1982

EMERGENCY REGULATION
Department of Fish and Wildlife Resources

WHEREAS, the Department of Fish and Wildlife Resources is charged under KRS 150.025 with the responsibility to establish the deer gun and archery hunting seasons; and

WHEREAS, the Department of Fish and Wildlife Resources on June 3, 1982, amended 301 KAR 2:111 which established the hunting season for deer; and

WHEREAS, the Department of Fish and Wildlife Resources has received a request from the Commanding Officer of the Blue Grass Ordnance Depot that the deer hunting dates for the facility be rescheduled in order to resolve a conflict between the previously established hunting dates and certain military priorities for the use of the facility; and

WHEREAS, time constraints are such as to make it impossible for the Department of Fish and Wildlife Resources to comply with the regular administrative review procedure as established under Chapter 13 of the Kentucky Revised Statues; and

WHEREAS, the Commissioner of the Department of Fish and Wildlife Resources has determined in a letter dated October 1, 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 2:113E. Deer hunting on the Blue Grass Ordnance Depot.

RELATES TO: KRS 150.025, 150.170, 150.175, 150.305, 150.330, 150.340, 150.360, 150.370, 150.390
PURSUANT TO: KRS 13.082
EFFECTIVE: October 6, 1982
NECESSITY AND FUNCTION: This regulation pertains to the deer gun and archery hunting seasons on the Blue Grass Ordnance Depot. Due to a conflict between military priorities and previously established hunting dates, it is necessary to establish new hunting dates which will afford hunters sport and recreational opportunities consistent with the potential of the wildlife resource present on the area. The function of this regulation is to provide for the prudent taking of deer within reasonable limits based upon adequate supply.

Section 1. Blue Grass Ordnance Depot Located in Madison County. (1) Deer archery hunts: Either sex, October 10, 17, and 24.

(2) Deer gun hunts: Either sex, December 4, 11, and 18.

(3) Bag limits: The post bag limit is one (1) deer of either sex. Persons who have taken their first deer elsewhere in Kentucky, including other designated special areas, may take their second deer on Blue Grass Ordnance Depot by any legal weapon permitted on this area. Persons who take their first deer on Blue Grass Ordnance Depot are eligible to take their second deer elsewhere in Kentucky, including other designated special deer areas by means of any legal deer hunting weapon. Under no circumstances may an individual hunter take more than two (2) deer anywhere in the state.

(4) Applications: Separate applications are required for archery and gun hunts. Applications for drawings must be made on a postcard with only one (1) hunter allowed per card. More than one (1) postcard per individual will disqualify the applicant. When a husband and wife or father (or other adult) and juvenile desire to hunt together, the required information may be written on individual three (3) by five (5) inch cards, stapled together, and mailed in one (1) envelope. Each applicant must furnish name and ad-

dress (including zip code), telephone number and specify whether gun or archery hunting is desired. Hunting dates and areas will be decided by a drawing. All cards or envelopes must be postmarked no earlier than August 10 or later than September 10 to be eligible for the drawing. A fifteen dollar ($15) per person fee will be charged for hunting, payable on the assigned hunting date. Mail all applications to: Deer Hunt, Building S-14, Lexington Blue Grass Depot Activity, Lexington, Kentucky 40511.

(5) Age limits: No one under the age of fourteen (14) will be allowed to hunt. Hunters under sixteen (16) must be accompanied by an adult.

(6) Prohibited and permitted weapons: Only breechloading shotguns of ten (10) gauge maximum and twenty (20) gauge minimum firing a single projectile are permitted. Longbows and compound bows are permitted. Crossbows are prohibited.

(7) Harvest quota: Hunting will be discontinued whenever the designated deer harvest quota is reached.

(8) Hunter safety certificates: All deer hunters under the age of sixteen (16) years must possess a hunter safety certificate.

Section 2. This regulation will not be valid after December 18, 1982.

CARL E. KAYS, Commissioner
ADOPTED: October 1, 1982
APPROVED: W. BRUCE LUNSFORD, Secretary
RECEIVED BY LRC: October 6, 1982 at 3:45 p.m.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-767
September 17, 1982

EMERGENCY REGULATION
Natural Resources and Environmental Protection Cabinet

WHEREAS, the Commonwealth of Kentucky assumed exclusive jurisdiction over the regulation of surface coal mining and reclamation on May 18, 1982; and

WHEREAS, KRS 350.020 states that unregulated surface coal mining operations create hazards dangerous to life and property and that it is the purpose of KRS Chapter 350 to provide such regulation and control; and

WHEREAS, there is a need for a more comprehensive regulatory program of coal processing waste disposal sites pursuant to KRS Chapter 350; and

WHEREAS, the Secretary of the Natural Resources and Environmental Protection Cabinet advises that it is in the best interest of the Commonwealth to promulgate the regulation, and that since an emergency exists with respect to coal processing waste disposal sites, it should, pursuant to KRS 13.088, become effective upon being filed with the Legislative Research Commission:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, pursuant to the authority vested in me by KRS 13.088(1), hereby acknowledge the finding by the Secretary of the Natural Resources and Environmental Protection Cabinet that an emergency exists and direct that the attached regulation, upon being filed with the Legislative Research Commission, pursuant to Chapter 13 of the Kentucky Revised Statutes, become effective under the terms contained therein.

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

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 7:050E. Coal processing waste disposal sites.

RELATES TO: KRS 151.125, 151.297, 224.071, 350.020
PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.020
EFFECTIVE: September 21, 1982
NECESSITY AND FUNCTION: KRS 350.020 states that unregulated surface coal mining operations create hazards dangerous to life and property and that it is the purpose of KRS Chapter 350 to provide such regulation and control of these operations in order to minimize or prevent injurious effects on the people and resources of the Commonwealth. KRS 350.020 directs the department to adopt whatever regulations are found necessary to accomplish the purpose of KRS Chapter 350. Furthermore, KRS 151.125 and 151.297 provide for the issuance of remedial orders whenever life or property are or may be endangered by the failure of any dam, reservior, levee, embankment, or other water barrier. In addition, KRS 224.071 provides for the issuance of abate and alleviate orders when there is a danger to the health or welfare of the people of the Commonwealth or to natural resources. This regulation provides for the control of coal processing waste dams, waste impoundments, and waste banks in order to prevent loss of life, damage to property, and injurious effects on the environment of the Commonwealth due to structural failure of these facilities and is necessary because such facilities are not otherwise adequately regulated. This regulation provides, among other things, for submittal of engineering reports, performance standards, and remedial measures to correct dangerous facilities.

Section 1. Applicability. This regulation applies to all coal processing waste disposal sites, whether dams, waste impoundments, or waste banks, that were constructed or utilized after August 3, 1977, regardless of whether or not the sites are or have been under permit or bond under KRS Chapter 350.

Section 2. Reports. (1) Within sixty (60) days of September 21, 1982, operators or owners of coal processing waste disposal sites shall submit two (2) copies of the following to the department regional office:

(a) All existing information currently available to the operator or owner including complete design of the facility, stability analyses, and a description of the coal processing waste material at the site including moisture content and particle size gradation. This shall also include copies of plans submitted to and/or approved by MSHA. If such plans submitted to MSHA include all of the information required by this paragraph, then submittal of copies of

such plans shall suffice. Where information required by this paragraph has already been submitted to the department as a part of a permit application, the operator or owner shall so notify the department regional office in writing and need not resubmit duplicate material.

(b) As-built drawings of the current phase of construction or of the completed facility as applicable, including a map showing the location of the facility.

(2) Analyses and descriptions submitted under subsection (1)(a) of this section shall be based upon current information available to the operator or owner. However, on a case-by-case basis, at any time, the department may require the operator or owner to submit such additional plans and analyses or to conduct such investigations and testing of materials as necessary to determine the stability of the facility where failure of the facility could cause damage to life or property or injurious effects on the environmment of the Commonwealth. This may include, but is not limited to, seepage investigations, settlement studies based on compressibility and mining subsidence, foundation investigations including borings or test pits, laboratory testing of foundation materials, and determination of strength parameters based on laboratory testing of site specific coal processing waste materials.

Section 3. Performance Standards. (1) Any coal processing waste disposal site impounding water, or impounding coal processing waste which is physically unstable due to excessive moisture content or excessive fine-grained material, and any dam containing coal processing waste in the embankment shall comply with either 405 KAR 1:210 or 405 KAR 3:180.

(2) All other coal processing waste disposal sites shall comply with 30 CFR 77.214 and 30 CFR 77.215, provided, however, no facility shall be constructed in such manner that it may cause loss of life, damage to property, or injurious effects on the environment of the Commonwealth due to structural failure of the facililty.

(3) Those portions of structures that have already been constructed and structures that have been completed need not be reconstructed except where reconstruction is determined by the department to be necessary to ensure stability of the facility in order to eliminate potential hazards to life or property or to prevent injurious effects on the environment of the Commonwealth.

(4) Nothing in this regulation shall be construed as relieving an operator from the obligation to comply with any other provision of this Title, including, but not limited to, compliance with the permanent program performance standards and the requirements for existing structures in 405 KAR 7:040, Section 4.

Section 4. Remedial Measures. Operators or owners of coal processing waste disposal sites may be required by the department to revise the facility design and/or to implement such remedial measures as necessary to comply with Section 3 of this regulation.

Section 5. Certifications. (1) All designs, maps, plans, and drawings submitted under this regulation shall be prepared and certified by a qualified registered professional engineer.

(2) Construction or reconstruction of coal processing waste disposal sites shall be inspected during and after construction by a qualified registered professional engineer or by qualified persons under the engineer's supervision and the facility shall be certified within two (2) weeks of each inspection by the responsible qualified registered professional engineer as having been constructed in accordance with the design approved by the department. Where the department has not yet reviewed and approved the design, the engineer shall make the certifications based upon the design approved by MSHA.

ELMORE C. GRIM, Commissioner
ADOPTED: September 15, 1982
APPROVED: JACKIE SWIGART, Secretary
RECEIVED BY LRC: September 21, 1982 at 11:15 a.m.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-877
October 12, 1982

EMERGENCY REGULATIONS
Transportation Cabinet
Motor Vehicle Dealer Licensing

WHEREAS, the 1982 General Assembly of the Commonwealth of Kentucky enacted KRS 190.058 and created the Motor Vehicle Commission as an agency of the Commonwealth, with the responsibility of carrying out the functions and duties conferred upon it by other amendments to KRS Chapter 190; and

WHEREAS, in order for the Commission to effectively administer the provisions of this Act, it is necessary that regulations be promulgated and adopted by the Commission; and

WHEREAS, since the Commission's duties and responsibilities require the acceptance of applications for licenses, the granting of licenses, as well as the holding of hearings and the right to suspend and revoke licenses, it is necessary that the regulations of the Commission take effect immediately; and

WHEREAS, the Secretary of the Transportation Cabinet has determined in writing that an emergency exists in that there is an immediate need to issue licenses for motor vehicle dealers and recommends that the Governor declare the attached regulations 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 dealer licensing regulations and direct that said regulations shall become effective immediately upon filing with the Legislative Research Commission as provided by KRS 13.088(1).

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

TRANSPORTATION CABINET
Department of Vehicle Regulation
Motor Vehicle Commission

601 KAR 21:010E. Meetings.

RELATES TO: KRS 190.058
PURSUANT TO: KRS 13.082, 190.058
EFFECTIVE: October 15, 1982
NECESSITY AND FUNCTION: KRS 190.058 pro-

vides for the Motor Vehicle Commission to hold annual meetings and regular meetings. The purpose of this regulation is to establish those meetings, the method for calling the meetings, and the place of the meetings.

Section 1. The Commission shall hold a regular annual meeting in September of each year for the purpose of electing a chairman and vice-chairman to serve for the ensuing year.

Section 2. The regular meetings of the Commission shall be held at least once a month or as often as may be necessary. Meetings shall be called by the chairman or the vice-chairman upon not less than three (3) days' notice which shall be given to each member of the Commission. Members of the Commission may waive the notice requirement. All meetings of the Commission shall be in the Office of the Commission in Frankfort, Kentucky, or such other place as the chairman may designate, and all meetings shall start at 10:00 a.m. prevailing time at the place of meeting.

PHIL THOMAS, Executive Director
ADOPTED: October 5, 1982
RECEIVED BY LRC: October 15, 1982 at 3:15 p.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Motor Vehicle Commission

601 KAR 21:030E. Applications.

RELATES TO: KRS 190.030
PURSUANT TO: KRS 13.082, 190.010, 190.015, 190.030, 190.035
EFFECTIVE: October 15, 1982
NECESSITY AND FUNCTION: KRS 190.030 provides for the issuance of various licenses to engage in the activity of a motor vehicle dealer. This regulation allows the Motor Vehicle Commission to provide for an orderly procedure for the submission of applications and the content thereof to facilitate processing of applications and the issuance of the license.

Section 1. Upon receipt of a completed application other than an application for a license as a motor vehicle salesperson, manufacturer, factory branch or factory representative, a review of the application will be made, including an appropriate investigation as to the applicant's compliance with the appropriate statutory and regulatory provisions governing the issuance of a license.

Section 2. Applicant will be notified of the acceptance or rejection of his application, and if the application is rejected, the grounds therefor must be specifically stated, and the applicant shall further be notified, in that event, of his right to a hearing before the Commission in accordance with the rules and regulations of the Commission.

Section 3. No application may be accepted or license granted unless the applicant has an established place of business as defined in KRS 190.010.

Section 4. A licensee may conduct more than one (1) business in a building otherwise meeting the requirements of this regulation provided he has suitable space and adequate facilities therein to conduct the business of a motor vehicle dealer.

Section 5. (Applies to retail only.) A motor vehicle dealer shall display on his premises a sign not less than nine (9) inches in height, which is clearly visible from the nearest roadway, and which specifically identifies his business.

Section 6. An applicant for any license conducting more than one (1) business at the proposed location shall be capable as to fitness and ability to properly conduct the business activity authorized by the license. If an applicant for a license will be conducting more than one (1) business at the proposed location, and if the primary business of the applicant is not one to be licensed under KRS 190.010, et seq., then the applicant must comply with the following:

(1) Submit a financial statement. The Commission may require the applicant to furnish a bond as authorized by statute.

(2) Submit at least six (6) photographs of the premises to be occupied by the applicant.

(3) Submit a detailed drawing of his premises in relation to the nearest roadway. This drawing is to include location and size of office, display area and location of dealership sign.

(4) Furnish a personal data sheet on each individual owning a portion of the business and/or officers of a corporation.

(5) Applicant, partner or corporate officer must sign a statement authorizing the Motor Vehicle Commission to make inquiries or investigations concerning the applicant's employment, credit, or criminal records.

(6) Applicant must obtain garage liability insurance and file with the Commission a certificate of insurance (form TD 95-99) in the exact name in which it applies for a license.

(7) Applicant will be required to verify that it is familiar with the laws concerning the purchase and sale of motor vehicles. Failure to demonstrate such proof may be grounds for denial of license.

(a) Applicant must have a sign, if applicable, in compliance with Section 1 of this regulation, clearly indicating that applicant is a motor vehicle dealer in addition to any other signs he may have.

(b) Applicant must have a hard surface lot (gravel, asphalt, concrete or other suitable covering) of sufficient size to support its business for parking and storage area. This lot shall be used exclusively for the display and showing of vehicles for sale and customer parking, and shall be constructed in such a manner that it will not allow the flow of public traffic through it.

(c) Applicant must demonstrate that it has sufficient office space to carry on the activity authorized under the license for which the application is submitted. Sufficient office space need not be a separate walled enclosure, but must be an area which will be used to conduct the activity authorized under the license in addition to the area necessary to conduct the applicant's primary business.

1. An applicant who conducts an automobile salvage or junk business on the same premises must be in compliance with all state regulations regarding junkyard operations. Applicant must have an area for the display of vehicles for sale and an office separate and apart from the area where junk cars or parts are stored or situated.

2. If an applicant operates a garage for the repair or rebuilding of wrecked or disabled vehicles, an office and area for the display of vehicles separate and apart from the area where such repairs are made must be allocated for the licensed activity.

Section 5. Not more than one (1) licensee for the same licensed activity shall be licensed from a single place of business.

Section 6. A licensee shall have a sales tax permit number from the Revenue Cabinet.

PHIL THOMAS, Executive Director
ADOPTED: October 5, 1982
RECEIVED BY LRC: October 15, 1982 at 3:15 p.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Motor Vehicle Commission

601 KAR 21:050E. Dealer/salesperson.

RELATES TO: KRS 190.010, 190.030, 190.035
PURSUANT TO: KRS 13.082, 190.010, 190.030, 190.035
EFFECTIVE: October 15, 1982
NECESSITY AND FUNCTION: KRS 190.010, 190.030, and 190.035 define what a motor vehicle salesman is and his relationship to his dealer/employer. KRS 190.030 also provides for salesmen's licenses to indicate for whom they work and to be displayed upon request. This regulation interprets the dealer/salesman relationship and implements statutory requirements to facilitate accurate recordkeeping by the Motor Vehicle Commission, and to put the public on notice of with whom they are dealing.

Section 1. A properly licensed motor vehicle salesperson employed by a proper licensee may, in that capacity, sell or exchange a motor vehicle anywhere in Kentucky, subject to the following limitations:
(1) Such activity must be pursuant to the salesperson's employment by the licensee whose name appears on his/her license.
(2) Once a sale or exchange is negotiated by a salesperson, he/she may not offer, transfer or assign it to any other licensee or salesperson.
(3) A salesperson may not establish a place of business separate from the location for which his/her employer holds a license.
(4) A salesperson may not hold himself/herself out to be a licensed dealer or conduct himself/herself in any manner which might lead a prospective purchaser to believe he/she is a licensed dealer.
(5) A salesperson may not advertise his/her sales activity at any specific location other than that for which his/her employer holds a license.

Section 2. In case of a change of employment, a salesperson shall return his/her license to the Commission with a notification from the licensee by whom he/she will be employed, and his/her license will be amended and returned to him/her showing the name and address of the new employer, and a copy thereof will be sent to the new employer. Before any copy of the license may be secured by any new employer, the salesperson's license must be amended to show the name and address of the new employer.

Section 3. A licensee shall display in a conspicuous place in his/her office a copy of the license of each salesperson employed by him/her. Upon the termination of employment of a salesperson, the licensee shall, within ten (10) days, notify the Commission of such termination and return to the Commission the dealer's copy of the salesperson's license.

PHIL THOMAS, Executive Director
ADOPTED: October 6, 1982
RECEIVED BY LRC: October 15, 1982 at 2:15 p.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Motor Vehicle Commission

601 KAR 21:070E. Change of ownership.

RELATES TO: KRS 190.030
PURSUANT TO: KRS 13.082, 190.030
EFFECTIVE: October 15, 1982
NECESSITY AND FUNCTION: KRS 190.030 requires each separate entity acting as a dealer to have a license and to make needed reports to the Motor Vehicle Commission. This regulation implements those requirements, particularly when a sale or transfer occurs, so that the Commission can be on notice of who actually holds licenses.

Section 1. Any change of ownership of a licensee shall require a new application from the new owner(s) or corporation.

Section 2. Upon the sale or transfer of a licensee's business, the new owner shall secure a new license. If the licensee is a corporation, the sale of the controlling stock in the corporation must be reported to the Commission, and the Commission may require a new license application.

PHIL THOMAS, Executive Director
ADOPTED: October 5, 1982
RECEIVED BY LRC: October 15, 1982 at 3:15 p.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Motor Vehicle Commission

601 KAR 21:090E. Trade names.

RELATES TO: KRS 190.040
PURSUANT TO: KRS 13.082, 190.040
EFFECTIVE: October 15, 1982
NECESSITY AND FUNCTION: KRS 190.040(1)(i) provides that a license can be denied, suspended, or revok-

ed for false or misleading advertising. This regulation interprets that proscription against false or misleading advertising to include the use of the name of a make of automobile in the trade name of a used car dealer, a practice which would very likely mislead a consumer into thinking that he can buy a new car from that dealer.

Section 1. The trade name of a licensee shall incorporate the words used cars, auto sales, auto mart, or other similar wording clearly identifiable as a motor vehicle licensee. No licensee other than a franchised new car dealer may use the name of any make of motor vehicle as a part of his/her trade name. The adoption of such a trade name or advertising in this manner shall be deemed to constitute false or misleading advertising within the meaning of KRS 190.040 and shall be considered grounds for the denial, suspension or revocation of a license.

PHIL THOMAS, Executive Director
ADOPTED: October 5, 1982
RECEIVED BY LRC: October 15, 1982 at 3:15 p.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Motor Vehicle Commission

601 KAR 21:110E. Motor vehicle auction dealer.

RELATES TO: KRS 190.010
PURSUANT TO: KRS 13.082, 186.076, 190.010, 190.015, 190.030, 190.035
EFFECTIVE: October 15, 1982
NECESSITY AND FUNCTION: KRS 190.015, 190.030 and 190.035 govern activities of a new classification of licensee under KRS 190.030, that of motor vehicle auction dealer.

Section 1. Retail Auction Sales. KRS 186.076 states in part, "A dealer's license may be revoked if he acquires a used motor vehicle for cash, trade-in, or in any other manner and fails to have the registration transferred to him at the time the vehicle is sold or otherwise transferred to another person, or within ten (10) days after acquired whichever may be sooner." This regulation interprets the word "person" to mean an individual other than a licensed dealer. Therefore, any auction dealer shall have the registration on all vehicles offered for sale to the general public transferred into the auction dealer's name prior to offering the vehicle for sale.

Section 2. At wholesale auction sale, all dealers offering vehicles for sale through an auction dealer to other licensed dealers shall have the registration transferred into their name prior to listing the vehicle for auction.

PHIL THOMAS, Executive Director
ADOPTED: October 5, 1982
RECEIVED BY LRC: October 15, 1982 at 3:15 p.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Motor Vehicle Commission

601 KAR 21:130E. Procedures.

RELATES TO: KRS 190.058, 190.062
PURSUANT TO: KRS 13.082, 190.058, 190.062
EFFECTIVE: October 15, 1982
NECESSITY AND FUNCTION: An absolute necessity for any administrative board is a written code of practice and procedure. The enabling legislation for the adoption of such procedures by the Motor Vehicle Commission is found in KRS 190.058. This regulation establishes the proper form of procedure and practice before the Motor Vehicle Commission and adopts the general practice procedures found in the Kentucky Rules of Civil Procedure.

Section 1. Definitions. All words are used as defined in applicable sections of KRS 190.010.

Section 2. Appearances. Any licensee may appear and be heard in person, or by duly appointed attorney, and may produce under oath evidence relative and material to matters before the Commission. Any attorney, in a representative capacity, appearing before the Commission may be required to show his authority to act in such capacity.

Section 3. Argument. Due to press of other matters, the Motor Vehicle Commission asks all oral arguments be succinct and concise. The hearing officer may curtail or set time limits for oral arguments.

Section 4. Additional Hearings. The Commission may, on its own motion, prior to its determination, require an additional hearing. Notice to all interested parties setting forth the date of such hearing must be given in writing by the Executive Director to the Commission.

Section 5. Briefs. Briefs may be filed upon permission if a member of the Motor Vehicle Commission is conducting the hearing, and may be filed as a matter of right if hearing is conducted by a referee other than a member of the Commission. The Commission asks that briefs be concise, summarizing first the evidence presented at the hearing. Copies of briefs must be typewritten or printed and filed in quadruplicate. Time allowed for filing briefs may be designated by the hearing officer, in no event less than five (5) days after the hearing. Respondent briefs may be filed by the Commission, or filed by any person whose interests are affected. Reply briefs may be filed only when limited strictly to answering the brief of respondent. Briefs containing more than ten (10) pages shall contain on the top fly leaves a subject index with page references.

Section 6. Continuances. Continuances may be granted in the discretion of the Commission or hearing officer if good cause therefor be shown and if requested forty-eight (48) hours in advance of hearing date.

Section 7. Depositions. The hearing officer of the Commission may order testimony to be taken by deposition at any state of hearing. Depositions may be taken before any person having power to administer oaths and designated by the Commission or written by the person taking the deposition or under his direction and shall then be subscribed by

the deponent and certified in the usual manner by the person taking the deposition. The provisions of the Civil Rules governing the taking of depositions shall be applicable.

Section 8. (1) Evidence. When called to the attention of the hearing officer, "judicial notice" will be taken of any matter situated in the files of the Motor Vehicle Commission, the Department of Revenue, or the Transportation Cabinet; any action pending which involves the Motor Vehicle Commission; and all other matters of which a court of Kentucky may take such notice. A brief statement recognizing the matter should be made in the transcript by the hearing officer.

(2) Rules of evidence. Except as otherwise provided herein, the rules of evidence governing civil proceedings in courts in the Commonwealth of Kentucky shall govern hearings before the Motor Vehicle Commission; provided, however, that the hearing officer may relax such rules in any case where, in his judgment, the ends of justice will be better served by so doing.

(3) Cumulative evidence. The introduction of cumulative evidence shall be avoided and the hearing officer may curtail the testimony of any witness which he judges to be merely cumulative; however, the party offering witness may make a short avowal of the testimony the witness would give and if witness asserts such avowal is true, this avowal shall be made a part of the stenographic record.

(4) Decisions. All decisions shall be based upon the evidence developed at the hearing.

(5) Additional evidence. Upon due application to the Commission, prior to the decision of the Commission thereon, the hearing may, in the discretion of the Commission, be reopened for the presentation of additional evidence. Application for additional hearings must set forth concisely the nature of this additional evidence. The Commission may, on its own motion, require an additional hearing.

Section 9. Ex Parte Contacts. No person shall have ex parte contact with any member of the Commission regarding any matter pending before the Commission for review prior to final decision. In the event an ex parte contact occurs, the name of the person making the contact shall be revealed on the record. In no event shall the information conveyed in an ex parte contact be relied upon or considered in reaching a decision.

Section 10. (1) Hearings shall be conducted by a Commission member or person designated by the Commission as a referee, hereinafter referred to as hearing officer.

(2) The hearing officer shall conduct said hearing, ruling upon matters of procedure and introduction of evidence. The hearing shall be conducted in such manner as the hearing officer determines will best serve the purpose of attainment of justice and dispatch. Objections may be taken to rulings of hearing officer and a rehearing or additional hearing may be ordered by the Commission. Reason for objection must be stated and made a part of the stenographic record. All testimony shall be taken down but shall not be transcribed unless requested by a party to the proceedings.

(3) Witnesses will be examined orally unless testimony is taken by depositions, as provided for herein, or the facts are stipulated.

Section 11. The Report and Recommended Order. Upon the conclusion of such a hearing, the hearing officer shall make a report and recommended order which shall contain finding of facts and conclusions of law. Copies of the report and recommended order shall be served upon each of the parties to the matter heard.

Section 12. Exceptions and Replies Thereto. Any party to a hearing may, within twenty (20) days after the date of the report and recommended order, file and serve exceptions thereto. Exceptions shall consist of as many objections to the whole or any part of the report as the party filing the exceptions desires to make with each objection numbered. Each objection shall fully state the nature thereof and the grounds therefor. Parties filing exceptions shall serve a copy thereof upon every other party participating in the hearing and shall certify to the Commission that such service has been accomplished. Replies to exceptions shall be filed and served within twenty (20) days after the filing of exceptions, if any party desires to make a reply. The reply shall consist of a separate reply to each objection set out in the exceptions. Any party filing a reply shall serve a copy thereof on every other party participating in the hearing and shall certify to the Commission that such service has been accomplished.

Section 13. Final Order. Upon the filing of the exceptions and replies thereto relative to a report and recommended order and/or expiration of the time for filing of same, the hearing officer shall render the complete record to the Commission which shall consider and pass upon the case. The Commission may, after a study of the case, refer it back to the hearing examiner and request the taking of more proof on any point in issue. The Commission may require oral argument of the case. When the Commission has rendered its decision in the case, its decision shall be served by mail upon all parties and shall be the final order of the Commission. The final order shall contain the date of its rendition.

Section 14. Motions, Pleadings, Etc. Copies of all motions, pleadings, etc., must be served upon all interested parties, in addition to filing the required copies before the Commission. There shall be no demurrers; but motions to dismiss, setting forth the reasons therefor, may be entertained by the Commission.

Section 15. Reconsideration Hearings. (1) Any party to the proceeding may, for good cause shown, request in writing a hearing for purposes of reconsideration of a Commission decision of any matter formally heard by the Commission.

(2) The request should be filed with the Executive Director within fifteen (15) days from the date of the notice of the Commission's decision is mailed.

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

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

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

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

(4) The Commission shall consider requests for reconsideration in a summary manner.

(5) If a hearing for reconsideration is granted by the

Commission, it shall be conducted in accordance with the requirements of this regulation. The reconsideration hearing shall be held within thirty (30) days of the decision to grant the request for reconsideration.

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

Section 16. Notices. Upon the filing of an appeal from the order or decision, the Executive Director of the Commission shall notify in writing all interested parties of the fact and of the time set for hearing. All other hearings shall be held only after notice at least ten (10) days before hearing. A notice of a revocation hearing by registered mail to the licensee or owner of the licensed premises, if locking and barring the premises is involved, sent to the known address of the licensee or owner of the licensed premises at the address shown on the last application for a license shall be deemed sufficient compliance.

Section 17. Record. (1) The stenographic record of any hearing before the Motor Vehicle Commission shall not be transcribed unless such transcription is directed by the appropriate Commission officer or employee or is requested in writing by any interested party to the hearing who shall make arrangements for such transcript of record with the Executive Director of the Commission. The original record shall be filed directly with the Clerk of the Franklin Circuit Court, and copy furnished to the interested party requesting the record.

(2) The charge for transcript of records of hearing shall be one dollar ($1) per page for the original copy, and fifty (50) cents per page for each carbon copy, not to exceed four (4), furnished with an original. The fee shall be paid before the record is filed or the copies delivered to interested parties.

(3) If for its own use, the Commission has any record of hearing transcribed, any person requiring the same may have a carbon copy, if one is available, at the rate of fifty (50) cents per page.

Section 18. Specifications as to Pleadings, Complaints, Briefs, Motions, Etc. Except when permission is granted by the hearing officer, all papers filed under these rules must be typewritten or printed (mimeographed, multigraphed or planographed copies will be accepted as typewritten). All copies must be clearly legible and double spaced, except for quotations. It is requested that all motions, complaints, briefs, etc., be made on unglazed paper eight and one-half (8½) inches wide and eleven (11) inches long.

Section 19. Stipulations. Parties may, by agreement, stipulate as to any facts involved in the proceedings. Such stipulation must be made part of the stenographic records of the hearing.

Section 20. Subpoenas and Subpoena Duces Tecum. (1) The party desiring a subpoena must make application at least five (5) days before the hearing date with the Executive Director of the Commission. The application shall be in writing, and shall state the name and address of each witness required. Provisions of the Civil Rules shall be applicable.

(2) If evidence other than oral testimony is required, such as documents or written data, the application shall set forth the specific matter to be produced and sufficient facts to indicate that such matter is reasonably necessary to establish the cause of action or defense of the applicant. Provisions of the Civil Rules shall be applicable.

Section 21. Witnesses. Separation of witnesses may be had upon request of either party to the hearing.

PHIL THOMAS, Executive Director
ADOPTED: October 5, 1982
RECEIVED BY LRC: October 15, 1982 at 3:15 p.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Motor Vehicle Commission

601 KAR 21:140E. Repeal.

RELATES TO: KRS 190.058
PURSUANT TO: KRS 13.082, 190.058
EFFECTIVE: October 15, 1982
NECESSITY AND FUNCTION: KRS 190.058 creates an agency of the Commonwealth to carry out the duties and functions conferred upon it; it repeals the Motor Vehicle Dealer Board and new regulations are necessary for the new Motor Vehicle Commission, and the old regulations hereinafter set forth governing the Motor Vehicle Dealer Board are of no further force and effect, and must be repealed.

Section 1. Title 601, Chapter 20, is hereby repealed, specifically:

601 KAR 20:010. Board meetings.
601 KAR 20:030. Application; disposition.
601 KAR 20:040. Licenses; issuance or denial.
601 KAR 20:050. Supplemental license.
601 KAR 20:070. Suitable premises; signs, multi-businesses.
601 KAR 20:080. Change of business location.
601 KAR 20:090. Change of ownership.
601 KAR 20:110. Dealer-salesman.
601 KAR 20:130. Used car dealers; trade names.

PHIL THOMAS, Executive Director
ADOPTED: October 5, 1982
RECEIVED BY LRC: October 15, 1982 at 3:15 p.m.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-813
September 27, 1982

EMERGENCY REGULATION
Cabinet for Human Resources
Department for Social Insurance

WHEREAS, the Secretary of the Cabinet for Human Resources is responsible under the provisions of KRS 194.050(1) and 205.200(2) for setting forth, by regulation, the eligibility requirements for Aid to Families with Dependent Children within the Commonwealth; and

WHEREAS, through enactment of Section 152 of Public Law 97-248, the Tax Equity and Fiscal Responsibility Act of 1982, the Congress has revised the requirements as to time and manner of payment within the eligibility criteria for Aid to Families with Dependent Children (AFDC); and

WHEREAS, pursuant to Section 152(b) of the federal act, the revisions are to become effective October 1, 1982; and

WHEREAS, the Secretary has found that to conform with requirements of Section 152 of Public Law 97-248, it is necessary to revise the eligibility requirements for AFDC in the Commonwealth of Kentucky; 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 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 Section 13.088(1) of the Kentucky Revised Statutes, do hereby acknowledge the finding of the Secretary of the Cabinet for Human Resources with respect to the filing of said regulation on Time and Manner of Payments, 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 2:050E. Time and manner of payments.

RELATES TO: KRS 205.220(1)
PURSUANT TO: KRS 13.082, 194.050
EFFECTIVE: September 28, 1982
NECESSITY AND FUNCTION: The *Cabinet* [Department] for Human Resources has responsibility under the provisions of KRS Chapter 205 to administer money payment programs under Title IV-A of the Social Security Act and a state funded program of money payments to those aged, blind and disabled individuals disadvantaged by the implementation of the Supplemental Security Income Program, hereinafter referred to as SSI. In addition KRS 205.245 provides for money payments to certain other aged, blind or disabled individuals. This regulation sets forth the time and the manner in which payments are made and the persons to whom payments may be made as required by KRS 205.220(1).

Section 1. Manner and Time of Payment: (1) All assistance payments are made by check issued monthly.

(2) The effective date of *initial* payment *for new approvals* shall be the *date an* [first day of the month of] application *is filed* if all eligibility factors were met as of that *date* [month].

(3) Payment is made for an entire month during any part of which eligibility factors are met, *except for initial month's benefits for new approvals which shall not be made for any period prior to the date of application.*

(4) For AFDC, payments shall not be made to an individual for any month in which the amount of the benefit payment, prior to any recoupment, would be less than ten dollars ($10). Any individual who is denied a payment for this reason shall be deemed a receipient of AFDC for all other purposes.

(5) Supplemental payments shall be made if, due to administrative deadlines, changes in circumstances cannot be recognized in the month such change is reported; or, for AFDC, [beginning July 1, 1982,] cannot be recognized in the time frames required in retrospective budgeting.

(6) Supplemental payments to correct underpayments due to administrative errors shall be made for a period of up to twelve (12) months preceding the month of error correction if the error existed in the preceding months.

Section 2. Inalienability of Payment: Money payments are unconditional and are exempt from any remedy for the collection of debts, liens and encumbrances; however, [beginning July 1, 1982,] the *cabinet* [department] may initiate recoupment to recover overpayment of AFDC benefits.

Section 3. Eligible Payees: Money payments are issued in the name of the eligible applicant, except that:

(1) In the Aid to Families with Dependent Children Program, a protective payment may be made to a third party payee when:

(a) A determination has been made that poor money management is contributing to the unsuitability of the home for a needy child; or

(b) The parent payee has refused without good cause to pariticipate in the Work Incentive Program or the Child Support Program.

(2) Payment for the month of death may be made to the parent or other specified relative of the deceased child, or the duly appointed administrator of the estate or other qualified executor of the will of the deceased.

JOHN CUBINE, Commissioner
ADOPTED: September 15, 1982
APPROVED: BUDDY ADAMS, Secretary
RECEIVED BY LRC: September 28, 1982 at 3 p.m.

Amended Regulations Now In Effect

STATE BOARD OF ELECTIONS
As Amended

31 KAR 1:030. Medical emergency special ballot.

RELATES TO: KRS 117.075
PURSUANT TO: KRS 117.015
EFFECTIVE: October 6, 1982
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 *has a medical emergency within seven (7) days of an election and* 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 *or by mail.* 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.

DEPARTMENT OF MILITARY AFFAIRS
Division of Disaster and Emergency Services
As Amended

106 KAR 1:030. Rescue organizations.

RELATES TO: *KRS 39.400(4), 39.427(2), 39.470, HB 295 (1982 General Assembly)* [Executive Order 78-356]
PURSUANT TO: [Executive Order 78-356,] KRS 13.082, *39.400(4), 39.427(2), 39.470, HB 295 (1982 General Assembly)*
EFFECTIVE: October 6, 1982
NECESSITY AND FUNCTION: Executive Order 78-356 directed that all responsibilities, functions, and funds relating to rescue organizations, both voluntary and professional, be assumed by the Division of Disaster and Emergency Services (DES). *Existing statutes empower the agency to develop rules and promulgate regulations and, further, establish as state policy the concept of providing state financial assistance to local emergency response organizations.* [It further authorized the Division to establish eligibility criteria for funding. This regulation provides policy, procedure, and qualification requirements for implementation of the Executive Order.]

Section 1. Purpose. The rescue aid program is designed to:
(1) Reduce and prevent the loss of life by creating a better equipped, trained, and coordinated rescue force throughout the Commonwealth;
(2) Upgrade the capabilities of local rescue squads by providing financial assistance to be used to purchase equipment and obtain training;
(3) Encourage the development of rescue squads where none exist.

Section 2. Responsibilities. (1) The Adjutant General, shall have overall responsibility for the program policy, administration and implementation.
(2) The executive director, DES, shall insure proper utilization of funds and shall serve as the principal advisor to the Adjutant General.
(3) The review board shall be responsible for reviewing applications for funds and, with the concurrence of the Adjutant General, shall allocate available funds. The board shall be composed of the DES executive director, [assistant director,] director of operations, *director of plans and recovery,* [director of support services,] administrative officer, and search and rescue coordinator.
(4) DES area coordinators shall provide liaison between local rescue squads and the review board, ensuring compliance with this regulation, continuity with other emergency preparedness programs, and accuracy of submitted documentation.
(5) Local DES civil defense (DES/CD) coordinators shall insure coordination of rescue programs at the local level and process all applications for assistance for squads within his jurisdiction.
(6) The chief officer of the rescue squad shall initiate project applications for funds and shall insure that all funds are expended for items or services as approved.

Section 3. Definition. "Rescue squad" means an organization composed of twelve (12) or more individuals who provide emergency rescue service to the public in the form of search, rescue from peril, and victim recovery, either on land or water. The group will operate by assisting, extricating, or otherwise removing persons trapped, lost, injured, incapacitated or deceased from buildings, vehicles, aircraft, bodies of water, and other emergency situations.

Section 4. Eligibility. To be eligible to receive rescue funds allocated under the provisions of this regulation, a squad must meet all of the following requirements:

(1) It must be organized to conduct search, rescue and victim recovery;

(2) It must operate a vehicle dedicated to rescue activities and equipped to meet the minimum equipment requirements for a light duty squad;

(3) It must be formally affiliated with the county DES or civil defense organization through one (1) of the following means:

(a) Execution of a county resolution/ordinance, or written agreement signed by the county judge/executive, DES/CD coordinator, and chief rescue officer, outlining a specific working agreement. This document will include, as a minimum, chain of command and responsibilities of each concerned party;

(b) Incorporation of the responsibilities of the rescue squad into the county emergency operations plan. This plan must have the concurrence of the county judge/executive, county DES/CD coordinator, and chief rescue officer.

(4) When a rescue squad is not independent, but is incorporated within other emergency service departments, such as a fire department, the squad members must be available for and capable of performing rescue services not incidental to their primary mission. For example, a rescue squad within a fire department must perform rescue missions other than those associated with fires.

(5) No individual may be counted as a squad member more than once for the purposes of grant application, though he may normally be available to serve with more than one (1) squad;

(6) Squads which specialize in certain facets of rescue, such as water and/or under water recovery, shall maintain at least a light duty rescue capability to be eligible for funding;

(7) Squads may not assess fees for services rendered;

(8) In order to encourage the development of new rescue squads where a need is verified, funding may be provided to groups under the following conditions:

(a) A minimum of twelve (12) persons must be identified as active members;

(b) Formal guidelines or by-laws must be written to define administrative and operational procedures for the squad;

(c) Section 4(3) must be fully complied with.

Section 5. Application Procedures. (1) A rescue squad aid project application (DES Form 107, filed herein by reference) will be initiated by the chief rescue officer and forwarded to the local DES/CD coordinator for review and consolidation. In the absence of a local coordinator, the county judge/executive will fill this role.

(2) The local coordinator will forward all applications to the DES area coordinator, who will review them and forward documentation to the review board.

(3) The review board will convene three (3) times during the year to assess applications and allocate funds. Reviews will begin on or about August 15, December 1, and April 1 of each year. All applications on file will be reviewed during each session.

(4) The review board will notify the local organization of grant awards and the DES administrative officer will insure payment.

(5) The local DES/CD coordinator will retain copies of all applications on file.

Section 6. Expenditures. The rescue squad must expend all grant money within thirty (30) days of receipt of grant funds and must provide a copy of the invoice, as well as proof of payment to the DES area coordinator within seventy-five (75) days of receipt of the award. Funds not expended must be returned to DES.

Section 7. Equipment. (1) All equipment purchased with rescue aid funds will be selected from the required equipment list attached unless otherwise approved by the review board. Optional items will not be approved until all items on the required list have been purchased.

(2) The rescue squad shall be accountable to the Commonwealth of Kentucky for all equipment purchased in whole or in part with these funds, providing that the unit purchase price is $300 or more. After five (5) years from the date of the grant award, the equipment shall become the property of the squad. All such accountable property will be marked in accordance with guidance provided by the DES administrative officer.

(3) Permission to dispose of unserviceable, obsolete, or damaged items purchased with these funds may be granted by the Adjutant General or executive director. Requests for such action must be submitted through the local DES/CD coordinator and the DES area coordinator.

(4) Equipment personally owned by members of a rescue squad may not be used to fulfill requirements of the minimum equipment list.

(5) When a squad is disbanded, loses its local charter to operate, or otherwise becomes incapable of performing duties outlined in Section 3, all equipment purchased with these funds will revert to DES for re-allocation. In cases in which local funds paid for a portion of the equipment or the equipment has depreciated, the squad may return the equipment to DES or repay an amount determined appropriate by the review board.

Section 8. Waivers. Requests for waiver of any section or subsection of this regulation may be submitted with appropriate justification to the DES executive director. Waivers approved will apply only to the specific request.

Section 9. Inspection/Audit. (1) Equipment purchased with these funds shall be subject to inspection, with twenty-four (24) notice, by the local DES/CD coordinator, DES area coordinator, or any member of the review board.

(2) An inspection will be made when items are reported damaged, in need of replacement, or when there is evidence of misuse. Inspections may also be required upon request of any member of the review board.

(3) An annual inspection of equipment purchased under this regulation will be conducted by the DES area coordinator. Such review will be made for purposes of accountability, maintenance and proper utilization.

(4) All funds are subject to state audit and local squads shall cooperate fully to provide necessary documentation.

Section 10. Reports. (1) A report to the DES area coordinator must be made within twenty-four (24) hours when:

(a) Accountable equipment purchased with these funds is lost, stolen, or damaged;

(b) The squad is disbanded or otherwise rendered incapable of performing duties as outlined in Section 3.

(2) Local DES/CD coordinators must maintain a cumulative list of equipment owned by each squad, denoting those items purchased with these funds. An up-

dated list must be made available to the DES area coordinator at the time of each application.

(3) Rescue squads must submit *incident/training reports* [DES Form 29 (search and rescue activity report, filed herein by reference)] monthly to the local DES/CD coordinator, who must forward the report to the DES area coordinator. Negative reports shall not be required.

BILLY G. WELLMAN
The Adjutant General

ADOPTED: March 1, 1982
RECEIVED BY LRC: June 21, 1982 at 10 a.m.

CABINET FOR HUMAN RESOURCES
Department for Health Services
As Amended

902 KAR 4:030. Tests for inborn errors of metabolism.

RELATES TO: KRS 214.155
PURSUANT TO: KRS 13.082, 194.050, 211.090
EFFECTIVE: October 6, 1982
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 monthly billing [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.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
As Amended

904 KAR 5:250. Recoupment and recovery.

RELATES TO: KRS 341.415
PURSUANT TO: KRS 13.082, 341.155
EFFECTIVE: October 6, 1982
NECESSITY AND FUNCTION: This regulation defines the term "departmental error" for the purposes of recovery and recoupment of improperly paid employment insurance benefits.

Section 1. "Departmental error" *subject to Section 2 of this regulation* means: (1) Errors in computing benefit rate;
(2) Incorrect weekly payment due to failure to consider deductible amount;
(3) Payment beyond the expiration of the benefit year;
(4) Payment in excess of maximum benefit amount;
(5) Payment under incorrect program where no program adjustment can be made;
(6) Retroactive non-monetary determinations;
(7) Monetary re-determinations;
(8) Payment during a period of disqualification;
(9) Payment to wrong claimant;
(10) Machine errors.

Section 2. "Departmental error" shall not include:
(1) Errors as a result of a false statement, misrepresentation or concealment of material information by a recipient of benefits;
(2) Overpayments as a result of a reversal of entitlement to benefits in the appeal or review process;
(3) Errors as a result of misinformation or lack of information supplied by a claimant or recipient of benefits;
(4) The amount of any single check in excess of twice the weekly benefit rate of the claimant for the benefit year for which the claim is made.

JOHN CUBINE, Commissioner
ADOPTED: July 13, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: July 13, 1982 at 1:45 p.m.

Amended After Hearing

(Republished prior to Subcommittee consideration as required by KRS 13.085(4).)

FINANCE AND ADMINISTRATION CABINET
Department of Personnel
Amended After Hearing

101 KAR 1:055. 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]
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, *upon certification of the State Budget Director and the Office for Policy and Management as to the availability of funds,* 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) Former employees who were separated from state service by lay-off and who are reinstated or re-employed in the same or a similar class within one (1) year from the date of lay-off may receive the salary they were receiving at the time of lay-off, even if such salary is above the maximum of the new salary range.

(4) [(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 an employee's salary is above the maximum of the salary range for the class to which he is promoted, the employee shall receive a lump-sum payment of five percent (5%) of his annual base salary. An employee may receive an additional promotional increase of five percent (5%) on the first of the month following successful completion of the probationary period following promotion; if an employee's salary is above the maximum of the salary range for the class to which he is promoted, the employee may receive a lump-sum payment of five percent (5%) of his annual base salary. In no case shall the employee's salary be below the minimum of the higher grade following promotion.* 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] *; if an employee's salary is above the maximum of the salary range for the class to which he is promoted, the appointing authority, with the prior written approval of the commissioner, may grant upon promotion a lump-sum payment of ten percent (10%) or fifteen percent (15%) of the employee's annual base salary. [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 *may* [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 employee's salary is above the maximum of the grade for the new class, the employee shall receive a lump-sum payment of five percent (5%) of his annual base salary rate. [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 *whose position* [who] is *placed in* [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 *new* [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 employee's salary is above the maximum of the grade for the new class, the employee may receive a lump-sum payment of five percent (5%) of his annual base salary rate. [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 *following reallocation of his position* [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 *the pay plan* [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 unsatisfactory 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 *the pay plan* [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(2), 4(3),* 4(4), *4*(5), *4(6), 4(7), 5(2)(b), 5(7) and 9(2)* [and 9(3)] shall [not] be eligible to receive *the same* performance increases *provided for employees whose salaries are within the grades except that such increases shall be calculated and paid in a lump-sum amount on the employee's performance increase date* [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 *and annual increment* 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 *thirty (30) working days pursuant to Section 7(2) of this regulation* [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 *and annual increment* 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(4), 4(5), 4(6), 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 *3(3), 4(1), 4(2), 4(3),* 4(4) [and (5)] *4(5), 4(6), 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. For purposes of calculating the statutory annual increment of five percent (5%), educational achievement increases under Section 6 of this regulation, employee suggestion systems awards under 101 KAR 1:150, and overtime and/or compensatory leave payments shall not be included in "gross annual salary or wages;" a lump-sum payment made to an employee pursuant to Sections 4(1), 4(4), 4(5), and 5(2)(a) of this regulation, and previous regulatory provision providing for a continuous service award shall be included in "gross annual salary or wages" in calculating the statutory five percent (5%) annual increment following such payment.

(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 advancement 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 shall [may] receive an increase limited to a five (5) percent salary increment following completion of either 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 assigned increment 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 *thirty (30) working days* [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 *who are below the new minimum rates* 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.

Section 13. 101 KAR 1:050, Compensation plan, is hereby repealed.

DEE MAYNARD, Commissioner
ADOPTED: October 8, 1982
RECEIVED BY LRC: October 15, 1982 at 10:15 a.m.

FINANCE AND ADMINISTRATION CABINET
Department of Personnel
Amended After Hearing

101 KAR 1:110. 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]
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. If the involuntary transfer is to a new work station in a different county, 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, if applicable,* 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: October 8, 1982
RECEIVED BY LRC: October 15, 1982 at 10:15 a.m.

FINANCE AND ADMINISTRATION CABINET
Department of Personnel
Amended After Hearing

101 KAR 1:130. 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]
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 reemployment 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 *or other mechanical recording* 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 *the stenographic or mechanical record* [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. *Any mechanical recording device and procedures utilized by the board must be similar to that used by the Administrative Office of the Courts at the District Court level.* The board upon review of the findings of fact, *stenographic or mechanical recording* [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 *or mechanical recording* [record] shall be taken of this additional testimony and the *hearing officer* [presiding member-hearing examiner] shall submit to the board a *stenographic or mechanical recording* [transcript] of the evidence presented. The board shall then consider the findings of fact, *the stenographic or mechanical recording* [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 recommenda-

tions. 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 *stenographic or mechanical recording* [transcript] of the evidence presented at the hearing. Such request shall be in writing to the board. Any party requesting such *record* [transcript] shall bear the expense of preparing the copy of the *record* [transcript at the rate of ten (10) cents per page unless otherwise ordered by the Personnel Board]. Payment for the *stenographic or mechanical recording* [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, *or the board* [such] orders shall be issued by the *executive director* [commissioner] acting as secretary to the board.

DEE MAYNARD, Commissioner
ADOPTED: October 8, 1982
RECEIVED BY LRC: October 15, 1982 at 2:15 p.m.

FINANCE AND ADMINISTRATION CABINET
Department of Personnel
Amended After Hearing

101 KAR 1:140. 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]
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. *All employees who are eligible and registered to vote shall be allowed, upon prior request, ample time, up to a maximum of four (4) hours, for the purpose of voting. Such absence shall not be charged against leave. Employees who do not request time off to vote or who are not scheduled to work during voting hours shall not be entitled to compensatory leave in lieu of time off to vote.* [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 con-

sistently 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: October 8, 1982
RECEIVED BY LRC: October 15, 1982 at 10:15 a.m.

FINANCE AND ADMINISTRATION CABINET
Department of Personnel
Amended After Hearing

101 KAR 1:200. Rules for unclassified service.

RELATES TO: KRS *18A.155* [18.220]
PURSUANT TO: KRS 13.082, *18A.155* [18.220]
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. *All employees who are eligible and registered to vote shall be allowed, upon prior request, ample time, up to a maximum of four (4) hours, for the purpose of voting. Such absence shall not be charged against leave. Employees who do not request time off to vote or who are not scheduled to work during voting hours shall not be entitled to compensatory leave in lieu of time off to vote.* [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 com-

missioner, 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 advancements, 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: October 8, 1982
RECEIVED BY LRC: October 15, 1982 at 2:15 p.m.

ENERGY AND AGRICULTURE CABINET
Department of Agriculture
Office of Marketing Services
Amended After Hearing

302 KAR 45:010. Ginseng, general provisions.

RELATES TO: KRS 246.650, 246.660
PURSUANT TO: KRS 13.082, 246.660
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 *after inspection by an official of 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: September 29, 1982
RECEIVED BY LRC: September 30, 1982 at 9:30 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution
Amended After Hearing

401 KAR 50:010. Definitions and abbreviations.

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 defining of terms to be used in Title 401, Chapters 50 to 65.

Section 1. Definitions. All terms not defined herein or in subsequent regulations, shall have the meaning given them in KRS 224.005 or by commonly accepted usage. As used in the regulations of the Division of Air Pollution unless the content clearly indicates otherwise, the following words shall have the following meaning:

(1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit any air contaminant into the outdoor atmosphere.

(2) "Air contaminant or air pollutant" includes smoke, dust, soot, grime, carbon, or any other particulate matter, radioactive matter, noxious acid, fumes, gases, odor, vapor, or any combination thereof.

(3) "Air pollution" means the presence in the outdoor atmosphere of one (1) or more air contaminants in sufficient quantities and of such characteristics and duration as is or threatens to be injurious to human, plant, or animal life, or to property, or which unreasonably interferes with the comfortable enjoyment of life or property.

(4) "Air pollution control equipment" means any mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and regulations, vital to production of the normal product of the source or to its normal operation.

(5) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source;

(b) Any physical change in, or change in the method of operation of any affected facility which increases the potential to emit of any pollutant (to which a standard applies) emitted by such facility or which results in the emission of any air pollutant (to which a standard applies) not previously emitted.

(6) "Alternative method" means any method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the department's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(7) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(8) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive and/or control measures.

(9) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(10) "Compliance schedule" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with any limitation or standard.

(11) "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(12) "Continuous monitoring system" means the total equipment, required under the applicable regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(13) "Department" means the [Department for] Natural Resources and Environmental Protection *Cabinet.*

(14) "Director" means Director of the Division of Air Pollution of the [Department for] Natural Resources and Environmental Protection *Cabinet.*

(15) "District" means an air pollution control district as provided for in KRS Chapter 77.

(16) "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from any affected facility or from air pollution control equipment installed in any affected facility.

(17) "Equivalent method" means any method of sampling and analyzing for an air pollutant which has been demonstrated to the department's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(18) "Existing source" means any source which is not a new source.

(19) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(20) "Fuel" means natural gas, petroleum, coal, wood, and any form of solid, liquid, or gaseous fuel derived from such materials for the purpose of creating useful heat.

(21) "Fugitive emissions," except where 401 KAR 51:017 and 401 KAR 51:052 are applicable, means the emissions of any air contaminant [particulate matter] into the open air other than from a stack or air pollution control equipment exhaust.

(22) [(21)] "Hydrocarbon" means any organic compound consisting predominantly of carbon and hydrogen.

(23) [(22)] "Incineration" means the process of igniting and burning solid, semi-solid, liquid, or gaseous combustible wastes.

(24) "Intermittent [visible] emissions" means emissions of particulate matter into the open air from a process [stack] which operates [, as a result of the intermittent nature of the associated process, are visible] for less than any six (6) consecutive minutes.

(25) [(23)] "Malfunction" means any failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner.

(26) [(24)] "Major source" means any source of which the potential emission rate is equal to or greater than 100 tons per year of any of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(27) [(25)] "Modification" means any physical change in, or change in the method of operation of an affected facility which increases the potential to emit of any air pollutant (to which a standard applies) emitted by such facility, or which results in the emission of any air pollutant (to which a standard applies) not previously emitted, except that:

(a) Routine maintenance, repair, and replacement of component parts shall not be considered physical changes;

(b) The following shall not be considered a change in the method of operation:

1. An increase in the production rate, if such increase does not exceed the operating design capacity of the affected facility, or the maximum operating capacity specified as a condition to a permit issued by the department;

2. An increase in hours of operation;

3. Use of an alternative fuel or raw material if, prior to the date any standard becomes applicable to such facility, the affected facility is designed to accommodate such alternative use.

(28) [(26)] "Monitoring device" means the total equipment, required in applicable regulations, used to measure and record (if applicable) process parameters.

(29) [(27)] "New source" means any source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable regulation. A source, upon reconstruction, becomes a new source, irrespective of any change in emission rate.

(30) [(28)] "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the department.

(31) [(29)] "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(32) [(30)] "Owner or operator" means any person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(33) [(31)] "Particulate matter" means any material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(34) [(32)] "Person or persons" means any individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity whatsoever.

(35) [(33)] "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and 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 federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(36) [(34)] "Reconstruction" means the replacement of components of an existing affected facility to such an extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The department's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

(d) Any economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(37) [(35)] "Reference method" means any method of sampling and analyzing for an air pollutant as prescribed by Appendices A through G to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61. This term may be more narrowly defined within a specific regulation or chapter.

(38) [(36)] "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(39) [(37)] "Secondary emissions" means emissions which 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. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to [:]

[(a) Emissions from ships or trains coming to or from the new or modified stationary source; and]

[(b)] 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.*

(40) [(38)] "Shutdown" means the cessation of an operation for any purpose.

(41) [(39)] "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be considered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(42) [(40)] "Stack or chimney" means any flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(43) [(41)] "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the regulations of the Division of Air Pollution or the emission control requirements necessary to comply with the provisions of Title 401, Chapter 51, of the regulations of the Division of Air Pollution.

(44) [(42)] "Standard conditions:"

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68)) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(45) [(43)] "Startup" means the setting in operation of an affected facility for any purpose.

(46) [(44)] "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(47) [(45)] "Urban county" means any county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1970 census. If any portion of a county is a part of such an urbanized area, then the entire county shall be classified as urban with respect to the regulations of the Division of Air Pollution.

(48) [(46)] "Urbanized area" means any area defined as such by the U.S. Department of Commerce, Bureau of Census.

(49) "Volatile organic compounds (VOC)" 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.

Section 2. Abbreviations. The abbreviations used in the regulations of Title 401, Chapters 50 to 65, shall have the following meanings:

AOAC—Association of Official Analytical Chemists
ANSI—American National Standards Institute
ASTM—American Society for Testing and Materials
BOD—Biochemical oxidant demand
BTU—British Thermal Unit
°C—Degree Celsius (centigrade)
Cal—calorie
cfm—Cubic feet per minute
CFR—Code of Federal Regulations
CH_4—methane
CO—Carbon monoxide
CO_2—Carbon dioxide
COD—Chemical oxidant demand
dscf—dry cubic feet at standard conditions
dscm—dry cubic meter at standard conditions
°F—Degree Fahrenheit
ft—feet
g—gram(s)
gal—gallon(s)
gr—grain(s)
hr—hour(s)
HCl—Hydrochloric acid
Hg—mercury
HF—Hydrogen fluoride
H_2O—water
H_2S—Hydrogen sulfide
H_2SO_4—Sulfuric acid
in—inch(es)
J—joule
KAR—Kentucky Administrative Regulations
kg—kilogram(s)
KRS—Kentucky Revised Statutes
l—liter(s)
lb—pound(s)
m—meter(s)
min—minute(s)
mg—milligram(s)
MJ—megajoules
MM—million
mm—millimeter(s)
mo—month
Ng—nanograms
N_2—Nitrogen
NO—Nitric oxide
NO_2—Nitrogen dioxide
NO_x—Nitrogen oxides
oz—ounce
O_2—oxygen
O_3—ozone
ppb—parts per billion
ppm—parts per million
ppm (w/w)—parts per million (weight by weight)
ug—microgram
psia—pounds per square inch absolute
psig—pounds per square inch gage
S—at standard conditions
sec—second
TAPPI—Technical Association of the Pulp and Paper Industry
SO_2—Sulfur dioxide
sq—square
TSS—Total suspended solids
U.S. EPA—United States Environmental Protection Agency
yd—yard

JACKIE SWIGART, Secretary

ADOPTED: September 29, 1982

RECEIVED BY LRC: September 29, 1982 at 11:30 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution
Amended After Hearing

401 KAR 59:010. New process operations.

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 process operations which are not subject to another particulate standard within this chapter.

Section 1. Applicability. *[(1)]* The provisions of this regulation shall apply to each affected facility, associated with a process operation, which is not subject to another emission standard with respect to particulates in this chapter, commenced on or after the classification date defined below.

[(2) Emissions of particulate matter which do not exit through a control device or stack are subject to the provisions of 401 KAR 63:010.]

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) "Process operation" means any method, form, action, operation, or treatment of manufacturing or processing, and shall include any storage or handling of materials or products, before, during, or after manufacturing or processing.

(2) "Process weight" means the total weight of all materials introduced into any affected facility which may cause any emission of particulate matter, but does not include liquid and gaseous fuels charged, combustion air, or uncombined water.

(3) "Process weight rate" means a rate established as follows:

(a) For continuous or long-run steady state operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof.

(b) For cyclical or batch unit operations, or unit processes, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during such a period.

(c) Where the nature of any process operation or the design of any equipment is such as to permit more than one (1) interpretation of this definition, the interpretation which results in the minimum value for allowable emission shall apply.

(4) "Affected facility" as related to process operations means the last operation preceding the emission of air contaminants which results:

(a) In the separation of the air contaminant from the process materials; or

(b) In the conversion of the process materials into air contaminants, but does not include an air pollution abatement operation.

(5) "Classification date" means July 2, 1975.

(6) "Reasonably available control technology (RACT)" means control equipment or operational practices that are available to a particular source, taking into consideration technological and economic feasibility, which are accepted by the department on a case-by-case basis.

Section 3. Standard for Particulate Matter. *(1) Opacity standard.*

(a) No person shall cause, suffer, allow, or permit *any continuous [visible]* [the] emission into the open air *from a control device or stack associated with* [of particulate matter from] any affected facility [, or from all air pollution control equipment installed on any affected facility] which [:]

[(1)] is equal to or greater than twenty (20) percent opacity. [; or]

(b) No person shall cause, suffer, allow or permit any intermittent [visible] emission into the open air from a control device or stack associated with any affected facility located in any area designated non-attainment for particulate matter under 401 KAR 51:010 which is equal to or greater than twenty (20) percent opacity [for twelve (12) or more times in any consecutive sixty (60) minute sampling period or is at any time greater than sixty (60) percent opacity].

(2) *Mass emission standard.*

(a) For emissions from a control device or stack no person shall cause, suffer, allow or permit the emission into the open air of particulate matter [which exits] from [a control device or stack associated with] any affected facility which is in excess of the quantity specified in Appendix A to this regulation.

(b) Fugitive emissions of particulate matter from any affected facility located in any area designated non-attainment for particulate matter under 401 KAR 51:010 shall be subject to reasonably available control technology requirements as set forth in conditions appearing on the operating permit.

Section 4. Test Methods and Procedures. Except as provided in 401 KAR 50:045, performance tests used to demonstrate compliance with Section 3 shall be conducted according to the following methods. *Kentucky Method 50 and reference methods are* [,] filed by reference in 401 KAR 50:015. [:]

(1) For sources located in or having significant impact upon areas designated non-attainment for total suspended particulates under 401 KAR 51:010, Kentucky Method 50 for the emission rates of particulate matter and the associated moisture content. In all other areas Reference Method 5 shall be used.

(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.

(5) Reference Method 9 for *opacity of continuous* [visible] emissions.

(6) For intermittent [visible] emissions, the method to determine opacity shall be a method promulgated by U.S. EPA and subsequently adopted by the department pursuant to the requirements of KRS Chapter 13 [Reference Method 9 except that the readings which are taken at fifteen (15) second intervals shall not be averaged over six (6) minutes. The standard in Section 3(1)(b) shall be exceeded if any twelve (12) or more readings in a period of sixty (60) consecutive minutes are equal to or greater than twenty (20) percent opacity or if any single reading is above sixty (60) percent opacity].

(7) [(6)] For Kentucky Method 50 or Reference Method 5, Reference Method 1 shall be used to select the sampling site and the number of traverse sampling points. The sampling time for each run shall be at least sixty (60) minutes and the minimum sample volume shall be 0.85 dscm (thirty (30) dscf) except that smaller sampling time or volumes, when necessitated by process variables or other factors, may be approved by the department.

APPENDIX A TO 401 KAR 59:010
ALLOWABLE RATE OF PARTICULATE EMISSION BASED ON PROCESS WEIGHT RATE

Process Weight Rate		Maximum Allowable Emission Rate
Lb/Hr.	Ton/Hr.	Lb/Hr.
[100 or less	0.05 or less	0.56]
[200	0.10	0.86]
[400	0.20	1.32]
[600	0.30	1.70]
[800	0.40	2.03]
1,000 *or less*	0.50 *or less*	2.34
1,500	0.75	3.00
2,000	1.00	3.59
2,500	1.25	4.12
3,000	1.50	4.62
3,500	1.75	5.08
4,000	2.00	5.52
5,000	2.50	6.34
6,000	3.00	7.09
7,000	3.50	7.81
8,000	4.00	8.48
9,000	4.50	9.12
10,000	5.00	9.74
12,000	6.00	10.90
16,000	8.00	13.03
18,000	9.00	14.02
20,000	10.00	14.97
30,000	15.00	19.24
40,000	20.00	23.00
50,000	25.00	26.41
60,000	30.00	29.57
70,000	35.00	30.57
80,000	40.00	31.23
90,000	45.00	31.83
100,000	50.00	32.37
120,000	60.00	33.33
140,000	70.00	34.16
160,000	80.00	34.90
200,000	100.00	36.17
1,000,000	500.00	46.79
2,000,000	1,000.00	52.28
6,000,000	3,000.00	62.32

Interpolation of the data for process weight rates up to 60,000 lb/hr. shall be accomplished by use of the equation

$$E = 3.59P^{0.62}$$

and interpolation and extrapolation of the data for process weight rates in excess of 60,000 lb/hr. shall be accomplished by the use of the equation

$$E = 17.31P^{0.16}$$

where E = rate of emission in lb/hr and P = process weight rate in tons/hr.

JACKIE SWIGART, Secretary
ADOPTED: September 29, 1982
RECEIVED BY LRC: September 29, 1982 at 11:30 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution
Amended After Hearing

401 KAR 61:015. Existing indirect heat exchangers.

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 existing indirect heat exchangers.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the applicable 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 and 401 KAR 50:025.

(1) "Affected facility" means an indirect heat exchanger having a heat input capacity of more than one (1) million BTU per hour.

(2) "Indirect heat exchanger" means any piece of equipment, apparatus, or contrivance used for the combustion of fuel in which the energy produced is transferred to its point of usage through a medium that does not come in contact with or add to the products of combustion.

(3) "Classification date" means:

(a) August 17, 1971, for affected facilities with a capacity of more than 250 million BTU per hour heat input;

(b) April 9, 1972, for affected facilities with a capacity of 250 million BTU per hour heat input or less.

Section 3. Method for Determining Allowable Emission Rates. (1) Except as provided in subsection (3) of this section, the total rated heat input capacity of all affected facilities, commenced before the applicable classification date within a source shall be used as specified in Sections 4 and 5 to determine the allowable emission in terms of pounds of effluent per million BTU heat input.

(2) At such time as any affected facility is assigned an allowable emission rate by the department, at no time thereafter shall that rate be changed due to inclusion or shutdown of any affected facility at the source.

(3) (a) A source may petition the department to establish an allowable emission rate which may be apportioned without regard to individual affected facility heat input provided that the conditions specified in paragraphs (b), (c), (d), and (e) of this subsection are met. Such allowable emission rate shall be determined according to the following equation:

$$F = (AB + DE)/C$$

Where:

A = the allowable emission rate (in pounds per milion BTU input), as determined according to 401 KAR 59:015, Section 3(1);

B = the total rated heat input (in millions of BTU per hour) of all affected facilities commenced on or after the applicable classification date within a source, including those for which an application to construct, modify, or reconstruct has been submitted to the department;

C = the total rated heat input (in millions of BTU per hour) of all affected facilities within a source, including

those for which an application to construct, modify, or reconstruct has been submitted to the department;

D = the total emission rate (in pounds per million BTU input) as determined according to subsection (1) of this section;

E = the total rated heat input (in millions of BTU per hour) of all affected facilities commenced before the applicable classification date;

F = the alternate allowable emission rate (in pounds per actual million BTU input).

(b) At no time shall the owner or operator of the source allow the total emissions (in pounds per hour) from all affected facilities within the source divided by the total actual heat input (in millions of BTU per hour) of all affected facilities within the source to exceed the alternate allowable emission rate as determined by paragraph (a) of this subsection.

(c) At no time shall the owner or operator of any source subject to federal new source performance standards allow the emissions from any affected facility commenced on or after the applicable classification date to exceed the allowable emission rate determined by use of that affected facility's rated heat input (instead of the heat input as determined by subsection (1) of this section) as specified in 401 KAR 59:015, Sections 4 and 5.

(d) The owner or operator of the source must demonstrate compliance with this subsection by conducting a performance test according to 401 KAR 50:045 on each affected facility under such conditions as may be specified by the department.

(e) Upon petition, the department will establish an alternate emission rate in accordance with this subsection if the owner or operator demonstrates to the department's satisfaction that the source will maintain compliance with this subsection on a continual basis.

Section 4. Standard for Particulate Matter. Except as provided for in Section 3(3), no owner or operator of an affected facility subject to the provisions of this regulation shall cause to be discharged into the atmosphere from that affected facility:

(1) Particulate matter in excess of that specified in Appendix A of this regulation;

(2) Emissions which exhibit greater than twenty (20) percent opacity in regions classified as Priority I with respect to particulate matter, except:

(a) That, for cyclone or pulverized fired indirect heat exchangers, a maximum of forty (40) percent opacity shall be permissible for not more than two (2) consecutive minutes in any sixty (60) consecutive minutes;

(b) That, for stoker fired indirect heat exchangers, a maximum of forty (40) percent opacity shall be permissible for not more than six (6) consecutive minutes in any sixty (60) consecutive minutes during cleaning the fire box or blowing soot and, for indirect heat exchangers with stationary grates, a maximum of forty (40) percent opacity shall be permissible during cleaning of the grates for not more than three (3) consecutive minutes in any sixty (60) consecutive minutes for each section of grates that are cleaned;

(c) For emissions from an indirect heat exchanger during building a new fire for the period required to bring the boiler up to operating conditions provided the method used is that recommended by the manufacturer and the time does not exceed the manufacturer's recommendations.

(3) Emissions which exhibit greater than forty (40) percent opacity in regions classified as Priority II or III with respect to particulate matter except:

(a) That, for cyclone or pulverized fired indirect heat exchangers, a maximum of sixty (60) percent opacity shall be permissible for not more than two (2) consecutive minutes in any sixty (60) consecutive minutes;

(b) That, for stoker fired indirect heat exchangers, a maximum of sixty (60) percent opacity shall be permissible for not more than six (6) consecutive minutes in any sixty (60) consecutive minutes during cleaning the fire box or blowing soot and, for indirect heat exchangers with stationary grates, a maximum of sixty (60) percent opacity shall be permissible during cleaning of the grates for not more than three (3) consecutive minutes in any sixty (60) consecutive minutes for each section of grates that are cleaned;

(c) For emissions from an indirect heat exchanger during building a new fire for the period required to bring the boiler up to operating conditions provided the method used is that recommended by the manufacturer and the time does not exceed the manufacturer's recommendations.

(4) The emission limitations contained in other subsections of this section shall not apply to any affected facility (with more than 250 million BTU per hour heat input capacity which was in being or under construction before August 17, 1971, or any affected facility with 250 million BTU per hour capacity or less which was in being or under construction prior to April 9, 1972) if that affected facility was in compliance prior to April 9, 1972, with, or has a valid permit to operate within the provisions of the previous Kentucky Air Pollution Control Commission Regulation No. 7 entitled "Prevention and Control of Emissions of Particulate Matter from Combustion of Fuel in Indirect Heat Exchangers." These affected facilities shall comply with the emission limitations in that regulation except that replacement of the particulate emissions control device associated with the affected facility shall subject it to the standard contained in this section.

Section 5. Standard for Sulfur Dioxide. (1) Except as provided for in Section 3(3), no owner or operator of an affected facility subject to the provisions of this regulation shall cause to be discharged into the atmosphere from that affected facility, any gases which contain sulfur dioxide in excess of that specified in Appendix B of this regulation.

(2) When different fuels are burned simultaneously in any combination, the applicable standard shall be determined by proration using the following formula:

Allowable Sulfur Dioxide Emission,

$$\text{lb/MM BTU} = \frac{y\,(a) + z\,(b)}{y + z}$$

Where:

y is the percent of total heat input derived from liquid or gaseous fuel;

z is the percent of total heat input derived from solid fuel;

a is the allowable sulfur dioxide emission in pounds per million BTU heat input derived from liquid or gaseous fuel; and

b is the allowable sulfur dioxide emissions in pounds per million BTU heat input derived from solid fuel.

(3) Compliance shall be based on the total heat input from all fuels burned, including gaseous fuels.

(4) In counties classified as VA with respect to sulfur dioxide, for sources having a total heat input greater than fifteen hundred million BTU per hour (1500 MM BTU/hr.) as determined by Section 3(1), no owner or operator shall allow the annual average sulfur dioxide emission rate from all existing and new affected facilities combined at the source to exceed 0.60 pounds per million BTU.

Section 6. Monitoring of Operations. (1) The sulfur content of solid fuels, as burned, shall be determined in accordance with the methods specified by the department.

(2) The sulfur content of liquid fuels, as burned, shall be determined in accordance with the methods specified by the department.

(3) The rate of fuel burned for each fuel shall be measured daily or at shorter intervals and recorded. The heating value and ash content of fuels shall be ascertained at least once per week and recorded. Where the indirect heat exchanger is used to generate electricity, the average electrical output and the minimum and maximum hourly generation rate shall be measured and recorded daily.

(4) The owner or operator of any indirect heat exchanger of more than 250 million BTU per hour heat input subject to the provisions of this regulation shall maintain a file of all measurements required by this regulation and summarized monthly. The record of any such measurement(s) and summary shall be retained for at least two (2) years following the date of such measurements and summaries.

(5) The department may require for any indirect heat exchanger of less than 250 million BTU per hour heat input any or all the fuel monitoring required by this section.

(6) For an indirect heat exchanger that does not use a flue gas desulfurization device, a continuous monitoring system as specified in 401 KAR 61:005 for measuring sulfur dioxide emissions is not required if the owner or operator monitors such emissions by fuel sampling and analysis pursuant to Section 7(6) of 401 KAR 59:015.

Section 7. Test Methods and Procedures. (1) Except as provided in 401 KAR 50:045, performance tests used to demonstrate compliance with Sections 4 and 5 shall be conducted according to the following methods (filed by reference in 401 KAR 50:015):

(a) Reference Method 1 for the selection of sampling site and sample traverses;

(b) Reference Method 3 for gas analysis to be used when applying Reference Methods 5, 6 and 7;

(c) Reference Method 5 for the concentration of particulate matter and the associated moisture content;

(d) Reference Method 6 for the concentration of sulfur dioxide;

(e) Reference Method 7 for the concentration of nitrogen oxides.

(2) For Reference Method 5, Reference Method 1 shall be used to select the sampling site and the number of traverse sampling points. The sampling time for each run shall be at least sixty (60) minutes and the minimum sampling volume shall be 0.85 dscm (thirty (30) dscf) except that smaller sampling times or volumes, when necessitated by process variables or other factors, may be approved by the department. The probe and filter holder heating systems in the sampling train shall be set to provide a gas temperature no greater than 160°C (320°F).

(3) For Reference Methods 6 and 7, the sampling site shall be the same as that selected for Reference Method 5. The sampling point in the duct shall be at the centroid of the cross section or at a point no closer to the walls than one (1) m (3.28 ft.). For Reference Method 6, the sample shall be extracted at a rate proportional to the gas velocity at the sampling point.

(4) For Reference Method 6, the minimum sampling time shall be twenty (20) minutes and the minimum sampling volume shall be 0.02 dscm (0.71 dscf) for each sample. The arithmetic mean of two (2) samples shall constitute one (1) run. Samples shall be taken at approximately thirty (30) minute intervals.

(5) For Reference Method 7, each run shall consist of at least four (4) grab samples taken at approximately fifteen (15) minute intervals. The arithmetic mean of the samples shall constitute the run value.

(6) For each run using the methods specified by subsection (1)(c), (d), and (e) of this section, the emissions expressed in g/million cal (lb/million BTU) shall be determined by the following equation:

$$E = CF \frac{20.9}{20.9 - \%O_2}$$

Where:

E = pollutant emission, g/million cal (lb/million BTU).

C = pollutant concentration, g/dscm (lb/dscf) determined by Reference Method 5, 6 or 7.

F = a factor as determined in 401 KAR 59:015, Section 7.

$\%O_2$ = oxygen content by volume (expressed as percent), dry basis.

Percent oxygen shall be determined by using the integrated or grab sampling and analysis procedures for Reference Method 3 as applicable. The sample shall be obtained as follows:

(a) For determination of sulfur dioxide and nitrogen oxides emissions, the oxygen sample shall be obtained simultaneously at the same point for Reference Method 6 and 7 determinations, respectively. For Reference Method 7, the oxygen sample shall be obtained using the grab sampling and analysis procedures for Reference Method 3.

(b) For determination of particulate emissions, the oxygen sample shall be obtained simultaneously by traversing the duct at the same sampling location used for each run of Reference Method 5 under subsection (2) of this section. Reference Method 1 shall be used for selection of the number of traverse points except that no more than twelve (12) sample points are required.

(7) When combinations of fossil fuels are fired, the heat input, expressed in cal/hr (BTU/hr), shall be determined during each testing period by multiplying the gross calorific value of each fuel fired by the rate of each fuel burned. Gross calorific value shall be determined in accordance with ASTM methods D2015-66(72) (solid fuels), D240-64(73) (liquid fuels), or D1826-64(70) (gaseous fuels), as applicable (ASTM designations filed by reference in 401 KAR 50:015). The rate of fuels burned during each testing period shall be determined by suitable methods and shall be confirmed by a material balance over the steam generation system.

Section 8. Compliance Timetable. (1) Affected facilities located in areas designated as attainment for sulfur dioxide and/or particulate matter shall be in compliance *as of June 6, 1979* [on the effective date of this regulation].

(2) (a) In Class I counties designated as non-attainment for sulfur dioxide, the owner or operator of any affected facility in any source whose total rated capacity is sixteen thousand million BTU per hour (16,000 MM BTU/hr) or

more shall be required to complete the following:

1. Submit a final control plan for achieving compliance with this regulation no later than May 1, 1978;
2. Award contracts for complying coal by January 1, 1979;
3. Initiate use of such complying coal on or before December 1, 1979;
4. Demonstrate compliance by performance tests on or before October 1, 1981.

(b) In Class IVA counties designated as non-attainment for sulfur dioxide, the owner or operator of any affected facility in any source with a total rated capacity of greater than fifteen hundred million BTU per hour (1,500 MM BTU/hr) but less than twenty-one thousand million BTU per hour (21,000 MM BTU/hr) shall be required to complete the following:

1. Submit a final control plan for achieving compliance with this regulation no later than May 1, 1979;
2. Award contracts for complying coal by August 1, 1979;
3. Initiate use of such complying coal on or before January 1, 1980;
4. Demonstrate compliance by performance tests on or before March 1, 1980.

(c) In Class IVA counties designated as non-attainment for sulfur dioxide, the owner or operator of any affected facility in any source with a total rated capacity of greater than twenty-one thousand million BTU per hour (21,000 MM BTU/hr) shall be required to complete the following:

1. Submit a control plan for flue gas desulfurization and initiate construction of a coal washing plant on or before June 1, 1978;
2. Issue invitations for bids for construction and installation of flue gas desulfurization equipment on or before October 1, 1978;
3. Award contract for construction and installation of flue gas desulfurization equipment on or before March 1, 1979;
4. Initiate construction of flue gas desulfurization equipment on or before December 1, 1979;
5. Complete construction of coal washing plant on or before December 1, 1980;
6. Complete construction of flue gas desulfurization equipment on or before June 1, 1982;
7. Demonstrate compliance by performance tests on or before September 1, 1982.

[(d) The owner or operator of any affected facility located in any area designated non-attainment for sulfur dioxide and/or particulate matter, except as provided for in paragraphs (a), (b), and (c) of this subsection, shall demonstrate compliance with this regulation as expeditiously as practicable but in no case later than December 31, 1982.]

JACKIE SWIGART, Secretary

ADOPTED: September 29, 1982

RECEIVED BY LRC: September 29, 1982 at 11:30 a.m.

(See Appendix A and Appendix B on the following pages)

APPENDIX A TO 401 KAR 61:015
ALLOWABLE PARTICULATE EMISSION RATES

For sources having a Total Heat Input Capacity (as determined by Section 3(1) of this regulation) of:

The standard (in pounds per million BTU actual heat input) is (based upon the Priority classification with respect to particulates of the Region in which the source is located):

(MM BTU/hr)	Priority I	Priority II	Priority III
10 or less	0.56	0.75	0.80
50	0.38	0.52	0.57
100	0.33	0.44	0.49
250	0.26	0.35	0.40
500	0.22	0.30	0.34
1000	0.19	0.26	0.30
2500	0.15	0.21	0.24
5000	0.13	0.18	0.21
7500	0.12	0.16	0.19
10000 or more	0.11	0.15	0.18

Interpolation of allowable emissions for intermediate heat input values not specified above may be accomplished by use of the equations shown below for the appropriate heat input range specified. In all equations X = millions of BTU per hour heat input as determined by Section 3(1) of this regulation, and Y = allowable particulate emissions in pounds per million BTU actual heat input.

Region Classification with respect to Particulate Matter	Range (MM BTU/Hr)	Allowable (Pounds/MM BTU)
Priority I	10 to 10,000	$Y = 0.9634 X^{-0.2356}$
Priority II	10 to 10,000	$Y = 1.2825 X^{-0.2330}$
Priority III	10 to 10,000	$Y = 1.3152 X^{-0.2159}$

APPENDIX B
TO
401 KAR 61:015
ALLOWABLE SULFUR DIOXIDE EMISSION RATES

All standards are [three (3) hour averages unless the provisions of Section 6(6) apply in which case the standard is a] twenty-four (24) hour averages.

For sources having a total heat input (as determined by Section 3(1) of this regulation) of:	The standard (in pounds per million BTU actual heat input) is (based upon the classification with respect to sulfur dioxide of the county in which the source is located):													
	CLASS I		CLASS II		CLASS III		CLASS IV		CLASS IVA		CLASS V		CLASS VA	
(MM BTU/Hr.)	Liquid/Gaseous Fuel	Solid Fuel	Liquid/Gaseous Fuel	Solid Fuel	Liquid/Gaseous Fuel	Solid Fuel	Liquid/Gaseous Fuel	Solid Fuel	Liquid/Gaseous Fuel	Solid Fuel	Liquid/Gaseous Fuel	Solid Fuel	Liquid/Gaseous Fuel	Solid Fuel
10 or less	3.0	5.0	4.0	6.0	4.6	7.0	5.4	8.0	5.4	8.0	6.0	9.0	6.0	9.0
50	1.5	2.4	2.4	3.7	3.2	4.8	4.3	6.4	4.3	6.4	4.9	7.3	4.9	7.3
100	1.2	1.8	2.0	3.0	2.7	4.1	4.0	5.9	4.0	5.9	4.5	6.7	4.5	6.7
150	1.0	1.5	1.8	2.7	2.5	3.7	3.7	5.6	3.7	5.6	4.3	6.4	4.3	6.4
200	0.9	1.3	1.6	2.5	2.3	3.5	3.6	5.4	3.6	5.4	4.1	6.2	4.1	6.2
250-1500	0.8	1.2	1.5	2.3	2.2	3.3	3.5	5.2	3.5	5.2	4.0	6.0	4.0	6.0
greater than 1500 but less than 21,000	0.8	1.2	1.5	2.3	2.2	3.3	3.5	5.2	2.3	3.5	4.0	6.0	1.1	1.1
21,000 or more	0.8	1.2	1.5	2.3	2.2	3.3	3.5	5.2	2.1	3.1	4.0	6.0	1.1	1.1

Interpolation of allowable emissions for rated capacity values between 10 and 250 million BTU heat input may be accomplished by use of the equations shown below for the appropriate fuel specified. In all equations Y = allowable sulfur dioxide emission in pounds per million BTU actual heat input, X = millions of BTU per hour heat input capacity rating as determined by Section 3(1) of this regulation.

COUNTY CLASS	FUEL	ALLOWABLE (POUNDS/MM BTU)
I	Liquid/Gaseous	$Y = 7.7223\ X^{-0.4106}$
	Solid	$Y = 13.8781\ X^{-0.4434}$
II	Liquid/Gaseous	$Y = 8.0681\ X^{-0.3047}$
	Solid	$Y = 11.9134\ X^{-0.2979}$
III	Liquid/Gaseous	$Y = 7.7966\ X^{-0.2291}$
	Solid	$Y = 11.9872\ X^{-0.2336}$
IV	Liquid/Gaseous	$Y = 7.3639\ X^{-0.1347}$
	Solid	$Y = 10.8875\ X^{-0.1338}$
IVA	Liquid/Gaseous	$Y = 7.3639\ X^{-0.1347}$
	Solid	$Y = 10.8875\ X^{-0.1338}$
V	Liquid/Gaseous	$Y = 8.0189\ X^{-0.1260}$
	Solid	$Y = 12.0284\ X^{-0.1260}$
VA	Liquid/Gaseous	$Y = 7.7223\ X^{-0.4106}$
	Solid	$Y = 13.8781\ X^{-0.4434}$

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution
Amended After Hearing

401 KAR 61:020. Existing process operations.

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 existing process operations which are not subject to another particulate emission standard within this chapter.

Section 1. Applicability. *[(1)]* The provisions of this regulation shall apply to each affected facility, associated with a process operation, which is not subject to another emission standard with respect to particulates in this chapter, commenced before the classification date defined below.

[(2) Emissions of particulate matter which do not exit through a control device or stack are subject to the provisions of 401 KAR 63:010.]

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) "Process operation" means any method, form, action, operation or treatment of manufacturing or processing, and shall include any storage or handling of materials or products, before, during, or after manufacturing or processing.

(2) "Process weight" means the total weight of all materials introduced into any affected facility which may cause any emission of particulate matter, but does not include liquid and gaseous fuels charged, combustion air, or uncombined water.

(3) "Classification date" means July 2, 1975.

(4) "Process weight rate" means a rate established as follows:

(a) For continuous or long-run steady state operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof;

(b) For cyclical or batch unit operations, or unit processes, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during such a period; and

(c) Where the nature of any process operation or the design of any equipment is such as to permit more than one (1) interpretation of this definition, the interpretation which results in the minimum value for allowable emission shall apply.

(5) "Affected facility" as related to process operations means the last operation preceding the emission of air contaminants which results:

(a) In the separation of the air contaminant from the process materials; or

(b) In the conversion of the process materials into air contaminants, but does not include an air pollution abatement operation.

(6) "Reasonably available control technology (RACT)" means control equipment or operational practices that are available to a particular source, taking into consideration technological and economic feasibility, which are accepted by the department on a case-by-case basis.

Section 3. Standard for Particulate Matter. (1) *Opacity standard.*

(a) No person shall cause, suffer, allow or permit *any continuous [visible]* [the] emission into the open air *from a control device or stack associated with* [of particulate matter from] any affected facility [, or from all air pollution control equipment installed on any affected facility] which[:]

[(a)] is equal to or greater than forty (40) percent opacity[; or]

(b) No person shall cause, suffer, allow or permit any intermittent [visible] emission into the open air from a control device or stack associated with any affected facility located in any area designated non-attainment for particulate matter under 401 KAR 51:010 which is equal to or greater than forty (40) percent opacity [for twelve (12) or more times in any consecutive sixty (60) minute sampling period or is at any time greater than sixty (60) percent opacity].

(2) Mass emission standard.

(a) For emissions from a control device or stack, no person shall cause, suffer, allow or permit the emission into the open air of particulate matter [which exits] from [a control device or stack associated with] any affected facility which

[(b)] is in excess of the quantity specified in Appendix A of this regulation.

(b) [(2)] An affected facility may elect to substitute the following standards in lieu of the value given in Appendix A:

1. [(a)] A maximum exit particulate emission concentration of 0.02 grains per standard cubic foot;

2. [(b)] Air pollution control equipment of at least ninety-seven (97) percent actual efficiency; *and*

3. [(c)] Addition of dilution air shall not constitute compliance. [; and]

(c) Fugitive emissions of particulate matter from any affected facility located in any area designated non-attainment for particulate matter under 401 KAR 51:010 shall be subject to reasonably available control technology requirements as set forth in conditions appearing on the operating permit.

[(d) At least ninety (90) percent of the particulate emissions from the affected facility must be vented to the control device.]

Section 4. Test Methods and Procedures. Except as provided in 401 KAR 50:045, performance tests used to demonstrate compliance with Section 3 shall be conducted according to the following methods (*Kentucky Method 50 and reference methods are* filed by reference in 401 KAR 50:015):

(1) Kentucky Method 50 for sources located in or having a significant impact upon non-attainment areas for total suspended particulates as designated in 401 KAR 51:010, and Reference Method 5 for sources located in all other areas, for the emission rates of particulate matter and the 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.

(5) Reference Method 9 for *opacity of continuous* [visible] emissions.

(6) For intermittent [visible] emissions, the method to determine opacity shall be a method promulgated by U.S. EPA and subsequently adopted by the department pursuant to the requirements of KRS Chapter 13 [Reference Method 9 except that the readings which are taken at fifteen (15) second intervals shall not be averaged over six (6) minutes. The standard in Section 3(1)(b) shall be exceeded if any twelve (12) or more readings in a period of sixty (60) consecutive minutes are equal to or greater than forty (40) percent opacity or if any single reading is above sixty (60) percent opacity].

(7) [(6)] For Kentucky Method 50 and Reference Method 5, Reference Method 1 shall be used to select the sampling site and the number of traverse sampling points. The sampling time for each run shall be at least sixty (60) minutes and the minimum sample volume shall be 0.85 dscm (thirty (30) dscf) except that smaller sampling time or volumes, when necessitated by process variables or other factors, may be approved by the department.

APPENDIX A TO 401 KAR 61:020
ALLOWABLE RATE OF PARTICULATE EMISSION BASED ON PROCESS WEIGHT RATE

Process Weight Rate		Maximum Allowable Emission Rate
Lb/Hr.	Ton/Hr.	Lb/Hr.
[100 or less	0.05 or less	0.551]
[200	0.10	0.877]
[400	0.20	1.40]
[600	0.30	1.83]
[800	0.40	2.22]
1,000 *or less*	0.50 *or less*	2.58
1,500	0.75	3.38
2,000	1.00	4.10
2,500	1.25	4.76
3,000	1.50	5.38
3,500	1.75	5.96
4,000	2.00	6.52
5,000	2.50	7.58
6,000	3.00	8.56
7,000	3.50	9.49
8,000	4.00	10.4
9,000	4.50	11.2
10,000	5.00	12.0
12,000	6.00	13.6
16,000	8.00	16.5
18,000	9.00	17.9
20,000	10.00	19.2
30,000	15.00	25.2
40,000	20.00	30.5
50,000	25.00	35.4
60,000	30.00	40.0
70,000	35.00	41.3
80,000	40.00	42.5
90,000	45.00	43.6
100,000	50.00	44.6
120,000	60.00	46.3
140,000	70.00	47.8
160,000	80.00	49.1
200,000	100.00	51.3
1,000,000	500.00	69.0
2,000,000	1,000.00	77.6
6,000,000	3,000.00	92.7

Interpolation of the data for process weight rates up to 60,000 lb/hr. shall be accomplished by use of the equation

$$E = 4.10P^{0.67}$$

and interpolation and extrapolation of the data for process weight rates in excess of 60,000 lb/hr. shall be accomplished by the use of the equation

$$E = 55.0P^{0.11}-40$$

where E = rate of emission in lb/hr and P = process weight rate in tons/hr.

JACKIE SWIGART, Secretary
ADOPTED: September 29, 1982
RECEIVED BY LRC: September 29, 1982 at 11:30 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution
Amended After Hearing

401 KAR 61:140. Existing by-product coke manufacturing plants.

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 existing by-product coke manufacturing plants.

Section 1. Applicability. The provisions of this regulation are applicable to each affected facility 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 and 401 KAR 61:005.

(1) "Affected facility" means a by-product coke oven battery.

(2) "Classification date" means April 9, 1972.

(3) "Coke oven battery" means a number of slot-type coking chambers arranged side by side.

(4) "Charging" means the process of conveying coal and dropping it into a coke oven through the charging holes or ports located on top of the oven.

(5) "Coking" means the destructive distillation of coal in the absence of oxygen.

(6) "Coke" means a solid form of carbon resulting from the destructive distillation of coal.

(7) "Coke oven" means a refractory lined, heated, slot-type chamber in which coke is produced.

(8) "Chuck door" means the port for the leveling bar.

(9) "Leveling bar" means a structured steel bar pushed back and forth horizontally through the chuck door and used to eliminate the peaks in the coal charged in the oven.

(10) "Collecting main" means the horizontal manifold connected to the standpipes used to conduct the volatile materials to the by-products plant.

(11) "Larry car" means the apparatus used to charge coal into an empty oven. It is also known as a charging car.

(12) "Pusher machine" means a large apparatus which travels on rails alongside the battery and used to remove doors and push coke from the ovens.

(13) "Gooseneck" means a short curved cast iron refractory lined pipe that conveys the volatiles from the standpipe to the collector main.

(14) "Standpipe" means a short vertical refractory lined pipe which conducts volatiles from an oven through the gooseneck to the collector main.

(15) "Quench" means the process whereby water is used to cool the hot coke.

(16) "Quenching car" means an apparatus used to convey hot coke to the quenching tower. It is also known as a wharf car.

(17) "Charging period" means for larry car charging systems, the period of time commencing when the first hopper gate is opened and ending when the last topside port lid is replaced. The charging period includes the period of time during which the port lid is reopened in order to sweep spilled coal into the oven.

(18) "Total coke oven doors" means push and coke side doors with the chuck doors considered to be part of the push side doors.

Section 3. Standards for Particulate Matter. No person subject to the provisions of this regulation shall cause, suffer or allow particulate matter to be discharged to the atmosphere from each affected facility or operation of a by-product coke oven battery except as follows:

(1) Coke oven charging: No visible emissions during the charging cycle from the control equipment, the charging ports, the larry cars or the open chuck door, *except for an average of twenty-five (25) seconds of any visible emissions (excluding water vapor) per charge, averaged over five (5) consecutive charges* [with an opacity greater than twenty (20) percent for a period or periods aggregating more than two (2) minutes in any consecutive sixty (60) minutes].

(2) Battery topside leaks: *No more than five (5) percent of the charging ports and ten (10) percent of the standpipes on operating ovens shall be leaking (exhibiting visible emissions except for steam or non-smoking flame) at any time* [The number of leaks (any visible emissions except for steam or non-smoking flame) at any time shall not exceed five (5) percent of the total number of potential leaks on the battery topside. The total number of potential leaks on the battery topside is equal to the number of operating ovens multiplied by the number of charging lids and standpipes per oven].

(3) Doors: No visible emission, except non-smoking flame, from more than ten (10) percent of the total coke oven doors on a battery.

(4) Combustion stack: No visible emission (other than water mist or vapor) shall exceed twenty (20) percent opacity from any coke oven combustion stack.

(5) Pushing: *Emissions shall be controlled such that:*

(a) No visible emissions, as observed at fifteen (15) second intervals, shall exceed twenty (20) percent opacity from the time the oven door removal has been completed until the hot car is inside the quench tower except for ten (10) percent of the total number of observations recorded. [At least eight-five (85) percent of the total particulate matter generated by the pushing operation shall be captured by the control device and the captured emissions cleaned further such that]

(b) The emission rate from the control device *shall not* [in no case] exceed[s] 0.030 pounds of filterable particulate per ton of coke pushed, averaged over a number of pushes.

(6) Quenching:

(a) No visible emissions, except water vapor or mist shall exceed an opacity of twenty (20) percent during the quenching operations.

(b) No process water shall be used for quenching and the *make-up* [quench] water shall *not contain total dissolved solids concentration in excess of 750 mg/liter* [be at least equal to or better than the quality of the water in the river or stream from which it is drawn].

(c) The quench tower draft shall be adequate to ensure that all visible quenching gases exit through the quench tower baffles.

Section 4. Standard for Sulfur Dioxide. Coke oven gas shall not be burned or discharged unless it contains a concentration of sulfur compounds (expressed as sulfur dioxide) *as determined by Appendix A of this regulation* that will result in emissions of no more than ninety-five (95) pounds of equivalent sulfur dioxide per million cubic feet of coke oven gas produced. Included in this are all sulfur compounds, expressed as sulfur dioxide, emitted from sulfur recovery equipment used to process the sulfur compounds removed from coke oven gas.

Section 5. Test Methods and Procedures. (1) Except as provided in 401 KAR 50:045, and subsections (2) and (3) of this section, performance tests used to demonstrate compliance with Sections 3 and 4 shall be conducted according to the following methods (filed by reference in 401 KAR 50:015):

(a) Reference Method 9 for combustion stack opacity *and pushing operation, except for time averaging and number of observations.* [;]

(b) *Method 209 B from the Standard Methods for the Evaluation of Water and Wastewater, Fifteenth (15th) Edition, 1980 for determining total dissolved solids in make-up water.* [Reference Method 5 for the particulate mass emission rate for pushing emissions. The front half of the sampling train shall be used to determine the particulate emissions rate with possible modifications to allow high volume sampling and reduced probe-filter temperatures.]

(2) Determination of sulfur in coke oven gas. Cleaned coke oven gas and any Claus plant tail gas shall be sampled for hydrogen sulfide, carbonylsuflide, and carbon disulfide by gas chromatograph separation and flame photometric or thermal conductivity detection. Alternate methods may be approved by the department. Clean gas and tail gas flow shall be measured by in-line continuous orifice, venturi or elbow tap flow meters. Compliance testing shall consist of simultaneous measurement of sweet (clean) coke oven gas and sulfur recovery tail gas concentrations and flows. Four (4) samples per hour shall be acquired for concentration and flows during a four (4) hour test period. Compliance shall be determined from the arithmetic average of the sixteen (16) values calculated by using the formula in Appendix A of this regulation.

(3) Determination of visible emissions during the oven charging period:

(a) Principle. The visible emissions emitted from charging systems and oven ports are to be determined visually by an observer who is familiar with coke oven battery operations. *Observations for five (5) consecutive charges are to be recorded unless the standard is exceeded before the five (5) charges are completed.* [Observations for sixty (60) consecutive minutes as specified by the emission standard are required unless the standard is exceeded in a fewer number of charges.]

(b) Procedure. The observer is to stand such that he has a good view of the oven being charged. Upon observing any visible emission [exceeding twenty (20) percent opacity,] an accumulative stopwatch is started. The watch is stopped when the visible emission *stops* [drops below twen-

ty (20) percent] and is restarted when the visible emission reappears [at over twenty (20) percent opacity]. The observer is to continue this procedure for the entire charging period. Visible emissions may occur simultaneously from several points during a charge; e.g., from around all drop sleeves at the same time. In this case, the visible emissions are timed collectively, not independently. Also, visible emissions may start from one (1) source immediately after another source stops. This will be timed as one (1) continuous visible emission. The following visible emissions are not to be timed:

1. Visible emissions from burning coal spilled on top of the oven or oven lid during charging;

2. Visible emissions that drift from the top of a larry car hopper, but have already been timed as a visible emission from the drop sleeve below the hopper. [When the slide gate closes on a larry car hopper after the coal has been added to the oven, the gate may not provide an airtight seal. On occasion a puff of smoke observed at the drop sleeve shrouds will be forced past the slide gate up into the larry car hopper. From there the smoke may drift from the top of the larry car hopper over a much longer period than it was visible at the shroud. However, if the larry car hopper does not have a slide gate or the slide gate is left open or only partially closed, visible emissions may quickly pass through the larry car hopper without being observed at the shroud. In this case, the emissions from the larry car hopper will appear as a strong surge of smoke and shall be timed.]

(c) Recording charging emissions. The time recorded on the stop watch is the total time that visible emissions [exceeding twenty (20) percent opacity] were observed during the charge. [For any consecutive sixty (60) minutes, one (1) value of the seconds of visible emissions over twenty (20) percent opacity as measured by the stopwatch shall be recorded.]

(4) Determination of visible emissions from coke oven topside leaks:

(a) Principle. The visible emissions produced from leaking offtake systems, and topside lids are determined visually by an observer who is familiar with coke oven battery operations.

(b) Procedure. The observer shall inspect the coke oven battery by travelling the length of the battery topside at a steady pace, pausing only to make appropriate entries on the inspection report. Travel at a normal walking pace one (1) length of the coke oven battery shall constitute a run taking approximately four (4) minutes (for a seventy (70) oven battery) to complete. In performing a run *to determine oven lid leaks,* the observer shall walk the centerline of the battery looking far enough ahead (two (2) or four (4) ovens) of his travel to easily see the oven lids[, offtake systems, or collection mains. If the emissions to be inspected cannot be observed from the battery centerline, an alternative location may be used (e.g., a catwalk)]. During [any] one (1) run, the observer shall record the number of total visible emissions from oven lids, *and during another run the observer shall determine visible emissions from* offtake systems, and collection mains, *from the battery centerline or an alternative location (e.g., a catwalk).* The total number of leaks from the topside shall be recorded on the inspection report sheet. The following emissions shall not be recorded:

1. Visible emissions from lids and standpipe caps that are opened during a decarbonization period *(not to exceed three (3) ovens at any one (1) time)* or charging period.

[2. Visible emissions caused by maintenance work in progress at an oven.]

2. [3.] Steam emissions; this includes steam caused by the vaporization of wet luting material.

(c) Determination of percent topside leaks. The total number of leaks shall be observed during a run and then the percent of *charge port and standpipe* [topside] leaks shall be determined by using the formula*s* given in Appendix B to this regulation.

(5) Door inspection procedure:

(a) Observation. The inspector shall make his observations of door emissions from a location as close to the battery as safety and visibility conditions permit, but generally outside of the pusher machine or hot car tracks. The inspector may move to a closer observation point to determine the source of an emission. The inspector shall start the inspection procedure with an oven at either end of the battery and on either the push side or the coke side of the battery. The inspector shall observe and record any visible emission from the door. Visible emissions from the sealing edge around the perimeter of a door, or, in the case of the pusher side, from the door and the chuck door will be considered as door emissions. Visible emissions from structural leaks, such as buckstay or lintel leaks, will not be considered as door emissions. The inspector will then move to the adjacent door and check for door emissions in a like manner. The inspector will continue this procedure down the entire length of the battery. If a temporary machine obstruction occurs blocking his view of a series of ovens, he may bypass those ovens and continue down the remainder of the battery, returning to check the bypassed ovens when he has completed that side of the battery. After the inspector has observed the doors on one (1) side of a battery, he shall then proceed directly to the opposite side of the battery and again start at one (1) end of the battery repeating the same procedure as for the previous side.

(b) Determination of percent leaking doors. The total number of leaking doors shall be observed on both sides of the coke oven battery and then the percent of leaking doors shall be determined using the formula given in Appendix C to this regulation.

(6) Determination of quenching visible emissions. The inspector shall make his observations of quenching emissions from a position where he can observe the quench plume. The inspector observes all emissions from the time the wharf car enters the quench tower until the time it leaves the tower after the quench. The maximum opacity of the plume observed against a contrasting background is recorded. If water vapor or mist is present, the opacity is determined after the water vapor or mist is no longer visible in the plume.

(7) Determination of pushing visible emissions. The inspector shall make his observation from a position where he can observe emissions from the coke oven door and from the hot car as the emissions rise above the collector main. Emissions shall be observed from the time the door removal has been completed until the hot car has entered the quench tower.

Section 6. Compliance Timetable. The owner or operator shall *have* demonstrate*d* compliance with *the standard in* Section 3(5)*(b)* on or before December 31, 1980. *Compliance with the standard in Section 3(2) shall be demonstrated on or before December 31 [October 15], 1982.* Compliance with all other provisions of this regulation shall have been demonstrated on or before *June 6, 1979* [the effective date of this regulation].

APPENDIX A TO 401 KAR 61:140

Formula for determining sulfur compounds (expressed as SO_2) contained in coke oven gas.

$$\text{Sulfur compounds in coke oven gas} = \frac{C_{swg}V_{swg} + C_{tg}V_{tg}}{V_{fg}}$$

Where:

C_{swg} = the concentration of total reduced sulfur in the sweet gas expressed as SO_2;

C_{tg} = the concentration of total reduced sulfur in the tail gas expressed as SO_2; and

V_{swg}, V_{tg}, V_{fg} = flow rates of sweet gas, tail gas and foul gas, respectively.

APPENDIX B TO 401 KAR 61:140

Formula for determining percent *charge port* [topside] leaks.

$$\text{Percent } \textit{charge port} \text{ [topside] leaks} = \frac{\text{total number of } \textit{charging port} \text{ leaks observed during run}}{\text{[total] number of } \textit{operating ovens} \times \text{charging ports/oven [potential leaks]}} \times 100$$

[Where:

Total number of potential leaks = Number of operating ovens x (charging lids/oven + standpipes/oven).]

Formula for determining percent standpipe leaks.

$$\textit{Percent standpipe leaks} = \frac{\textit{total number of standpipe leaks observed during run}}{\textit{number of operating ovens x standpipes/oven}} \times 100$$

Visible emission occurring during the decarbonization period as provided in Section 5(4)(b)1 shall not be included in the formulas above.

APPENDIX C TO 401 KAR 61:140

Formula for determining the percent door leaks.

$$\text{Door leaks (\%)} = \frac{\text{total number of leaking doors observed}}{2 \times \text{number of operating ovens in the battery}} \times 100$$

JACKIE SWIGART, Secretary

ADOPTED: September 29, 1982

RECEIVED BY LRC: September 29, 1982 at 11:30 a.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Amended After Hearing

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

RELATES TO: KRS Chapter 138

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 *and Fuel Taxes.* (1) For the purpose of this section *current* registration *period* shall mean the *valid period for vehicle identification cards which shall be from February 1 one (1) year to January 31 the succeeding year.* [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 *vehicle* [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 *vehicle* 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 *vehicle* identification card shall be displayed in the cab of the vehicle at all times. Failure to display the *vehicle* identification card shall constitute a violation of KRS *138.665* [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 *surety* 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 *a* [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 *vehicle identification* [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) [(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 *submitted with each quarterly tax return* [updated and kept current on a semi-annual basis by the lessor].

(4) [(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.

[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 *8.* [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 *receipt* prepared by a station or vendor located in the State of Kentucky and shall have an imprinted Kentucky address. *Those receipts which contain an imprinted Kentucky address are valid receipts unless the receipts also contain addresses for station location outside of the State of Kentucky.* [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, *and may include,* [which includes,] but *will* [is] not *be* 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 *three (3)* [five (5)] years, subject to examination by representatives of the Transportation Cabinet [or Revenue Cabinet].

Section *9.* [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 *shall* 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 *10.* [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 *vehicle identification* [cab] cards issued to such carrier.

(2) Failure to return the license and cards or the operation of a motor vehicle displaying a *vehicle identification* [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 *vehicle identification* [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 *11.* [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 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) [(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.

(3) [(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.

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

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 *assessed* [accessed] by the department through its personnel or the proper *departmental* [law] enforcement agencies or by courts of competent jurisdiction.

Section 14. Inspection. Any *department* 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 *department highway* [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.]

(a) [(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.

(b) [(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.

(c) [(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.]

(d) [(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.

(e) [(f)] Such records must be preserved for *three (3)* [five (5)] years.

Section 16. Records Disposition. The department will retain the active file of KYU tax returns for at least *three (3)* [five (5)] years. An inactive KYU license will be retained *three (3)* [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 *17.* [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: October 15, 1982 at 3:30 p.m.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Amended After Hearing

902 KAR 25:010. Section 1122 Review.

RELATES TO: KRS 194.025(3), 194.050(1)
PURSUANT TO: KRS 13.082, 194.050(1)
NECESSITY AND FUNCTION: KRS 194.050 requires the Secretary for Human Resources to adopt, administer and enforce all rules and regulations necessary to operate the programs and fulfill the responsibilities vested in the *Cabinet* [Department] for Human Resources. This regulation implements the agreement between the *Cabinet* [Department] and the Secretary of the Department of Health and Human Services to carry out the provisions of Section 1122 of the Social Security Act.

Section 1. Purpose. The purpose of this regulation is to assure that federal funds appropriated under Titles V, XVIII, and XIX of the Social Security Act are not used to support unnecessary capital expenditures made by or on behalf of health facilities which are reimbursed under any of these titles and that, to the extent possible, reimbursement under these titles shall support planning activities with respect to health facilities in Kentucky.

Section 2. Definitions. Except as otherwise provided herein, the meanings of all terms used in this regulation shall be the same as the definitions of corresponding terms used in the certificate of need law, KRS Chapter 216B[,] and regulations promulgated thereunder, as amended.

(1) "Bed capacity" means licensed bed capacity of a given facility, and includes hemodialysis stations.

(2) *"Cabinet"* ["Department"] means the *Cabinet* [Department] for Human Resources acting as the designated planning agency pursuant to its contract with the Secretary of the Department of Health and Human Services, under Section 1122 of the Social Security Act, as amended.

(3) "Health facility" means a hospital, psychiatric hospital, tuberculosis hospital, skilled nursing facility, kidney disease treatment center, including a freestanding hemodialysis unit, intermediate care facility and ambulatory surgical facility, but does not include Christian Science sanatoriums operated or listed and certified by the First Church of Christ, Scientist, Boston, Massachusetts.

(4) "Local health planning agency" means a health planning agency organized for a designated geographical area of the Commonwealth and recognized by the Governor, in whose designated area the subject capital expenditure is to be obligated.

(5) "Secretary for HHS" means the Secretary of the Department of Health and Human Services and any officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

Section 3. Coverage. (1) Any capital expenditure proposed by or on behalf of a health facility is subject to review which:

(a) Substantially changes the health service provided; or

(b) Increases or decreases the bed capacity of the facility; or

(c) Exceeds $100,000.

(2) The cost of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion or replacement of the plant and equipment for which the expenditure is made shall be included in determining whether the capital expenditure *is reviewable* [exceeds $100,000].

(3) Where a person acquires by lease or comparable arrangement, or by donation, any health facility or part thereof or equipment for a health facility, that acquisition shall be subject to review if by purchase at fair market value it would have been subject to review.

(4) *Except as provided for in Section 8 of this regulation,* any change in a proposed capital expenditure which meets the criteria set forth in this section shall be subject to review.

(5) A determination by the department that a capital expenditure is subject to review may be appealed to the Secretary of HHS.

(6) Review will not be necessary when the estimated cost of the project is certified by a licensed architect or engineer, within sixty (60) days of the date on which the obligation is incurred, to be $100,000 or less; provided that where the actual cost of the project exceeds $100,000, the health facility shall submit a written application, with a copy of the certified estimate, to the *cabinet* [department] not more than thirty (30) days after the date the capital expenditure is obligated.

(7) Pursuant to 42 CFR §100.106(a)(4), the *cabinet* [department] elects not to review any capital expenditure which does not require a certificate of need under KRS Chapter 216B and regulations promulgated thereunder, *as amended*; provided that the *cabinet* [department] shall review any capital expenditure for acquisition of a health facility which meets the criteria of this section.

Section 4. Findings and Recommendations. (1) With respect to each capital expenditure proposed by or on behalf of a health facility, the *cabinet shall* [department will] submit to the Secretary of HHS its findings as to whether:

(a) A timely application was submitted in accordance with required procedures; and

(b) The capital expenditure is or is not consistent with the appropriately established standards, criteria, or plans developed for review of certificate of need applications pursuant to KRS Chapter 216B and regulations promulgated thereunder, as amended (or the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963).

(2) The *cabinet* [department] shall consider any recommendation of the respective local health planning agency in making its finding.

(3) If the *cabinet* [department] finds that the proposed capital expenditure is not consistent with prescribed standards, criteria, or plans, it *shall* [will]:

(a) Submit to the Secretary of HHS the findings and recommendations of the local health planning agency, if any;

(b) Recommend whether the Secretary of HHS should either:

1. Exclude expenses related to such capital expenditure in determining the federal payments to be made under Titles V, XVIII, and XIX with respect to services furnished in the health facility for which such capital expenditure is made; or

2. Not exclude such expenses, on the ground that the health facility has demonstrated proof of its capability to provide comprehensive health services efficiently, effectively, and economically, and that such an exclusion would discourage the operation or expansion of the health facility.

(4) If the *cabinet's* [department's] findings are contrary to the recommendation of the local health planning agency, it will submit to the Secretary of HHS a statement of the reasons for the contrary finding.

(5) If the *cabinet* [department] finds that the proposed capital expenditure is consistent with prescribed standards, criteria or plans, but that a timely application was not submitted, it shall recommend to the Secretary of HHS that the applicant not be cited for untimely notice if it finds that:

(a) The capital expenditure has been obligated in response to an emergency so that:

1. Delay for the filing of a timely application would have placed in jeopardy the health or safety of the patients of the facility;

2. The capital expenditure was not for a new health *facility* [service] or the expansion of capacity of an existing health service of the facility; and

3. The applicant filed the application within sixty (60) days after the *obligation* [emergency] occurred; or

(b) The applicant made a reasonable effort to determine from the *cabinet* [department] whether the expenditure was subject to review, and the *cabinet* [department] did not inform the applicant within sixty (60) days of its inquiry that the expenditure was subject to review.

Section 5. Review Procedures. (1) The applicant shall apply on the form developed by the *cabinet* [department], simultaneously submitting the original application and one (1) copy to the *cabinet* [department] and two (2) copies to the appropriate local health planning agency, if any. *A complete application must be filed not less than sixty (60) days prior to the obligation of the capital expenditure.*

(2) If the proposed capital expenditure also requires a certificate of need, the applicant may utilize the same application if he provides written consent that the *cabinet* [department] review his application under the certificate of need review cycle, including applicable time limitations, and the application shall be processed accordingly. If the applicant does not so consent, a separate application must be submitted.

(3) The review shall be completed within ninety (90) days of receipt of a complete application except:

(a) When the applicant elects to have his Section 1122 and certificate of need applications processed concurrently;

(b) When the applicant states in writing that he will incur the obligation prior to the ninetieth day, then the review shall be completed within sixty (60) days of receipt of a complete application; or

(c) When the applicant waives the ninety (90) day requirement.

(4) Upon receipt of an application, the *cabinet* [department] shall *acknowledge receipt and* consult with the local health planning agency, if any, to determine if the application is complete:

(a) *If the application is deemed complete upon receipt, the applicant will be notified within fifteen (15) days.* If the application is incomplete, the *cabinet* [department] shall notify the applicant of any additional relevant information required, *within* [not more than] fifteen (15) days after receipt of the application, and shall inform the applicant that the review period shall not commence until it is provided *or until the applicant notifies the cabinet that he elects for the application to be processed as originally submitted*;

(b) If the applicant provides only part of the additional information requested, the *cabinet* [department] shall, within fifteen (15) days, notify the applicant that the application is still incomplete *but the review will commence.*

(5) The review cycle commences when a complete application is received or when the applicant has responded *by providing* [to a request for] additional information *or by indicating that he elects for the application to be processed as originally submitted.*

(6) The *cabinet* [department] shall *notify the applicant of the commencement of the review and shall* make available through public information channels notice of its receipt of the application *and of the commencement of the review,* after it has been determined to be complete.

(7) Within the time prescribed in subsection (3), the *cabinet* [department] shall notify the applicant *in writing* whether the proposed capital expenditure is in conformity with prescribed standards, criteria, and plans, or that the department has elected not to review the proposed capital expenditure. *Where the cabinet has determined that the proposed capital expenditure would not be in conformity with the standards, criteria or plans described in Section 4(1)(b) of this regulation, notification of this decision shall be accompanied by a statement of the cabinet's proposed recommendation to the Secretary of HHS and the reasons therefor, a summary of the findings and recommendations of the local health planning agency, if any, and shall provide an opportunity for a fair hearing with respect to the findings and recommendations of the cabinet at the request of the person proposing such capital expenditure.* Notice of the *cabinet's* [department's] findings shall be deemed complete upon mailing.

(8) The *cabinet* [department] shall send a copy of its findings to the local health planning agency, if any, and shall make its findings available through public information channels.

(9) Any applicant may withdraw his application, without prejudice, by filing simultaneous written notice with the *cabinet* [department] and the local health planning agency, if any, prior to *receipt* [the date] of notice of the *cabinet's* [department's] findings.

Section 6. Fair Hearings. (1) Within thirty (30) days of the date of notice of an adverse finding by the *cabinet* [department], the applicant may file a written request for a hearing.

(2) The hearing shall be commenced within thirty (30) days after receipt of the request for the hearing, or later with the consent of the applicant.

(3) The hearing shall be conducted by an agency or person designated by the Governor, but shall not be conducted by the *cabinet* [department] or any agency which, or any person who, has taken part in any prior consideration of or action upon the application.

(4) The hearing shall be public and the *cabinet* [department] shall make available through public information channels details of the scheduled hearing *except notice to the applicant and the local health planning agency, if any, shall be by mail.*

(5) The applicant, the local health planning agency and other interested parties, including representatives of consumers of health service, shall be permitted to *give testimony and present arguments* [participate] in the hearing.

(6) All testimony shall be recorded but need not be transcribed. Copies of records of the proceedings shall be furnished to any person upon request and payment of costs of reproduction.

(7) No more than forty-five (45) days after the conclusion of the hearing, the hearing officer shall serve notice of his decision to the applicant, the *cabinet* [department], the local health planning agency, if any, and other interested parties who participated in the hearing. Notice shall be deemed complete upon mailing. The *cabinet* [department] shall make the decision of the hearing officer available through public information channels.

(8) The hearing officer shall affirm, reverse or modify the findings and recommendations of the *cabinet* [department], and may remand the matter to the *cabinet* [department] for further action, with specified time limits.

(9) The *cabinet* [department] shall transmit its findings and recommendations, together with the hearing officer's decision, to the Secretary of HHS.

Section 7. Resubmission. (1) An applicant whose project was excluded from reimbursement by the Secretary of HHS may reapply to the department for reconsideration upon a showing that:

(a) There has been a substantial change (since the previous finding) in existing or proposed health facilities or services of the type proposed in the area served;

(b) There has been a substantial change (since the previous finding) in the need for health facilities or services of the type proposed in the area served, as reflected in the plans, criteria, or standards; or

(c) At least three (3) years have elapsed from the date of the most recent negative finding of the department.

(2) An application shall be submitted on the form prescribed by the *cabinet* [department]. If the *cabinet* [department] finds that good cause has been shown as described in this section, the application shall be reviewed in the same manner as an original application.

Section 8. Escalations. (1) An applicant whose approved capital expenditure has escalated in excess of $100,000 since its review by the *cabinet* [department] may request exemption from review of the escalated amount, upon demonstrating to the *cabinet* [department] that:

(a) The capital expenditure has not been obligated in excess of the amount approved;

(b) The project has not changed from that originally approved; and

(c) The amount of the escalation does not exceed *the maximum permitted under 902 KAR 20:006, as amended* [twenty percent (20%)].

(2) The escalation request shall be submitted on a form prescribed by the *cabinet* [department].

Section 9. Approvals. (1) An approval of an application by the Secretary of HHS shall be valid for one (1) year, subject to a six (6) month extension by the *cabinet* [depart-

ment] if the applicant has a valid certificate of need, if required by KRS Chapter 216B.

(2) If *a* [an approved] project *proposes* [involves] a long-term construction plan under which a series of obligations for capital expenditures for discrete components will be incurred, *over a period longer than one (1) year,* the *cabinet may grant an* approval *which is* [shall be] valid for three (3) years.

BUDDY H. ADAMS, Secretary
ADOPTED: September 21, 1982
RECEIVED BY LRC: September 21, 1982 at 4 p.m.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Amended After Hearing

902 KAR 45:110. Inspection fees; food plants, markets, warehouses and distributors.

RELATES TO: KRS 217.025, 217.035, 217.037, 217.125
PURSUANT TO: KRS 13.082, 194.050, 217.125(2)
NECESSITY AND FUNCTION: KRS 217.125(2) authorizes the Secretary for Human Resources to provide by regulation a schedule of reasonable fees to be paid by food manufacturing plants, food storage warehouses, retail food markets, salvage distributors, and salvage processing plants for inspectional activities carried out by the Cabinet for Human Resources. This regulation is to set forth the fee to be charged.

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

(2) "Department" means Department for Health Services and local health departments having jurisdiction.

Section 2. Fees for Inspections. (1) For inspections conducted by the department or its representatives to determine compliance with regulations adopted by the cabinet for salvage distributors and salvage processing plants, and to determine compliance with KRS 217.025, 217.035 and 217.037 applicable to food manufacturing plants and food storage warehouses, a fee of sixteen dollars ($16) per inspection hour not to exceed the total amount of $200 per year shall be assessed.

(2) With respect to retail food markets, for inspections conducted by the department or its representative to determine compliance with regulations adopted by the cabinet pertaining to adulteration, misbranding, packaging and labeling of food products pursuant to KRS 217.025, 217.035, 217.037 and 217.125, a fee of sixteen dollars ($16) per inspection hour shall be assessed. In no event shall the fee exceed in any year the sum of fifty dollars ($50).

[Section 3. Travel Reimbursement. In addition to the inspection fees assessed pursuant to Section 2 the department or its representative shall be reimbursed for travel by its employees to and from the inspection site in accordance with the provision of 200 KAR 2:006E pertaining to travel reimbursement.]

Section *3.* [4.] Payment of Fees. (1) Payment of fees shall be made to the local health department having jurisdiction. Fees received by local health departments shall be deposited in the Kentucky State Treasury.

(2) Inspection fees shall be due thirty (30) days from the date of the billing.

Section *4.* [5.] Exemptions. State and local government agencies shall be exempt from the payment of fees.

DAVID T. ALLEN, Commissioner
ADOPTED: October 13, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: October 15, 1982 at 2:15 p.m.

Proposed Amendments

FINANCE AND ADMINISTRATION CABINET
Board of Accountancy
(Proposed Amendment)

201 KAR 1:045. Subjects of examination; grading; re-examination.

RELATES TO: KRS 325.265, 325.270
PURSUANT TO: KRS 325.240
NECESSITY AND FUNCTION: To promulgate administrative regulations of the State Board of Accountancy of Kentucky. This regulation pertains to subjects of examination, grading and re-examination.

Section 1. Examinations will include questions or problems on the following subjects:
(1) Accounting practice;
(2) Theory of accounts;
(3) Auditing;
(4) Business law.

Section 2. The candidate will be required to make a grade of not less than seventy-five (75) percent in each subject before he will be declared to have passed the examination.

Section 3. A candidate who fails to receive a conditional credit or credits in any examination shall have the right to re-examination.

Section 4. A candidate who fails to pass all subjects, but who receives a passing grade in two (2) or more subjects, or accounting practice alone, shall receive a conditional credit for such subject or subjects provided such candidate obtains a score of fifty (50) percent or more on the parts failed. This minimum grade requirement is waived if three (3) parts are passed at a single sitting.

Section 5. To add to conditioned status, the candidate must obtain a grade of seventy-five (75) or more in the parts passed and a grade of fifty (50) in all parts not pass-

ed. While a grade of less than fifty (50) prevents the candidate from adding to his conditional status, it alone does not remove or cancel conditioned status previously attained.

Section 6. A candidate who receives such conditional credit or credits must pass the remaining subjects within the six (6) examinations next succeeding the examination at which the first conditional credit was earned. *An additional sitting(s) may be granted at the discretion of the State Board of Accountancy for good cause.* In the event of the failure of a candidate thus to pass the examination within the above prescribed period, he will be considered to have failed the examination. Such a candidate may, however, thereafter make a new application, which shall be reviewed by the board as in the case of any new applicant.

Section 7. At any sitting, the candidate must sit for all parts for which he has not yet received a passing grade. The failure of a candidate to submit a paper in regard to any part of an examination will disqualify all papers submitted by that candidate at that examination unless the board, in its discretion, finds good cause not to disqualify the papers submitted.

Section 8. Any person licensed to practice law in this state need not be examined in the subject of business law. An applicant claiming waiver of the examination in business law by virtue of this section must include with his application a certification from the Kentucky State Bar Association to the effect that such candidate is duly licensed to practice law in this state and is in good standing as provided in KRS 30.170.

Section 9. A candidate for the certificate of certified public accountant who has written the uniform examination under the jurisdiction of another state and has failed to receive a passing grade in all subjects, but has passed two (2) or more subjects, or accounting practice alone, may in the discretion of the board be given conditional credit for parts passed, provided that the applicant met all requirements of the Kentucky law and regulations, except for residence, at the time of writing the examination.

JAMES T. AHLER, Executive Director
ADOPTED: October 1, 1982
RECEIVED BY LRC: October 15, 1982 at 9 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Mr. James T. Ahler, Executive Director, Kentucky State Board of Accountancy, 310 W. Liberty Street, Suite 315, Louisville, Kentucky 40202.

FINANCE AND ADMINISTRATION CABINET
Board of Accountancy
(Proposed Amendment)

201 KAR 1:050. Certificate application.

RELATES TO: KRS 325.261, 325.280
PURSUANT TO: KRS 325.240
NECESSITY AND FUNCTION: To promulgate administrative regulations of the State Board of Accountancy of Kentucky. This regulation pertains to making application for certification.

Section 1. Persons who have met the qualifications set forth in KRS 325.261 may make application for a certificate as Certified Public Accountant and a permit to practice public accounting provided such application is filed within five (5) years after successful completion of the examination. *Waiver of this five (5) year expiration period may be granted to individuals for good cause, upon application to the State Board of Accountancy.* In submitting the application to the board, the applicant shall:

(1) Submit the application on the form prescribed by the board together with payment of the fee of twenty-five dollars ($25);

(2) Cause to be filed with the board three (3) letters from persons to whom the applicant is well known, two (2) of which must be from licensees of this board. Each letter must state an opinion as to the moral character of the applicant and his fitness to practice as a Certified Public Accountant. All letters shall be mailed by the writers to the State Board of Accountancy, Louisville;

(3) Include in application the name and address of each person from whom letters are to be received in accordance with subsection (2) above. No applicant shall submit for reference the name of any person to whom he is related by either blood or marriage;

(4) Submit satisfactory evidence that the experience requirements have been met in accordance with 201 KAR 1:060, unless such is already in possession of the board;

(5) Enclose with application one (1) photograph taken within two (2) years preceding application, the back of which must bear the signature in ink of the applicant;

(6) Include with the application evidence of educational qualifications unless such is already in possession of the board;

(7) Submit satisfactory evidence of completion of an examination on professional ethics and other related questions as the board may deem appropriate.

Section 2. The act of filing an application for a certificate and permit to practice constitutes an agreement that the applicant will take the oath of the Kentucky Certified Accountant.

JAMES T. AHLER, Executive Director
ADOPTED: August 27, 1982
RECEIVED BY LRC: October 15, 1982 at 9 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Mr. James T. Ahler, Executive Director, Kentucky State Board of Accountancy, 310 W. Liberty Street, Suite 315, Louisville, Kentucky 40202.

FINANCE AND ADMINISTRATION CABINET
Kentucky State Board of Medical Licensure
(Proposed Amendment)

201 KAR 9:040. *Fee schedule* [License fees].

RELATES TO: KRS 311.530 to 311.620, 311.990
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: *To establish a schedule of fees for licenses and services rendered by the State Board of Medical Licensure. This regulation, as amended, is necessary to establish fees which are used to defray the increasing costs incurred by the Board in the performance of its statutory responsibilities pursuant to KRS Chapter 311.* [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 establish a fee schedule as authorized by KRS 311.565(2)(m) for examinations, directories, and the issuance and renewal of licenses and permits.]

Section 1. Fee schedule:

(1) Admission to any complete examination *given for the purpose of qualifying for licensure* [including a regular or limited license issued as a result thereof] (*includes initial licensure fee;* [The] charge for [a] partial examination shall be prorated according to the number of sections taken.) .....*$225* [150].

(2) [Application for] Regular license by reciprocity or endorsement.....*$150* [125].

(3) [Application for] Limited license by *examination* [reciprocity or endorsement] .....$50.

[Balance of fee to be paid when full license granted .....$75.]

(4) *Certification of Kentucky licensee* [Certifying a licentiate of Kentucky] to [the] licensing agency of another state.....*$20* [15].

(5) *Certification of Kentucky licensee's examination grades* [Certifying the grades of a licentiate of Kentucky] to [the] licensing agency of another state .....*$10* [5].

(6) [Each] Renewal of [a] limited license .....$20.

(7) Duplicate license certificate .....$10.

(8) [Application for] regular license by endorsement from National Board of Medical Examiners *for graduates of Kentucky medical schools* [for medical school graduates of Kentucky] .....*$100* [65].

(9) Temporary permit (Pursuant to KRS 311.575(2) this fee will be credited upon the prescribed fee for a regular license if subsequently issued by the board) .....*$50* [25].

(10) Emergency permit .....*$15* [No charge].

(11) [Each] Copy of the "Kentucky Medical Directory" ([Other than] Kentucky medical licensees, hospitals, medical and osteopathic schools, and other official licensing boards *are exempted*).....$5.

(12) Annual registration and renewal of license *of resident licensee*.....*$35* [12].

(13) Annual registration and renewal of nonresident licensee.....*$15.*

FRANK M. GAINES, JR., Secretary

ADOPTED: October 12, 1982

RECEIVED BY LRC: October 15, 1982 at 9 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: C. William Schmidt, Assistant Secretary, Kentucky State Board of Medical Licensure, 3532 Ephraim McDowell Drive, Louisville, Kentucky 40205.

FINANCE AND ADMINISTRATION CABINET
Division of Occupations and Professions
Kentucky Board of Nursing
(Proposed Amendment)

201 KAR 20:095. Inactive *licensure* status.

RELATES TO: KRS 314.041(7), 314.051(7)

PURSUANT TO: KRS Chapter 314

NECESSITY AND FUNCTION: *This amendment is necessary for administration of requirements for granting and maintaining inactive licensure status, and to establish requirements for changing licensure status from inactive to active.* [The 1978 revision of the Nurse Practice Act provides for licensees to be granted inactive status. It is necessary to establish requirements for licensees on inactive status and for those who wish to apply for renewal of a license to actively practice nursing.]

Section 1. An individual may apply for inactive status in Kentucky by meeting the following requirements:

(1) Complete renewal application;

(2) Pay current fee for inactive status.

Section 2. An individual who has been granted inactive status shall receive a license with such inactive status designated on the face of the license.

[Section 3. An individual who has been granted inactive status in Kentucky is prohibited from being employed in this state as a registered nurse or licensed practical nurse or from functioning in the capacity of a nurse while maintaining the inactive status.]

Section *3.* [4.] An individual *holding* [on] inactive *licensure* status who wishes to apply for [an] active *licensure* [license] may do so by meeting the following requirements:

(1) Complete *an active status* [renewal] application;

(2) Pay current renewal fee for an active license;

(3) Meet continuing education requirements as specified in *201 KAR 20:230, Renewal of licenses, Sections 3 and 4 as appropriate* [KRS 314.073].

Section *4.*[5.] If *an individual has held an inactive licensure status* [a person has been on inactive status] for five (5) or more years, he/she must show evidence of one (1) of the following requirements before an active license *will* [can] be issued.

(1) Active practice in another state of at least one (1) year within the preceding five (5) years;

(2) Enrollment in a board recognized nursing program to further his/her education in nursing within the preceding three (3) years;

(3) Completion of a *board approved refresher course in nursing within the previous one (1) year from date of application* [refresher course in nursing within the preceding year, which has been approved by the board].

(4) Completion of fifteen (15) contact hours of continuing education within the twelve (12) months preceding the date of *application* [applying] for active *licensure* status, in addition to the continuing education requirement as specified in *201 KAR 20:230, Renewal of licenses* [KRS 314.073].

Section *5.* [6.] *An individual who has been granted inactive status in Kentucky is prohibited from being employed*

in this state as a registered nurse or licensed practical nurse or from functioning in the capacity of a nurse while maintaining the inactive status. [An individual who is employed or who practices as a nurse in this state while on inactive status shall be considered to be practicing without a license and in violation of KRS 314.031 and subject to the penalties in KRS Chapter 314.]

SHARON WEISENBECK, Executive Director
ADOPTED: August 14, 1982
RECEIVED BY LRC: October 15, 1982 at 8:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Sharon M. Weisenbeck, Executive Director, Kentucky Board of Nursing, 4010 Dupont Circle, Suite 430, Louisville, Kentucky 40207.

FINANCE AND ADMINISTRATION CABINET
Division of Occupations and Professions
Board of Nursing
(Proposed Amendment)

201 KAR 20:205. Standards for continuing education offerings.

RELATES TO: KRS 314.011(11), 314.073
PURSUANT TO: KRS 314.021, 314.031(1), 314.131(1)
NECESSITY AND FUNCTION: In order to implement a statewide system of mandatory continuing education for relicensure of nurses, it is necessary for the board to set standards for continuing education offerings.

Section 1. An Approved Offering. An approved offering shall comply with the board's administrative and offering standards. The applicant for approval of an offering shall submit evidence of:

(1) Instructor(s) qualifications. The instructor(s) shall have academic preparation equal to, or greater than, that of the target audience, and shall have expertise in the subject matter, and experience in presenting content to adult learners.

(2) Assessment of learning needs. The justification for approved continuing education shall reflect planning in response to a current, systematic assessment of the learning needs of nurses.

(3) Behavioral objectives. The content, learning activities, teaching methodology, space provided, time allotted, and evaluation shall be based on, and congruent with, the identified behavioral objectives which shall clearly identify the particular skills, attitudes, and knowledge which the learner can expect to acquire as an outcome of participating in the learning activity.

(4) Content of continuing education. The content shall be designed to present current theoretical knowledge to enhance and expand nursing skills, and to promote the development, or change in attitudes necessary to make competent judgments and decisions in nursing.

(5) Principles of adult education. An educational offering shall be based on principles of adult education which shall include, but are not limited to: content meaningful to the target audience, provision for learner participation and utilization of a variety of formats and teaching techniques.

(6) Records and reports. The provider shall have a system for *maintenance* [maintaining] and *retrieval of* [retrieving] the records of offering(s) and participant attendance.

(a) The system shall provide for the submission of required attendance and evaulation records to the board [within four (4) weeks after] the completion of the offering and for the maintenance and retrieval of reports and records for a minimum of three (3) years.

(b) Records shall be maintained in a confidential manner.

(c) The nurse shall have access to personal record(s) and be provided with *a certificate of attendance, individual nurse participant record or transcript upon successful* [two (2) copies of the nurse participant record at the] completion of the offering.

(7) Evaluation of continuing education. The method of evaluation shall be identified during the planning phase.

Section 2. Applications for approval of an offering shall be submitted in accordance with requirements at least ninety (90) days prior to the scheduled date of presentation.

(1) *The offering approval period awarded shall be set forth in the approval notification letter sent to the provider by the board.* [Approval, if granted, shall be until January 1 of the succeeding year.]

(2) An approved offering may be presented as many times as desired during the approval period as long as the board's standards are maintained.

(3) The provider shall notify the board of any change in the administration of the educational unit or planned offering which occurs after approval is granted; failure to do so is grounds for revocation of approval.

SHARON M. WEISENBECK, Executive Director
ADOPTED: August 14, 1982
RECEIVED BY LRC: October 15, 1982 at 8:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Sharon M. Weisenbeck, Executive Director, Kentucky Board of Nursing, 4010 Dupont Circle, Suite 430, Louisville, Kentucky 40207.

FINANCE AND ADMINISTRATION CABINET
Division of Occupations and Professions
Board of Nursing
(Proposed Amendment)

201 KAR 20:215. Contact hours.

RELATES TO: KRS 314.011(11), 314.073
PURSUANT TO: KRS 314.021, 314.131(1)
NECESSITY AND FUNCTION: *For administration of* [In implementing] the continuing education requirement, it is necessary for the board to develop standards for awarding contact hour(s).

Section 1. To earn contact hour approval, the nurse shall successfully complete the requirements specified by the provider, or as prescribed by the board for an approved continuing education activity. To satisfy the continuing education requirement for an active Kentucky license, con-

tact hours shall be earned in an approved continuing education activity(s).

(1) An approved offering shall consist of at least one (1) contact hour.

(a) An offering may be presented in one (1) session (one (1) contact hour), or a series of sessions, each of which shall provide at least one (1) contact hour.

(b) Fractional parts of a contact hour shall not be approved for an offering.

(2) Academic credit in nursing may satisfy the continuing education requirement. Academic credit may be converted to contact hours as follows:

(a) One (1) semester academic credit hour = fifteen (15) contact hours.

(b) One (1) quarter academic credit hour = twelve (12) contact hours.

[(3) Clinical practice which is part of an approved offering that requires the demonstration of specific skills to meet stated behavioral objectives shall satisfy the criteria for one (1) contact hour allowed for two (2) hours of clinical practice as prescribed in KRS 314.073(1).]

(3) [(4)] Self-study may be approved for relicensure beginning in 1984. Prior to 1984, approval of self-study may be considered on an individual basis for those licensees employed or living outside the United States.

(4) [(5)] Contact hours awarded by another organization may be recognized by the board as equivalent, or comparable provided the organization's standards and criteria for continuing education and the approval mechanism have been reviewed and approved by the board.

Section 2. The following types of courses will not satisfy the continuing education requirements for licensure:

(1) Courses in nursing which were a part of the nurse's prelicensure preparation. (This does not preclude approval of nursing electives or other courses in nursing science beyond the basic nursing program.)

(2) Courses in other auxillary training programs.

(3) Inservice education as defined in 201 KAR 20:200, Section 1(7).

SHARON M. WEISENBECK, Executive Director
ADOPTED: August 14, 1982
RECEIVED BY LRC: October 15, 1982 at 8:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Sharon M. Weisenbeck, Executive Director, Kentucky Board of Nursing, 4010 Dupont Circle, Suite 430, Louisville, Kentucky 40207.

FINANCE AND ADMINISTRATION CABINET
Division of Occupations and Professions
Board of Nursing
(Proposed Amendment)

201 KAR 20:220. Provider approval.

RELATES TO: KRS 314.011(11), 314.073
PURSUANT TO: KRS 314.021, 314.031(1), 314.131(1)
NECESSITY AND FUNCTION: Only those contact hours earned in approved programs/offerings conducted by approved providers shall satisfy the requirements for relicensure.

Section 1. To administer the continuing education requirement, the board adopts the following standards: Administrative standards. An approved provider shall comply with the following administrative standards:

(1) Educational unit. There shall be within the provider's organizational structure an identifiable educational unit with designated personnel and resources for conducting an organized schedule of continuing education for nurses and for reporting and recording of contact hours according to the requirements of the board's standards and criteria.

(2) Philosophy and objectives. The unit's philosophy and objectives for continuing education shall be consistent with those of the provider organization.

(3) Nurse administrator of continuing education. A nurse, holding a current, active Kentucky nurse license, with experience in adult and continuing education shall be administratively responsible for the provider's educational unit for continuing education for nurses. The educational qualifications of the nurse administrator shall be as follows:

(a) For the licensed practical nursing groups' educational units, the nurse administrator of continuing education shall hold a diploma, or its equivalent, from an approved school of practical nursing.

(b) Other providers' educational units shall have a nurse administrator who holds a baccalaureate or higher degree in nursing or a nurse consultant who meets the nurse administrator qualifications.

(4) Policies and procedures. Written policies and procedures of the provider shall facilitate the efficient operation of the planned continuing education activities and shall clearly define the provider's accountability, financial support, and administrative control necessary to maintain the board's standards and criteria for continuing education and to achieve the objectives of the planned program/offering(s).

(5) Educational facilities and resources. The provider shall have accessible and available, or arrange for, educational facilities, human resources, necessary instructional aids, and equipment for the planners, faculty/instructor(s), and/or learners consistent with the educational content, format, teaching methodology, and behavioral objectives of each continuing education offering.

(6) Continuing education planners/committee. A committee composed of nurses holding current, active nurse licenses and qualified by education and expertise in the subject matter, and experience in planning adult and continuing education shall be used in planning and evaluating board approved program/offerings; other advisors or consultants may be used as appropriate.

Section 2. Initial Provider Approval. The potential provider shall request an application for consideration as a provider and the board shall assign the potential provider a permanent, nontransferable number. The provider number shall be used to identify all communications, offering announcements, records, and reports.

(1) Applications for consideration as a provider may be submitted at any time during the year.

(2) Application for provider approval should be submitted no later than September 1.

(3) If the potential provider meets the board's standards and criteria, approval shall be granted. An approved provider shall apply for approval of program/offering(s) in accordance with board requirements.

(4) *The providership approval period awarded shall be set forth in the approval notification letter sent to the pro-*

vider by the board. [The approval period shall be from January 1 of a year to January 1 of the succeeding year for both providers and continuing education activities.]

[(a) When the review process is not completed to grant approval by January 1, the approval period shall begin on the first day of the month following the completion of the review process.]

[(b)] Retroactive approval shall not be granted.

Section 3. Continued Approval of a Provider. Applications for continued approval as a provider shall be submitted *prior to the end of the current approval period* [by July 1 for the succeeding year]. (1) Continued approval of the provider shall be based on the past year's performance and compliance with board standards.

(2) The provider's past year performance may be evaluated by participant evaluations, provider evaluation, on-site visits, and/or an audit of the provider's reports and records.

Section 4. The board may deny, revoke, suspend, or probate approval of any provider, continuing education activity, or other approved entity for just cause.

Section 5. Appeal. If a provider is dissatisfied with a board decision concerning approval and wishes a review of the decision, the following procedure shall be followed:

(1) Written requests for the review must be filed with the board within thirty (30) days after the date of notification of the board action which the provider contests.

(2) The board, or its designee, shall conduct a review in which the provider may appear in person and present reasons why the board's decision should be set aside or modified.

SHARON M. WEISENBECK, Executive Director
ADOPTED: August 14, 1982
RECEIVED BY LRC: October 15, 1982 at 8:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Sharon M. Weisenbeck, Executive Director, Kentucky Board of Nursing, 4010 Dupont Circle, Suite 430, Louisville, Kentucky 40207.

FINANCE AND ADMINISTRATION CABINET
Division of Occupations and Professions
Board of Nursing
(Proposed Amendment)

201 KAR 20:225. Reinstatement of a lapsed license.

RELATES TO: KRS 314.071, 314.073
PURSUANT TO: KRS 314.021, 314.031(1), 314.131(1)
NECESSITY AND FUNCTION: A license that is not renewed shall lapse and relicensure shall be by reinstatement.

Section 1. Lapsed License. A lapsed license may occur for any of the following reasons:

(1) Failure to apply for license renewal for any reason.

(2) Failure to meet the continuing education requirement as prescribed by law and regulations.

(3) Failure to submit adequate data to enable the board to complete processing an application.

(4) Failure to submit current fee.

Section 2. *Requirements for Licensure Reinstatement.* *(1)* If a licensee fails to renew an active license as prescribed by law and regulation, the license shall lapse on the last day of the *licensure period* [licensed year].

(2) The board may issue an active license by reinstatement if the *applicant:* [nurse]

(a) Submits *a completed* [an] application *form* [and fee];

(b) Submits the current application fee; and

(c) Meets the continuing education requirements for the current *licensure period* [year] and completes additional contact hours as *follows* [prescribed herein]:

1. [(1)] One (1) year: no additional contact hours.

2. [(2)] Two (2) years: five (5) additional contact hours.

3. [(3)] Three (3) years: ten (10) additional contact hours.

4. [(4)] Four (4) or more years: fifteen (15) *additional* contact hours *or a board approved refresher course.*

Section 3. Reinstatement Requirements for Out-of-State Residents Holding Lapsed Kentucky License. (1) The applicant who has been actively licensed and engaged in nursing practice in another state for at least one (1) year during the preceding five (5) years shall submit evidence from employer(s) to verify such active practice.

(2) The applicant who has not been actively licensed and engaged in nursing practice in another state for at least one (1) year during the preceding five (5) years shall complete the continuing education requirements for relicensure for the current licensure period and in addition shall complete one (1) of the following prior to being licensed by the board:

(a) Fifteen (15) contact hours of continuing education in nursing.

(b) A board approved refresher course.

Section 4. The board may reinstate a license to either active or inactive status as requested by the individual reinstatement applicant.

Section *5.* [3.] If a license has been suspended or revoked by the board in a disciplinary action, the terms of reinstatement of the license shall be prescribed by the board. In addition, the nurse shall comply with the requirements prescribed in Section 2 of this regulation for reinstatement of an active license.

SHARON M. WEISENBECK, Executive Director
ADOPTED: August 14, 1982
RECEIVED BY LRC: October 15, 1982 at 8:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Sharon M. Weisenbeck, Executive Director, Kentucky Board of Nursing, 4010 Dupont Circle, Suite 430, Louisville, Kentucky 40207.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 2:055. Pits and blinds; restrictions.

RELATES TO: KRS 150.025, *150.240,* 150.600, *150.630*
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: This regulation pertains to the establishment of pits and blinds on Ballard

Wildlife Management Area, Peal Wildlife Management Area and commercial waterfowl shooting areas in a portion of Ballard County. This regulation is necessary for the continued protection and conservation of migratory waterfowl and to insure a permanent and continued supply of this 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 waterfowl within reasonable limits based upon an adequate supply and to insure some uniformity of commercial waterfowl shooting area operating and reporting procedures. It is necessary to amend this regulation *to delete the prohibition against establishing a commercial waterfowl blind within 100 yards of state-owned public shooting areas and to remove references to restrictions which are duplicated in another regulation* [because of a change in the number of persons permitted to occupy a pit or blind and the size of shot allowed].

Section 1. It is unlawful for any person or persons to establish or use any [commercial] blind or pit for the purpose of taking waterfowl on commercial waterfowl shooting areas, the Ballard Wildlife Management Area and the Peal Wildlife Management Area within the area described herein, unless they conform with this regulation, except for the exemptions listed. A commercial waterfowl shooting area is any area of land and/or water, used in whole or in part for the taking, attempted taking, or the privilege of taking migratory waterfowl where a [daily] monetary charge is made. [This regulation deals with commercial waterfowl hunting; non-commercial hunting is covered by another regulation.]

Section 2. Designated Area Covered By This Regulation. This regulation applies only to the area described as follows: starting at the northwest city limits of the town of Wickliffe in Ballard County to the middle of the Mississippi River, and thence north along the Mississippi to the low water mark of the Ohio River along the Illinois shore to the Ballard-McCracken County line; thence along the county line south to state road 358; thence south along state road 358 to its junction with U.S. Highway 60 at LaCenter; thence following U.S. 60 southwest to the northeast city limits of Wickliffe.

Section 3. Required Permit. A commercial waterfowl permit issued by the Department of Fish and Wildlife Resources [, Frankfort, Kentucky 40601,] must be obtained by any person or persons operating a commercial waterfowl shooting area as defined in Section 1 of this regulation. Any person or persons operating more than one (1) commercial waterfowl shooting area must obtain a permit for each individual area. A land holding divided by a public road may be operated as a commercial waterfowl shooting area under one (1) permit. Whenever a farm unit is divided by land owned by others, a separate permit is required for each tract of land operated as a commercial waterfowl shooting area. An annual fee will be charged for each commercial waterfowl permit.

Section 4. Record Keeping, Reporting and Violations. The holder of a commercial waterfowl permit shall:

(1) Maintain and keep an accurate and complete daily hunter register and waterfowl kill record in duplicate on the hunting area on forms provided by the department. The original copy of said forms for the period Monday through Sunday must be mailed or taken to the Ballard Wildlife Management Area, Route #1, LaCenter, Kentucky 42056, at the close of shooting hours each Sunday during the waterfowl season, and must be postmarked no later than the following Monday or the day following the last day of the waterfowl season. Duplicate copies of these forms must be held at the place of registration. This daily register and kill record shall be exhibited to, and open to inspection by conservation officers and other authorized employees of the Department of Fish and Wildlife Resources and the U.S. Fish and Wildlife Service.

(2) Be responsible for any violation pertaining to his permit, or any type of violation being committed on his premises that is under the permit, unless he reports immediately the violation to a conservation officer.

Section 5. Rules of Compliance for Commercial Waterfowl Shooting Areas. (1) It is unlawful for any person or persons to shoot, take, or attempt to take, any waterfowl except from a blind or pit (see Section *9* [10] of this regulation for exemptions).

(2) It is unlawful for any person or persons to establish or use any blind or pit for the taking of waterfowl within 100 yards of any other blind or pit.

(3) It is unlawful for any person or persons with commercial intentions to establish or locate any blind or pit within 200 yards of any state waterfowl refuge, [or within 100 yards of any state-owned public shooting area] or within fifty (50) yards of any property line. Blinds or pits on state property shall conform to boundary regulations.

(4) It is unlawful for more than five (5) persons, each having one (1) shotgun to occupy a single blind or pit at the same time.

(5) No waterfowl hunting will be permitted along or on the Ohio River from a point 100 yards upstream from Dam 53, downstream to a point 100 yards below the downstream boundary of the Ballard County Wildlife Management Area (the downstream boundary being approximately one and one-half (1½) miles below the mouth of Humphrey Creek). Waterfowl hunting is allowed on or along the remainder of the Ohio and Mississippi Rivers as described in Section 2 of this regulation.

(6) No person or persons shall hunt, in any manner, or carry a gun on any licensed commercial waterfowl shooting area without first registering and checking in with the owner, operator or keeper of the shooting area.

[(7) No shot larger than BBs may be used or possessed for hunting waterfowl. This rule applies statewide; including all of the department's wildlife management areas.]

Section 6. Marking of Harvested Waterfowl. All persons engaged in any type of commercial enterprise where waterfowl, or other game must be harbored, or stored for a period of time, or temporarily, must identify each bird with a tag, giving the name and address of the owner and his license number.

Section 7. Revocation of Permit. Failure to comply with any part of this regulation [shall constitute a violation by the holder of a commercial waterfowl permit, and] shall constitute grounds for the revocation of *the commercial waterfowl permit* [his or her permit].

Section 8. Rules Applying to the Ballard and Peal Wildlife Management Areas. (1) No more than three (3) persons shall occupy a single blind or pit at the same time.

(2) On the Peal Area, hunters may establish only temporary blinds or pits in compliance with Section 5, subsection (2) of this regulation. Any blind or pit may be occupied on a first come basis.

[Section 8. Rules Applying Only to the Ballard Wildlife Management Area located in Ballard County.]

[(1) Not more than three (3) persons are allowed to occupy a single blind or pit at the same time.]

[(2) Both geese and ducks may be taken by hunters occupying a blind or pit in areas designated for goose hunting.]

[(3) Only ducks may be taken by hunters occupying a blind or pit in areas designated for duck hunting. Shooting, taking, or attempting to take geese from a pit or blind in designated duck hunting areas, will constitute a violation of this regulation.]

[(4) No shot larger than BBs may be used or possessed for hunting waterfowl.]

[Section 9. Rules Applying Only to the Peal Wildlife Management Area Located Near Wickliffe in Ballard County.]

[(1) Not more than three (3) persons are allowed to occupy a single blind or pit at the same time.]

[(2) Both ducks and geese may be taken by hunters occupying a pit or blind.]

[(3) Hunters may erect only temporary pits or blinds as long as they comply with the setback provisions and distances between blinds as provided in Section 5, subsection (2), of this regulation.]

[(4) Any hunter may occupy a privately erected temporary, or state erected permanent blind or pit on a first come, first serve basis.]

[(5) No shot larger than BBs may be used or possessed for hunting waterfowl.]

Section *9.* [10.] Conditions and Locations Where Boat is Considered a Blind. For purposes of this regulation, an anchored, stationary or drifting boat from which waterfowl are hunted, is considered to be a blind [except for the area closed to waterfowl hunting as described in Section 5, subsection (5)].

CARL E. KAYS, Commissioner
ADOPTED: August 30, 1982
APPROVED: W. BRUCE LUNSFORD, Secretary
RECEIVED BY LRC: October 7, 1982 at 2:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Commissioner, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 2:140. Spring gun and archery season for wild turkey.

RELATES TO: KRS *150.010,* 150.025, 150.175, 150.176, 150.305, *150.320,* 150.330, 150.360, 150.365, 150.390
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: This regulation pertains to the spring gun and archery season and limits for wild turkey. The Commissioner with the concurrence of the Commission finds this regulation necessary for the continued protection and conservation of wild turkey populations and to insure a permanent and continued supply for present and future residents of the state. The function of this regulation is to provide for the prudent taking of wild turkeys within reasonable limits based upon an adequate supply. This amendment is necessary to change season dates, open new counties, close others and specify hunting procedures and permitted weapons.

Section 1. Seasons and Counties Open to Wild Turkey Hunting. (1) Seasons and Counties: Season dates are April *16* [17] through April *29* [30] in Bath; Rowan; Pike; Letcher; Menifee; Harlan; Butler; Crittenden and *Leslie Counties* [that portion of Christian County east of Highway 41]. The season dates are April *16* [17] through April *22* [23] in Ballard; *Boyle;* Casey; [Leslie;] McCreary*; Pulaski* and Marion Counties*; and that portion of Christian County east of Highway 41.*

(2) All other counties and wildlife management areas are closed to wild turkey hunting unless specified below.

Section 2. Seasons on Wildlife Management Areas. (1) Fort Knox Wildlife Management Area located in Hardin, Bullitt and Meade Counties. Season: *March 19 and 20, March 26 and 27, April 2 and 3, April 9 and 10, April 16 and 17, April 23 and 24* [any or all Saturdays and Sundays in April], depending upon military training priorities.

(2) Land Between the Lakes Wildlife Management Area located in Trigg and Lyon Counties. Season dates are April *13* [14] through *May 1* [April 25].

(3) Pioneer Weapons Wildlife Management Area located in Bath and Menifee Counties. Season dates are April *16* [17] through April *29* [30].

(4) Pine Mountain Wildlife Management Area located in Letcher County. Season dates are April *16* [17] through April *29* [30].

(5) Fort Campbell Wildlife Management Area located in Christian and Trigg Counties. Season dates are April *9* [10] through *24* [25] with no hunting on Mondays and Tuesdays.

(6) Beaver Creek Wildlife Management Area located in McCreary and Pulaski Counties. Season dates are April *16* [17] through April *22* [23].

(7) Redbird Wildlife Management Area located in Leslie and Clay Counties. Season dates are April *16* [17] through April *29* [23].

(8) Blue Grass Depot Activity Wildlife Management Area located in Madison County. Season dates are April 9 through April 30.

Section 3. Bag and Possession Limits for Wild Turkey Hunting. Only one (1) turkey gobbler with visible beard per hunter per calendar year *may* [shall] be taken, except that two (2) turkeys may be taken if one (1) is taken on Fort Knox, Fort Campbell, *Blue Grass Depot Activity* or Land Between the Lakes. A second Kentucky wild turkey permit must be obtained before hunting a second turkey.

Section 4. Requirements and Restrictions for Gun and Archery Turkey Hunting in All Designated Counties and Wildlife Management Areas. (1) The use of dogs in turkey hunting is prohibited.

(2) All turkey hunters must have in their possession a valid wild turkey permit and a valid annual Kentucky hunting license, unless exempted by KRS 150.170(3), (5) or (6).

(3) Turkey may be taken from one-half (½) hour before sunrise until 12:00 noon except at Land Between the Lakes and Fort Campbell Wildlife Management Areas, where hunting is allowed from one-half (½) hour before sunrise to one-half (½) hour after sunset. [All hours are prevailing local time.]

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

(5) Permitted and prohibited weapons. (See exceptions under Wildlife Management Areas.)

(a) Guns. Turkey may be taken with breech-loading shotguns, muzzle-loading shotguns, and muzzle-loading rifles. Shotguns must be no larger than 10-gauge or no smaller than 20-gauge. *Only Number 2 shot or smaller may be used.* Handguns are prohibited for taking turkeys except for muzzle-loading handguns on Pioneer Weapons Wildlife Management Area. Buckshot and slugs may not be possessed while turkey hunting.

(b) Bows and arrows. Turkey may be taken with any longbows and compound bows which do not have devices to hold an arrow at full draw without human aid. Only barbless arrows without chemical treatment or chemical attachments, with broadhead points at least seven-eighths (7/8) inch wide are permitted.

(c) Crossbows. Crossbows are permitted only on the Pioneer Weapons Wildlife Management Area. Crossbows must be of at least 100 pounds pull with a working safety. Arrows must be barbless with broadhead points at least seven-eighths (7/8) inch wide.

(6) Mandatory turkey check stations. Any hunter harvesting a wild turkey must have it checked at the nearest check station or by the nearest available conservation officer no later than 5:00 p.m. on the day the turkey is taken except as required on specified wildlife management areas. The hunter must complete the wild turkey permit and attach the tag portion to the turkey immediately after taking.

(7) Turkeys may be taken with the aid of [artificial turkey] decoys. Live turkeys may not be used as decoys.

(8) Turkeys may not be hunted on any baited area. A baited area means any area where feed, grains or any other substances capable of luring wild turkeys have been placed. Such areas shall be considered baited for ten (10) days following the complete removal of all bait. This does not prohibit hunting wild turkeys on any areas where grains, feed or other substances exist as the result of bona fide agricultural practices, or as the result of manipulating a crop for wildlife management purposes, provided that manipulation for wildlife management purposes does not include the placing or scattering of grain, feed or other substances once removed from or stored on the field where grown.

Section 5. Exceptions. (1) Land Between the Lakes Wildlife Management Area. Wild turkey may be taken on the Kentucky portion of Land Between the Lakes only in designated areas. A current Land Between the Lakes hunting permit is required. [Only Number 2 shot or smaller is permitted.] All rifles are prohibited. All turkey taken must be checked [out] at Land Between the Lakes and must be tagged with a Land Between the Lakes area tag.

(2) Fort Knox Wildlife Management Area. All turkeys harvested must be checked [in] at Building 7334 by 2:00 p.m. on the day harvested. Muzzle-loading rifles smaller than .32 caliber, 10-gauge shotguns and archery equipment are prohibited.

(3) Pioneer Weapons Wildlife Management Area. Turkeys may not be taken with breech-loading shotguns.

(4) Fort Campbell Wildlife Management Area. A post combination hunting-fishing permit is required. Muzzle-loading rifles [and shot smaller than No. 2] are prohibited.

CARL E. KAYS, Commissioner
ADOPTED: August 30, 1982
APPROVED: W. BRUCE LUNSFORD, Secretary
RECEIVED BY LRC: October 7, 1982 at 2:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Commissioner, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601.

TRANSPORTATION CABINET
Kentucky Airport Zoning Commission
(Proposed Amendment)

602 KAR 50:010. Definitions.

RELATES TO: KRS 183.861 to 183.990
PURSUANT TO: KRS 13.082, 183.861
NECESSITY AND FUNCTION: To define certain terms used in the regulations of the Kentucky Airport Zoning Commission.

Section 1. Administrative Terms. (1) "Administrator" means the Administrator of the Kentucky Airport *Zoning* Commission or any individual to whom he has delegated his authority in the matter concerned.

(2) "Commission" means the Kentucky Airport Zoning Commission created pursuant to KRS 183.861 to 183.990.

(3) "Local zoning body" means an independent, joint or regional planning commission or any local government which is a member of a planning unit created pursuant to KRS Chapter 100.

Section 2. Zoning Terms. (1) "Airport" as used in these regulations, means any area of land or water *used for landing and taking off of aircraft* operated or constructed by *any person,* an airport board or other governmental agency located within the Commonwealth which is *available for public use and is* designed for the landing and taking-off of aircraft, and any appurtenant areas used, or intended for use, for airport building, facilities, or rights of way, and all airport buildings and facilities located thereon; including, but not limited to, runways, taxiways, aircraft ramps, terminal and cargo buildings, gates, hangars, shops, service buildings, automobile parking, motels, restaurants, retail and wholesale stores, banks, automobile service facilities and garages, and entrance and service roads used or useful in connection with or as a part of the airport.

(2) "Jurisdictional surface" means that surface extending from the periphery of the *runway* [airport] reference points as established on the zoning map and extending outward and upward therefrom at a slope and horizontal distance as defined in these regulations.

(3) "Zoned airspace" means that airspace *above the* [within the] primary approach surface and above the [conical] surface *created by a slope of 100:1 extending outward and upward from the peripheral of the reference points for each runway for a horizontal distance of 20,000 feet and thereafter at a slope of 30:1 for horizontal distance* in which zoning jurisdiction is assumed by these regulations.

(4) "Reference point" for each runway means that point as depicted on the airport map at the end of each runway as presently exists or as depicted on the airport master plan or as proposed to be extended in a letter of intent on file with the Federal Aviation Administration, all of which shall have reasonable assurance of completion. The elevation of each reference point shall in all cases be its height above sea level.

(5) "Runway" means the surface of an airport used for landing and taking off of aircraft as depicted on the airport zoning map and airport master plan.

(6) "Obstruction" means any structure, object of natural growth, or use of land which protrudes into the zoned airspace as herein defined or a height of over 200 feet above the ground level or *fifty (50) feet in height above the surface of open water of the Ohio River, Mississippi River, Kentucky Lake, Lake Barkley, Barren River Lake, Nolin Lake Reservior, Rough River Lake, Dale Hollow Reservior (Ky.), Lake Cumberland, Green River Lake, and Taylorsville Lake or 200 feet above the* water level of all *other* waters within the Commonwealth of Kentucky.

(7) "Navigable airspace" means air space above the minimum safe altitudes of flight prescribed by the regulations of the federal aviation administration FAR Part 91.79 or department consistent therewith, and includes the air space necessary for normal landing or taking off of aircraft.

(8) "Primary approach surface" means the area as depicted on Airport Zoning Maps with the horizontal distance beginning at the width of the primary surface and extending outward to a point where the prescribed approach slope intersects the horizontal surface.

(9) "Conical surface" means a surface extending outward and upward from the periphery of the horizontal surface at a slope of twenty (20) to one (1) for a horizontal distance of 4,000 feet.

(10) "Horizontal surface" means a horizontal plane 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc referred to above is:

(a) 5,000 feet for all runways designated as utility or visual;

(b) 10,000 feet for all other runways. The radius of the arc specified for each end of a runway will have the same arithmetical value. That value will be the highest determined for either end of the runway. When a 5,000-foot arc is encompassed by tangents connecting two (2) adjacent 10,000-foot arcs, the 5,000-foot arc shall be disregarded on the construction of the perimeter of the horizontal surface.

(11) "Aircraft" means a heavier than air fixed wing aircraft or rotorcraft that depends principally on its engine(s) for flight through the air.

Section 3. General Definitions. (1) "Person" means any individual, firm, partnership, corporation, company, association, or body politic, and includes any trustee, receiver, assignee or other similar representative thereof.

(2) "Structure" means any object constructed or installed by man, including, but not limited to, buildings, towers, smokestacks, and overhead transmission lines, and objects of natural growth whether temporary or permanent.

(3) "Body politic" means the Commonwealth of Kentucky and its agencies, or any instrumentality of the state government, county or city government.

(4) "Alter a structure" means to increase or decrease the height of a structure or change the visibility of a structure by painting, marking or lighting the structure in a manner different from the painting, marking, and lighting standards set forth in the regulations of the commission.

(5) "Natural flyway" means a valley or other suitable terrain conducive for air navigation which ordinarily contains a highway, railway, or waterway which leads to a populated, industrial or commercial area.

Section 4. Airport Master Plan. As used in the regulations of the commission "Airport Master Plan" or "airport map" means the basic plan for the layout of a public *use* airport that shows as a minimum:

(1) The present boundaries of the airport and of the offsite area that the owner of a public *use* airport owns or controls for airport purposes, and of their proposed additions;

(2) The location and nature of existing and proposed airport facilities (such as runways, taxiways, aprons, terminal buildings, hangars, and roads) and of their proposed modification and extensions; and,

(3) The location of existing and proposed non-aviation areas, and of their existing improvements.

(4) An owner of an existing or proposed public airport may file a copy of its airport layout plan prepared under Part 151 of the Federal Aviation Regulations that has been approved by the FAA in lieu of an airport master plan or airport map.

Section 5. Definitions Relating to Permits. (1) "Permits" means the *written authorization* [approval of an Application for A Permit] to alter or construct a structure *issued* by the administrator of the commission pursuant to the regulations of the commission *or in accordance with findings and directions of the commission.*

(2) "Airport land use permit" means the *written authorization* [approval] by order of the commission [of a request by a public airport] to change a use or activity within an airport which is otherwise prohibited by the regulations of the commission.

Section 6. "Aeronautical study" means *a review or analysis* [that study] of the effect of the proposed construction or alteration of a structure upon the operation of air navigation facilities and the safe and efficient utilization of the navigable airspace.

CLAIR R. NICHOLS, Chairman
ADOPTED: September 20, 1982
APPROVED: FRANK R. METTS, Secretary
RECEIVED BY LRC: September 27, 1982 at 12:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Stephen Reeder, Deputy Secretary for Legal Affairs, 1008 State Office Building, Frankfort, Kentucky 40622.

TRANSPORTATION CABINET
Kentucky Airport Zoning Commission
(Proposed Amendment)

602 KAR 50:020. Administrator.

RELATES TO: KRS 183.861 to 183.990
PURSUANT TO: KRS 13.082, 183.861
NECESSITY AND FUNCTION: To create the position of the administrator of the Kentucky Airport Zoning Commission and to define his duties and authority such that the Office of the Kentucky Airport Zoning Commission may be kept open continuously for the transaction of business and to expedite the business of the commission for the convenience of the public.

Section 1. There shall be appointed upon order of the commission, an individual who shall be the administrator of the commission.

Section 2. It shall be the duty of the administrator to maintain a public file in the offices of the *Kentucky* [Department of] Transportation *Cabinet*, Division of *Mass Transportation* [Aeronautics and Airport Zoning] showing airport zoning maps of each public *use* airport within the state and the area around such airport over which it has [assumed] jurisdiction for zoning purposes and to maintain a public file showing any regulations adopted pertaining to land uses [and such shall constitute public notice of same].

Section 3. The administrator shall have the authority and power, subject to the review of the commission, to:
(1) Reject, approve and disapprove applications for permits, as set forth in the regulations of the commission;
(2) Conduct investigations of a violation of the regulations of the commission;
(3) Conduct aeronautical studies of applications for permits;
(4) Direct the preparation of all documents, papers, and evidence necessary to enforcement of the statutes and regulations of the commission pursuant to KRS 183.861, 183.873 and 183.990;
(5) Cause notices to be given of all hearings of the commission that are required by statute or regulation; and
(6) Perform all duties and functions that may hereinafter be delegated to the administrator either by the regulations of the commission or its orders.

CLAIR R. NICHOLS, Chairman
ADOPTED: September 20, 1982
APPROVED: FRANK R. METTS, Secretary
RECEIVED BY LRC: September 27, 1982 at 12:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Stephen Reeder, Deputy Secretary for Legal Affairs, 1008 State Office Building, Frankfort, Kentucky 40622.

reference points for each runway, as depicted on the Airport Zoning Map, for a horizontal distance of 20,000 feet, and thereafter at a slope of thirty (30) to one (1) for a horizontal distance of 24,000 feet.

Section 2. The commission assumes zoning jurisdiction over the use of land and structures within public *use* airports within the state.

Section 3. The commission assumes jurisdiction over the use of land and structures around airports notwithstanding the provisions of KRS Chapters 100 and 147.

Section 4. The commission assumes jurisdiction from the ground upward within the limits of the primary approach surface as depicted on Airport Zoning Maps approved by the Kentucky Airport Zoning Commission.

Section 5. The commission assumes jurisdiction over the airspace of the Commonwealth that exceeds 200 feet in height above ground level or fifty (50) feet in height above the surface of open water of the Ohio River, Mississippi River, Kentucky Lake, Lake Barkley, Lake Cumberland, Barren River Lake, Nolin Lake Reservoir, Rough River Lake, Dale Hollow Reservoir (Ky.), Green River Lake, and Taylorsville Lake.

Section 6. The administrator is to prepare a single map indicating airport zoning jurisdiction of all public owned and private owned airports available for public use across the Commonwealth. Said map shall be revised and updated as necessary.

CLAIR R. NICHOLS, Chairman
ADOPTED: September 20, 1982
APPROVED: FRANK R. METTS, Secretary
RECEIVED BY LRC: September 27, 1982 at 12:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Stephen Reeder, Deputy Secretary for Legal Affairs, 1008 State Office Building, Frankfort, Kentucky 40622.

TRANSPORTATION CABINET
Kentucky Airport Zoning Commission
(Proposed Amendment)

602 KAR 50:030. Jurisdiction of commission.

RELATES TO: KRS 183.861, 183.865, 183.867, *183.870*
PURSUANT TO: KRS 13.082, 183.861
NECESSITY AND FUNCTION: To define the areas over which the Kentucky Airport Zoning Commission assumes jurisdiction for the purpose of zoning in accordance with the statutes.

Section 1. The commission assumes zoning jurisdiction over that airspace over and around the public *use* airports within the Commonwealth which lies above the *imaginary* [conical] surface which shall extend outward and upward at a slope of 100 to one (1) from the peripheral of the

TRANSPORTATION CABINET
Kentucky Airport Zoning Commission
(Proposed Amendment)

602 KAR 50:040. Airport land uses.

RELATES TO: KRS 183.865
PURSUANT TO: KRS 13.082, 183.861
NECESSITY AND FUNCTION: To regulate the use of land within airports of the Commonwealth within the jurisdiction and function of the commission.

Section 1. Notwithstanding the provisions of any ordinance of a city or county legislative body pursuant to the authority of KRS Chapters 100 or 147, the following uses shall be allowed on the land within an airport: runways; taxiway, aircraft ramps; navigational aids and signals; safety equipment; aircraft terminals; cargo and service

buildings; ramps; gates; hangars, aircraft sales, leasing, repair, and storage; automobile parking, garage and service facilities; motels and restaurants.

Section 2. Notwithstanding the provisions of any ordinance of a city or county legislative body pursuant to the authority of KRS Chapters 100 or 147, the commission may allow the following additional uses, which do not constitute a hazard to air navigation: any commercial, industrial or residential use, including but not limited to governmental agencies and operation, banks and financial institutions, retail and wholesale stores, warehouses and storage facilities; manufacturing facilities and operations; offices and service facilities upon the issuance of an airport land use permit by order of the commission.

Section 3. Any activity or structure which lawfully existed before the adoption or amendment of the zoning regulations of the commission, but does not conform to all of the regulations which pertain to the use of land within public airports may continue as a nonconforming use, *provided there is no alteration or change to the activity or structure which extends or enlarges the nonconformity.*

Section 4. (1) A request for an airport land use permit shall be filed with the administrator and it shall state: the petitioner's name, address, and telephone number; the name of the public airport concerned; a description of the dimensions of any structure proposed to be erected; and a statement or reasons why the proposed use and structure will not constitute a hazard to air navigation.

(2) The petitioner shall annex to the request a copy of the airport zoning map for the airport concerned with the site of the proposed use or structure located thereon.

(3) The petition shall be considered at the next meeting of the commission and *a copy of the commission's decision shall be mailed to the petitioner* [the commission shall issue its written order either granting the petition, denying the petition or it may grant the petitions upon conditions that would eliminate any hazard to air navigation].

[(4) A copy of the order shall be mailed to the petitioner.]

[(5) The petitioner may request a hearing within thirty (30) days of an order denying a petition or granting a petition upon conditions.]

[(6) The petitioner who requests a hearing shall be notified of the time and place of the hearing to consider the petition.]

[(7) The hearing shall be conducted in accordance with the regulations of the commission.]

CLAIR R. NICHOLS, Chairman
ADOPTED: September 20, 1982
APPROVED: FRANK R. METTS, Secretary
RECEIVED BY LRC: September 27, 1982 at 12:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Stephen Reeder, Deputy Secretary for Legal Affairs, 1008 State Office Building, Frankfort, Kentucky 40622.

TRANSPORTATION CABINET
Kentucky Airport Zoning Commission
(Proposed Amendment)

602 KAR 50:050. Airport zoning map.

RELATES TO: KRS 183.867
PURSUANT TO: KRS 13.082, 183.861, 183.867(3)
NECESSITY AND FUNCTION: To outline the procedure for the adoption of the airport zoning regulations related to existing airports under the jurisdiction of the commission, and to provide for the procedures for revising airport zoning maps.

Section 1. Every owner of a public *use* airport in the state may file with the administrator of the Kentucky Airport Zoning Commission a map showing the airport and the area surrounding the airport used for approach and landing purposes or an airport master plan.

Section 2. If an owner of a public *use* airport fails to file a map as provided under Section 1 of this regulation, then the administrator shall cause an appropriate map to be prepared showing the airport and the area surrounding the airport used for approach and landing purposes.

Section 3. The administrator shall thereafter designate *the area of jurisdiction* on such map or airport master plan, prepared or filed under Sections 1 and 2 of this regulation, by reference to the regulations and advisory circulars of the Federal Aviation Administration concerning the area required for the safe maneuvering approach and landing of aircrafts [, and designate the area over which jurisdiction is assumed for zoning purposes pursuant to regulations of the commission].

Section 4. Thereafter the airport zoning map prepared pursuant to Section 3 of this regulation shall be submitted to the commission for its adoption by order of the commission. If the airport zoning map is adopted by order of the commission, the date of its adoption shall be noted on the airport zoning map, and the original shall be kept in the office of the administrator pursuant to KRS 183.867(3) and the regulations of the commission.

Section 5. (1) Every public *use* airport for which an airport zoning map has been adopted by the commission shall inform the administrator of any changes in the boundaries, runways, and taxiways either by filing a revised map or furnishing the administrator with information sufficient to cause a revised map to be prepared.

(2) The administrator shall thereafter designate *the area of jurisdiction* on such revised map prepared or filed under subsection (1) of this section, by reference to the regulations and advisory circulars of the Federal Aviation Administration concerning the area required for the safe maneuvering approach and landing of aircraft [, and designate the area over which jurisdiction is to be assumed for zoning purposes pursuant to regulations of the commission].

(3) The revised map prepared under this section shall constitute the airport zoning map for the public *use* airport upon its adoption by order of the commission and shall supersede any airport zoning map heretofore adopted by the commission.

Section 6. The administrator shall notify any local zoning body, whose jurisdiction is limited by the zoning

jurisdiction of the commission, by sending to the local zoning bodies a copy of the airport zoning map adopted by order of the commission.

Section 7. The local zoning bodies may retain jurisdiction of zoning in such areas as to all other matters; however, the local zoning bodies shall not adopt any ordinances or regulations that conflict with the jurisdiction of the commission in such areas as it pertains to the safe and proper use of the airport involved.

Section 8. Every airport zoning map heretofore adopted by the commission shall remain in full force and effect until revised pursuant to the regulations of the commission.

CLAIR R. NICHOLS, Chairman
ADOPTED: September 20, 1982
APPROVED: FRANK R. METTS, Secretary
RECEIVED BY LRC: September 27, 1982 at 12:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Stephen Reeder, Deputy Secretary for Legal Affairs, 1008 State Office Building, Frankfort, Kentucky 40622.

TRANSPORTATION CABINET
Kentucky Airport Zoning Commission
(Proposed Amendment)

602 KAR 50:060. Construction within *jurisdictional airspace* [conical surface permit].

RELATES TO: KRS 183.861 to 183.890
PURSUANT TO: KRS 13.082, 183.861
NECESSITY AND FUNCTION: To regulate the construction and alteration of structures in the zoned airspace of the state which present an obstruction to safety of air navigation.

Section 1. No person shall *maintain,* construct or alter any structure which constitutes an obstruction as defined by the regulations of the commission, unless the person who intends to *maintain,* construct or alter such a structure obtains a permit from the commission in accordance with the procedures set forth in the regulations of the commission.

Section 2. The commission shall consider the factors set forth in KRS 183.868 *and 183.870* in approving or disapproving an application for a permit under Section 1.

Section 3. No person shall maintain, construct or alter any overhead transmission lines or wires that exceed 150 feet above ground level and exceed 1,000 feet span length across a natural flyway for which the commission has assumed jurisdiction unless the person who intends to maintain, construct or alter a structure files an application for a permit to construct or alter.

CLAIR R. NICHOLS, Chairman
ADOPTED: September 20, 1982
APPROVED: FRANK R. METTS, Secretary
RECEIVED BY LRC: September 27, 1982 at 12:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Stephen Reeder, Deputy Secretary for Legal Affairs, 1008 State Office Building, Frankfort, Kentucky 40622.

TRANSPORTATION CABINET
Airport Zoning Commission
(Proposed Amendment)

602 KAR 50:070. Navigable airspace outside conical surface construction permit.

RELATES TO: KRS 183.870
PURSUANT TO: KRS 13.082, 183.861
NECESSITY AND FUNCTION: To regulate the heights of structures in the airspace of the Commonwealth for the benefit of the safety of aircraft and the public.

Section 1. No person shall construct, [or] alter, *or maintain* any existing structure above the ground level or the surface of open water in that remaining airspace of the state outside the conical surface that exceeds: 200 feet in height above ground level, or fifty (50) feet in height above the surface of open water of the Ohio River, Mississippi River, Kentucky Lake, Lake Barkley, Lake Cumberland, *Barren River Lake, Nolin Lake Reservoir, Rough River Lake, Dale Hollow Reservoir (Ky.), Green River Lake, Taylorsville Lake,* and 200 feet above all other waters, unless the persons who intend to construct or alter such a structure obtain a permit from the commission in accordance with the procedures set forth in the regulations of the commission.

Section 2. The commission shall consider the factors set forth in KRS 183.870(1) in approving or disapproving an application for the issuance of a permit under Section 1.

CLAIR R. NICHOLS, Chairman
ADOPTED: September 20, 1982
APPROVED: FRANK R. METTS, Secretary
RECEIVED BY LRC: September 27, 1982 at 12:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Stephen Reeder, Deputy Secretary for Legal Affairs, 1008 State Office Building, Frankfort, Kentucky 40622.

TRANSPORTATION CABINET
Kentucky Airport Zoning Commission
(Proposed Amendment)

602 KAR 50:080. Permit application content.

RELATES TO: KRS 183.869, 183.870, 183.871
PURSUANT TO: KRS 13.082, 183.861
NECESSITY AND FUNCTION: To outline the information that is required of an applicant to *maintain,* alter or construct a structure which is necessary for the administrator and commission to make a determination whether a permit should be issued and to delegate the responsibility for preparing the appropriate form to the administrator.

Section 1. Definitions. (1) "The person who intends to *maintain,* construct or alter a structure" and "applicant" means the person who will own or have control over the completed structure.

(2) "Certification by the applicant" means that the certification shall be made by the individual who is the: one who will own or control the structure when completed; or a

partner in a partnership; or the president or authorized *officer* [agent] of a corporation, company or association, or authorized *official* [agent] of a body politic; or legally designated representative of a trustee, receiver, or assignee.

Section 2. The administrator shall cause to be prepared a form to be known as the "Application for Permit to Alter, *Maintain* or Construct a Structure" which shall require the following information of the applicant:

(1) The name and address and telephone number of the person who intends to construct or alter a structure.

(2) Whether structure is to be temporary or permanent.

(3) Whether the permit is to construct a new structure or alter an existing structure.

(4) The nature of the structure and a complete description of it.

(5) The location of the proposed or existing structure by its latitude and longitude in degrees, minutes, and seconds.

(6) The elevation of the ground level of the proposed or existing structure above sea level.

(7) The nearest city and post office to the site.

(8) The distance and direction from the nearest city, if the site is located outside the corporate limits of a city.

(9) County in which structure is or will be located.

(10) [(9)] Name of the nearest public airport or aircraft landing area.

(11) [(10)] Distance and direction from the boundary of the nearest public airport or aircraft landing area.

(12) [(11)] The date the proposed construction or alteration of a structure is to commence and the date that work will be completed.

(13) [(12)] The over-all height in feet of the completed structure above the ground level or the mean water level.

(14) [(13)] The applicant should state whether the subject structure will be marked in accordance with the applicable provisions of 602 KAR 50:100, Section 1, and whether the subject structure will be lighted in accordance with the provisions of 602 KAR 50:100, Section 1.

(15) [(14)] State whether "Notice of Construction or Alteration" (Form 7460-1) has been filed with the Federal Aviation Administration for airspace clearance and the date of filing.

(16) [(15)] Certification by the applicant that all statements in the application are true, complete and correct to the best of the applicant's knowledge and belief.

(17) [(16)] The signature and title of the applicant authorized to make the application and certification with the date of the signing thereof.

(18) [(17)] The form prepared by the administrator shall also include a space for the use of the commission which indicates whether the application was approved or disapproved, date thereof, and the signature of the chairman.

Section 3. There shall be attached to the "Application for Permit to Alter, *Maintain* or Construct a Structure:"

(1) A 7.5 minute quadrangle topographical map prepared by the United States Geological Survey and the Kentucky Geological Survey with the location of the structure which is the subject of the application indicated thereon. (The 7.5 minute quadrangle map may be obtained from the Kentucky Geological Survey, Department of Mines and Minerals, Lexington, Kentucky 40506, *or Kentucky Commerce Cabinet, Map Sales Office, 133 Holmes Street, Frankfort, Kentucky 40601.*)

(2) Copies of Federal Aviation Administration Applications (FAA Form 7460-1) or any orders issued by and received from the Chief Traffic Branch, FAA area office.

(3) If the applicant has indicated on the application that the structure will not be marked or lighted in accordance with the regulations of the commission, the applicant shall attach a written request for a determination by the commission that the marking and lighting is not necessary. The applicant shall specifically state the reasons that absence of marking and lighting will not impair the safety of air navigation.

(4) If the structure to be constructed or altered is for the purpose of radio transmitting, then the applicant shall attach a true copy of the application for a license from the Federal Communications Commission.

CLAIR R. NICHOLS, Chairman
ADOPTED: September 20, 1982
APPROVED: FRANK R. METTS, Secretary
RECEIVED BY LRC: September 27, 1982 at 12:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Stephen Reeder, Deputy Secretary for Legal Affairs, 1008 State Office Building, Frankfort, Kentucky 40622.

TRANSPORTATION CABINET
Kentucky Airport Zoning Commission
(Proposed Amendment)

602 KAR 50:090. Application procedure.

RELATES TO: KRS 183.869, 183.870, 183.871
PURSUANT TO: KRS 13.082, 183.861
NECESSITY AND FUNCTION: This regulation outlines rules governing procedure that a person must follow in order to obtain a permit to erect or alter a structure, and to define the authority of the Administrator of the Kentucky Airport Zoning Commission to reject or approve applications for permits and provide for the rules of practice for the processing of an application for a permit.

Section 1. (1) Every person who is required by the regulations of this commission to obtain a permit to construct, *maintain* or alter a structure shall send two (2) executed copies of the Form *TD* [DT] 56-50, Application for Permit to Alter, *Maintain* or Construct a Structure, to the Administrator of the Kentucky Airport Zoning Commission, Division of *Mass Transportation* [Aeronautics and Airport Zoning], Frankfort, Kentucky *40622* [40601].

(2) The application must be submitted at least *sixty (60)* [thirty (30)] days prior to the date the proposed construction or alteration is to begin [for structures under 200 feet above ground level; and ninety (90) days prior to date for structures 200 feet or more above ground level. The completed height of the structure above ground level determines the time of filing of the application].

Section 2. (1) Upon receipt of the application, the administrator shall review the application to determine whether all information that is required has been submitted.

(2) If the application is incomplete, the administrator shall reject the application and return the application to the person submitting the application along with a statement of the information that is required by the commission for a complete application.

Section 3. (1) If the application is complete, then the administrator shall conduct an aeronautical study for the purpose of determining whether to recommend to the commission that a permit be issued.

(2) The administrator may approve an application for a permit to alter or construct a structure when he has determined that the structure would be shielded by existing structures of a permanent and substantial character, or by natural terrain or topographic features of equal or greater height and would be located in a congested area of a city or unincorporated area where it is evident beyond a reasonable doubt that the proposed structure so shielded will not adversely affect the safety of air navigation.

(3) Otherwise, the administrator shall submit the application along with his recommendation for approval or disapproval to the commission at its next meeting.

(4) Prior to the submission of the application to the commission, the administrator shall circulate a copy of the application and the conclusions of his aeronautical study to any interested parties including, but not limited to, local airport boards, municipal and county governments' officials, airport owners and operators.

(5) Any interested parties shall be permitted to file with the commission written objections to the approval of the applications. Said objections shall be filed at least ten (10) days prior to the date of the meeting of the commission.

(6) The application normally will be considered at the next meeing of the commission and a copy of the commission's decision shall be mailed to the applicant and other interested parties.

[Section 4. (1) In the event an application for a permit is disapproved by order of the commission, the applicant may petition the commission for a hearing within thirty (30) days of the date action was taken on the application.]

[(2) The petition for a hearing must contain in a full statement of the reasons that the application should be approved, and shall be filed with the Administrator, Kentucky Airport Zoning Commission, Division of Aeronautics and Airport Zoning, Frankfort, Kentucky 40601.]

[Section 5. (1) The administrator shall fix a time and place for a hearing on the applicant's petition for a review of the disapproval of an application by the commission or administrator and shall give notice of the time and place of the hearing by mail, not less than twenty (20) days before the date of the hearing to the petitioner and to any party deemed by the commission to have an interest in the proceedings.]

[(2) The airport board, chief executive of a city and county judge, or any person who owns an airport in the proximity of the site of the proposed construction or alteration of a structure shall be deemed an interested party and shall receive notice of the hearing.]

[Section 6. The hearing before the commission shall be conducted in accordance with the regulation of the commission governing the conduct of hearings.]

CLAIR R. NICHOLS, Chairman
ADOPTED: September 20, 1982
APPROVED: FRANK R. METTS, Secretary
RECEIVED BY LRC: September 27, 1982 at 12:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Stephen Reeder, Deputy Secretary for Legal Affairs, 1008 State Office Building, Frankfort, Kentucky 40622.

TRANSPORTATION CABINET
Airport Zoning Commission
(Proposed Amendment)

602 KAR 50:100. Marking and lighting obstruction standards.

RELATES TO: KRS 183.861 to 183.990
PURSUANT TO: KRS 13.082, 183.861
NECESSITY AND FUNCTION: To describe the standards for the marking and lighting of obstructions as official policy of the Kentucky Airport Zoning Commission in order to provide the most effective means of indicating the presence of obstructions to pilots, in accordance with the commission's responsibility to promote the safety of air commerce.

Section 1. (1) The Advisory Circular No. 70/7460 latest revision, Obstruction Marking and Lighting, issued by the Federal Aviation Administration, is hereby adopted and incorporated by reference, except as otherwise provided in the regulations of the commission.

(2) The above mentioned material has been published by Federal Aviation Administration and may be obtained from the Administrator, Kentucky Airport Zoning Commission, Frankfort, Kentucky *40622* [40601].

Section 2. Every person who is issued a permit to alter or construct a structure, or who maintains an obstruction as defined in 602 KAR 50:010, is required to mark and light the structure in accordance with the applicable standards described in Section 1 of this regulation, unless the commission determines that the absence of such marking and lighting will not impair the safety of air navigation.

Section 3. The determination that the absence of marking and lighting of a structure will not impair the safety of air navigation shall not be made by the commission unless the applicant for a permit to alter or construct a structure requests such a determination at the time of filing of an application. Otherwise, the marking and lighting standards described in Section 1 of this regulation shall be mandatory.

Section 4. Any structure that exceeds 200 feet above ground level shall be obstruction marked and lighted in accordance with the advisory circular listed under Section 1 of this regulation.

Section 5. Any holder of a commission variance permit that requires obstruction marking and lighting, as a condition for the approval of the application, may request a change in the obstruction marking and lighting requirements in order to maintain or improve the existing obstruction marking and lighting system based upon technological advances. Said request shall be in writing and approved by the commission prior to any changes or alterations being made to the previously approved obstruction marking and lighting system.

Section 6. In the event that an existing, standing facility is abandoned, the permit holder shall continue to maintain obstruction marking and lighting (if required by the commission) unless the facility is otherwise physically removed.

CLAIR R. NICHOLS, Chairman
ADOPTED: September 20, 1982
APPROVED: FRANK R. METTS, Secretary
RECEIVED BY LRC: September 27, 1982 at 12:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Stephen Reeder, Deputy Secretary for Legal Affairs, 1008 State Office Building, Frankfort, Kentucky 40622.

TRANSPORTATION CABINET
Kentucky Airport Zoning Commission
(Proposed Amendment)

602 KAR 50:110. Alteration construction, valid permit period.

RELATES TO: KRS 183.861 to 183.990
PURSUANT TO: KRS 13.082, 183.861
NECESSITY AND FUNCTION: The commission finds it is necessary for the public interest that construction or alteration of a structure should commence within a reasonable period after the issuance of a permit; therefore, the function of this regulation is to limit the [valid] period *in which to commence construction* [of a permit].

Section 1. A permit to construct or alter a structure issued by the commission or administrator shall be valid for a period of eighteen (18) months from its date of issuance. If said construction or alteration is not commenced within said eighteen (18) months period, said permit shall be void and no work shall be performed without the issuance of a new permit.

Section 2. All holders of an approved KAZC permit will be required to complete and return a construction/alteration project status report as soon as the structure reaches its greatest height. This report can be filed with the administrator any time during the eighteen (18) months valid permit period.

Section 3. All commission permit holders shall send written notification to the administrator within thirty (30) days after the removal of a tall structure that was issued a variance permit from the commission. In the event a commission permit holder should sell or transfer his facility, the existing commission permit shall transfer to the new owner. The new owner shall notify the administrator in writing of this change.

CLAIR R. NICHOLS, Chairman
ADOPTED: September 20, 1982
APPROVED: FRANK R. METTS, Secretary
RECEIVED BY LRC: September 27, 1982 at 12:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Stephen Reeder, Deputy Secretary for Legal Affairs, 1008 State Office Building, Frankfort, Kentucky 40622.

TRANSPORTATION CABINET
Kentucky Airport Zoning Commission
(Proposed Amendment)

602 KAR 50:115. Enforcement procedures; violations.

RELATES TO: KRS 183.861 to 183.990
PURSUANT TO: KRS 13.082, 183.861
NECESSITY AND FUNCTION: The Kentucky Airport Zoning Commission finds it necessary to establish administrative enforcement procedures whereby a person in violation of the statutes, [and] regulations, *orders or permits* of the commission may be given notice of the violation or show cause to the commission why he is not in violation as a means to minimize litigation.

Section 1. The commission delegates responsibility to *determine apparent violations of* [enforce] its statutes, regulations, [and] orders *and permits* to *its* [the] administrator. The administrator shall investigate violations of the statutes, regulations, [and] *orders and permits* and mail *a notice* [an order] to the person who owns or controls *the* [a] structure, *land, etc.*, in violation thereof.

Section 2. The *notice* [order] shall state the location, type of structure and the reasons the structure is in violation of the statutes, [and] regulations, *orders or permit* of the commission. The person shall be *requested to correct the violation* [ordered to remove the structure from the zone airspace or navigable airspace] within thirty (30) days of the *notice* [order] or show cause to the commission why *compliance should not be enforced.* [the subject structure should not be removed. The order shall state the penalty in KRS 183.990(3).]

Section 3. The person to whom the *notice* [order] is directed pursuant to this regulation may show cause why *enforcement should be withheld* [the structure should not be removed] by filing a written petition for a hearing before the commission. The petition may be in the form of a letter. The petition shall be filed in person or by mail with the Administrator, Kentucky Airport Zoning Commission, Frankfort, Kentucky *40622* [40601]. The petitioner shall state, *if applicable,* facts sufficient to show:
(1) The structure is not an obstruction in the zoned airspace of this state; or
(2) The structure is in the zoned airspace of this state, but it is not a hazard to the safety of air navigation; and
(3) Any other facts the petitioner deems relevant that would relieve him from the terms of the order, including a request for an extension of time to remove the structure.
(4) If the administrator does not receive a petition from a person to whom a notice has been mailed and finds that violation continued during the period allowed in the notice, then the administrator shall refer the matter to the commission for its action in order to determine the appropriate penalties and action for the said violation.

Section 4. If the administrator does not receive a petition from a person to whom *a notice* [an order] has been mailed and finds that the structure has not been removed during the period allowed in the *notice* [order], then the administrator shall refer the matter to the commission for its action.

Section 5. The administrator shall set the petition for a hearing *to be* [pursuant to 602 KAR 50:090, Section 5. The hearing shall be] conducted pursuant to 602 KAR 50:120.

Section 6. *The commission may order an injunctive action be instituted in circuit court for the enforcement of applicable statutes, rules, regulations, and orders issued pursuant to this regulation.* [The commission may state one (1) of the following conclusions in its final order:]

[(1) The structure is not in the zoned airspace of this state.]

[(2) The structure is in the zoned airspace of this state, but it is not a hazard to air navigation.]

[(3) The structure is in the zoned airspace of this state, and it is a hazard to the safety of air navigation. The person who owns or controls the structure shall be ordered to remove it from the zoned airspace within a reasonable time stated in the order.]

[Section 7. The commission may order an injunctive action be instituted in circuit court for the enforcement of applicable statutes, rules, regulations, and orders issued pursuant to this regulation.]

CLAIR R. NICHOLS, Chairman
ADOPTED: September 20, 1982
APPROVED: FRANK R. METTS, Secretary
RECEIVED BY LRC: September 27, 1982 at 12:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Stephen Reeder, Deputy Secretary for Legal Affairs, 1008 State Office Building, Frankfort, Kentucky 40622.

TRANSPORTATION CABINET
Kentucky Airport Zoning Commission
(Proposed Amendment)

602 KAR 50:120. Hearing procedures.

RELATES TO: KRS 183.871
PURSUANT TO: KRS 13.082, 183.861
NECESSITY AND FUNCTION: To provide for general procedures for the conduct of all hearings on any petition to the commission [for a hearing regarding any regulations adopted or orders issued].

Section 1. *Request for a hearing shall be accomplished as follows:* [Every hearing before the commission shall be conducted in a summary manner or as otherwise directed by the chairman. Opportunity will be given to the petitioner and all interested persons to produce witnesses and to present either in person or by counsel the points of issue. Such hearings shall be conducted in such manner as to ascertain the substantial rights of the petitioner and interested parties.]

(1) With the exception of those actions taken under 602 KAR 50:115, any person aggrieved by any action taken by the commission with respect to any application for a permit, request for adoption of airport zoning map, any regulations adopted or any other orders or rulings issued pursuant to these regulations may petition the commission in writing for a hearing.

(2) The petition, which may be in the form of a letter, shall identify the action taken by the commission for which a hearing is sought and it shall state specifically the grounds for the request in addition to a statement of the relief desired.

(3) Any such petition shall be filed within thirty (30) days of when the commission has formalized its action by the signature of the appropriate document whether by its administrator or its chairman.

(4) Once a petition for a hearing is received, the administrator shall notify all other interested parties of the receipt of the petition for a hearing which may include the applicant, local zoning body, local air board, airport owner and other identifiable person or persons who exhibit an interest in the commission's decision.

(5) The administrator shall within thirty (30) days of the receipt of the petition establish a time and place for the hearing to be conducted and shall notify all interested parties of the time and place of the hearing.

(6) Hearings shall be scheduled to be held within sixty (60) days of the receipt of the petition unless there are exceptional circumstances which would create an undue hardship upon one (1) or more of the parties. Notice of hearing shall be given by mailing a copy of the order establishing the hearing at least twenty (20) days prior to the date set for the hearing.

(7) If the commission deems it in the best interest of the public whether or not requested by the parties, it may require that the hearing specified herein be conducted prior to taking any action on the regulation, application, permit, zoning map, etc. Any action rendered by the commission as a result of a hearing conducted under this subsection shall constitute a final agency action from which an appeal may be taken.

Section 2. *The rules and procedures that follow shall be observed during the hearing process:* [Thereafter the commission shall consider all relevant evidence and other relevant factors that are set forth in the statutes and regulations of the commission related to the matter concerned. The commission shall then vote on the matter, and issue its written order based on the decision of a majority of the members present.]

(1) The hearing shall be conducted in a formal matter.

(2) A transcript or stenographic record of the hearing shall be taken. The reporter shall furnish an original and one (1) copy of the transcript to the commission. Unless otherwise agreed, the cost of transcribing the evidence and of furnishing an original and one (1) copy to the commission shall be borne by the petitioner.

(3) Opportunity will be given to the petitioner, the applicant and all other interested persons to produce witnesses, present evidence or raise other points of issue.

(4) The burden of proof concerning any action to be taken by the commission as a result of the hearing shall be upon the petitioner.

(5) All parties may be represented by counsel.

(6) The chairman of the commission or his designated representative will preside at the hearing and shall rule on any objection or question that arises. A majority of the commission may overrule or modify any ruling of the chairman.

(7) The administrator or the commission will open the hearing by presenting the petition for the hearing, documents representing the action taken by the commission that prompted the petition for a hearing and conclusions resulting from any aeronautical study conducted.

(8) Unless there are exceptional conditions that would warrant otherwise, the petitioner may make an opening statement outlining its position and any other party who desires the same relief will next be given the opportunity to present an opening statement. Then the adverse party may make an opening statement outlining its position, followed by any other parties seeking the same relief.

(9) After all opening statements, the petitioner will present its evidence and witnesses in support of its claim followed by other parties seeking similar action by the commission. Following the conclusion of the evidence presented by the petitioner and all other parties similarly aligned, the adverse parties are to be afforded the opportunity to present their evidence and witnesses.

(10) Each party shall have the right to cross-examine any witness offered by any other party.

(11) Formal rules of evidence used by the courts shall apply.

(12) The parties may by stipulation enter into the record any agreed facts, and it is desirable that the facts agreed upon be entered by stipulation whenever practical.

(13) Witnesses shall not be permitted to give opinion evidence unless they have first been qualified to show their special familiarity and knowledge with the desired subject.

(14) At the conclusion of all evidence, the parties may offer closing statements to the commission. The order of presentation will be in reverse of the opening statements unless determined otherwise by the chairman of the commission.

(15) The commission may require the filing of briefs in which the time of filing, length of briefs and replies, will be stated at the conclusion of the hearing.

(16) Subsequent to the closing statements, the commission shall consider all relevant, competent, and material evidence and make the necessary findings of facts and conclusions which shall constitute a final decision of the commission. The findings and conclusions of the commission shall be signed by the chairman and a copy sent to each party that appeared at the hearing.

Section 3. Appeals from *any final decision or order* [action or orders] of the commission may thereafter be *made to the Franklin Circuit Court in accordance with the procedures set forth* [prosecuted under the procedures set out] in KRS 183.620.

CLAIR R. NICHOLS, Chairman
ADOPTED: September 20, 1982
APPROVED: FRANK R. METTS, Secretary
RECEIVED BY LRC: September 27, 1982 at 12:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Stephen Reeder, Deputy Secretary for Legal Affairs, 1008 State Office Building, Frankfort, Kentucky 40622.

EDUCATION AND HUMANITIES CABINET
Department of Education
(Proposed Amendment)

706 KAR 1:010. Interim three-year plan for vocational rehabilitation services.

RELATES TO: KRS *156.010, 156.031, 156.070,* [163.110, 163.120, 163.130,] 163.140, 163.160 [, 163.170, 163.180]
PURSUANT TO: KRS 13.082, *163.140* [156.112, 156.116, 156.118]
NECESSITY AND FUNCTION: Section 101, Title I, P.L. 93-112, as amended, requires the submission of an Interim Three-Year State Plan for Vocational Rehabilitation Services, to the Secretary, Department of [Health,] Education [, and Welfare]. The plan must be approved in order for a state to be eligible for grants from the allotments of funds under Title I, P.L. 93-112, as amended by P.L. 93-516 and P.L. 95-602, *and this regulation adopts the pertinent state plan developed and approved by the Department of Education and setting forth rules governing the services, personnel, and administration of the Bureau of Rehabilitation Services.*

Section 1. Pursuant to the authority vested in the Kentucky State Board of Education by KRS *163.140,* [156.112] the Kentucky State Plan for Vocational Rehabilitation Services [incorporated in P.L. 93-112, as amended,] for the period October 1, *1982* [1979] through September 30, *1985,* [1982, said plan having been amended January 20, 1981,] is presented herewith for filing with *the* Legislative Research Commission, and incorporated by reference. *A copy of said plan can be obtained from the Bureau of Rehabilitation Services, Department of Education.*

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: September 14, 1982
RECEIVED BY LRC: October 7, 1982 at 2:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: L. W. True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Proposed Amendment)

806 KAR 9:030. Adjusters; examinations, licenses, restrictions.

RELATES TO: KRS 304.9-070, 304.9-430
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 restricts the persons whom an adjuster may represent thus preventing any conflicts of interest.

Section 1. An adjuster's license issued to an applicant pursuant to the provisions of the Insurance Code shall not at anytime authorize, and the licensee is expressly prohibited from, representing the interest of both insurer and the insured or claimant. The applicant, upon application for the license, shall elect whether he intends to act solely on behalf of insurers or solely on behalf of persons claiming benefits under insurance or annuity contracts. In either event, a licensee shall be deemed to act in a fiduciary capacity to his principal, and shall, prior to the issuance of such license, post with the commissioner a bond guaranteeing the performance of this trust, executed by an authorized surety company, in the sum of $1,000.

Section 2. In order to distinguish the capacity to act under an adjuster's license as elected under Section 1 of

this regulation, a licensee who acts solely on behalf of insurers shall be known as an "independent adjuster." A licensee who acts solely on behalf of persons claiming benefits under insurance or annuity contracts shall be known as a "public adjuster." The license, if issued, shall be clearly labeled to indicate this distinction.

Section 3. In order to obtain information sufficient for a proper determination of the applicant's qualification as specificed in KRS 304.9-430, the commissioner shall require each applicant to complete and file an application, to be signed and sworn to by the applicant before any person authorized by law to administer oaths, upon a form supplied by the commissioner. The form of application shall *be prescribed by the commissioner* [require full answers to such questions as may be reasonably necessary to determine the applicant's identity, residence and business address, personal history, business record, financial responsibility, experience in insurance, purpose for which the license is to be used, and such other questions as the commissioner may from time to time reasonably deem necessary to determine the applicant's qualifications and fitness].

Section 4. (1) After completing and filing application, an applicant shall further satisfy the commissioner of his fitness to fulfill the responsibilities of an adjuster by taking and successfully completing a written examination prescribed by the commissioner.

(2) In the event that an applicant for an adjuster's license meets the qualification requirements of KRS 304.9-430 except having "had experience or special education or training as to the handling of loss claims under insurance contracts of sufficient duration and extent to make him reasonably competent to fulfill the responsibilities as an adjuster," he shall not be required to take and successfully complete the prescribed examination, and in the commissioner's reasonable discretion may be issued a temporary license as an apprentice adjuster for not exceeding one (1) year. Such temporary apprentice license shall provide the licensee with the same privileges and obligations as in the case of any other adjusters licensed under the Insurance Code, except that it is subject to summary revocation by the commissioner for any cause that would have been grounds for refusal, revocation, or suspension of an adjuster's license; provided, however, that the applicant is and continues to be a full-time salaried employee of and subject to training, direction, and control by a licensed adjuster acting in the same capacity as that for which applicant's license was applied.

DANIEL D. BRISCOE, Commissioner
ADOPTED: October 13, 1982
APPROVED: NEIL J. WELCH, Secretary
RECEIVED BY LRC: October 15, 1982 at 12:45 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Daniel D. Briscoe, Commissioner of Insurance, P.O. Box 517, Frankfort, Kentucky 40602.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Proposed Amendment)

806 KAR 9:060. Identification cards.

RELATES TO: KRS 304.9-390
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 *permits* [requires] agents and solicitors to have identification cards.

Section 1. *(1)* Every agent and solicitor *licensed pursuant to KRS Chapter 304.9 may obtain from the commissioner* [who solicits business outside the confines of his principal place of business shall have upon his person] an identification card issued by the Department of Insurance indicating that he is a qualified insurance representative in Kentucky.

(2) Insurance agents and solicitors who obtain identification cards pursuant to this regulation shall pay to the commissioner in advance a fee of five (5) dollars for each card.

(3) The purpose of identity cards obtained pursuant to this regulation is to identify insurance agents and solicitors as qualified insurance representatives while soliciting outside of their principal places of business.

DANIEL D. BRISCOE, Commissioner
ADOPTED: October 13, 1982
APPROVED: NEIL J. WELCH, Secretary
RECEIVED BY LRC: October 15, 1982 at 12:45 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Daniel D. Briscoe, Commissioner of Insurance, P. O. Box 517, Frankfort, Kentucky 40602.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Proposed Amendment)

806 KAR 9:070. Examination retake limits.

RELATES TO: KRS 304.9-160, 304.9-190, 304.9-320, 304.9-430
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 reasonably restricts the number of times an applicant for an agent's, a solicitor's, a consultant's, or an adjuster's license may take the appropriate examination required by the Kentucky Insurance Code or regulations promulgated thereunder.

Section 1. Applicants to take the examinations required by KRS 304.9-160, 304.9-320, and 806 KAR 9:030 shall be permitted to take or retake an examination a combined

total of three (3) times within *120 days* [four (4) months] of the submission of an application. After a waiting period of *180 days* [six (6) months], a new application may be submitted.

Section 2. If an applicant to take the examinations required by KRS 304.9-160, 304.9-320, and 806 KAR 9:030 does not take an examination within 120 days of the filing of his application, said application shall become invalid. The applicant may file a new application at any time following the expiration of the 120 day period, and an examination may be taken when scheduled by the department in the regular course of business.

DANIEL D. BRISCOE, Commissioner
ADOPTED: October 13, 1982
APPROVED: NEIL WELCH, Secretary
RECEIVED BY LRC: October 15, 1982 at 12:45 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Daniel D. Briscoe, Commissioner of Insurance, P.O. Box 517, Frankfort, Kentucky 40602.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Proposed Amendment)

806 KAR 30:010. Application for license procedure.

RELATES TO: KRS 304.30-030
PURSUANT TO: KRS 13.082, 304.30-070
NECESSITY AND FUNCTION: KRS 304.30-070 authorizes the commissioner to make reasonable regulations to effectuate subtitle 30 of the Kentucky Insurance Code and to regulate the manner in which licensed insurance premium finance companies conduct their business. This regulation sets forth application for license procedures.

Section 1. Application for Original *or Renewal* License. Each application for an original *or renewal* license as an insurance premium finance company shall be made on *forms prescribed by the commissioner.* [the form entitled "Application for License as an Insurance Premium Finance Company." (See Section 7.)] It shall be accompanied by all required documents and the [required annual] license fee *provided by KRS 304.4-010* [of fifty dollars ($50)] which shall not be prorated. *Each application for renewal of a license as an insurance premium finance company shall be made on or before May 1 of each year and shall be accompanied by the renewal fee provided by KRS 304.4-010.*

[Section 2. Application for Renewal of License. Each application for a renewal of a license as an insurance premium finance company shall be made prior to May 1 of each year on the form entitled "Application for Renewal of Licenses as an Insurance Premium Finance Company." (See Section 7.) It shall be accompanied by all required documents and the required annual renewal license fee of fifty dollars ($50), which shall not be prorated. If an application for a renewal of a license is filed with the commissioner before May 1 of any year, the license sought to be renewed shall be continued in full force and effect either until the issuance by the commissioner of the renewal license applied for or the commissioner refuses to issue such renewal license.]

Section *2.* [3.] Biographical Questionnaire. Each application for an original license as an insurance premium finance company shall be accompanied by *biographical information for the persons specified in this section on forms prescribed by the commissioner.* [the form entitled "Biographical Questionnaire." (See Section 7.)] A separate form shall be completed and executed:

(1) In the case of a sole proprietor, by the sole proprietor [, and each supervising employee];

(2) In the case of a partnership or limited partnership, by each partner or limited partner [, and supervising employee];

(3) In the case of a firm, by each member or holder of record or beneficial interest therein [, and each supervising employee]; and

(4) In the case of a corporation, by each officer, director, *and* [or] owner of more than ten (10) percent, directly or indirectly, of the outstanding shares of stock [, and each supervisory employee].

(5) Biographical questionnaires need not be filed with an application for renewal of a license unless changes have taken place in the business organization involving individuals who have not previously filed such questionnaire.

Section *3.* [4.] Consent to Jurisdiction and Service of Process. Each applicant for a license and each person required to file the biographical questionnaire shall *be deemed to have appointed* [appoint] the *Secretary of State* [commissioner] as its attorney to receive service of all legal process issued against it in this state upon causes of action arising within this state. Nothing contained herein shall preclude service *by* [of] any other authorized method. Service upon the *Secretary of State* [commissioner] shall be made in the same manner as is provided for service of process upon authorized foreign or alien insurers.

[Section 5. Changes in Composition of Licensee. In the event of the addition to or withdrawal from the licensee of any of the persons required to file biographical questionnaires hereunder, the licensee shall, within ten (10) days after the event, advise the commissioner of the facts in detail by letter if an addition is involved. The letter shall be accompanied by a duly completed and executed biographical questionnaire in the form noted in Section 7. Each such licensee shall supply such additional information in regard thereto as the commissioner may request. If the commissioner is satisfied that the interest of the insureds and insurers will be adequately protected, he may thereafter, depending upon the circumstances, issue a temporary license or permit the licensee to continue under the license.]

Section *4.* [6.] Changes in Condition of Licensee. *(1)* If any licensee or any person who is a partner, member, supervisory employee, officer, director, or ten (10) percent stockholder of a licensee *is convicted, by final judgment of a court, of a felony involving moral turpitude* [shall be:]

[(1) Arrested or indicted for or convicted of any crime or offense other than a misdemeanor resulting from the operation of a motor vehicle; or]

[(2) Refused a license or suffers a revocation or suspen-

sion of a license of any type, other than a motor vehicle license, in this or any other jurisdiction; or]

[(3) Be declared a bankrupt or otherwise seek the protection of the National Bankruptcy Act or make an assignment for the benefit of creditors], the commissioner shall, within ten (10) days after *such conviction* [the event], be advised of the facts in detail by letter.

(2) The licensee shall notify the commissioner immediately upon its discovery that it no longer meets the requirements of 806 KAR 30:080.

[Section 7. Forms entitled "Application for License as an Insurance Premium Finance Company," "Application for Renewal of Licenses as an Insurance Premium Finance Company," and "Biographical Questionnaire" are prescribed by the department and herein filed by reference. Copies may be obtained from the Department of Insurance, Capital Plaza Tower, Frankfort, Kentucky 40601.]

DANIEL D. BRISCOE, Commissioner
ADOPTED: October 14, 1982
APPROVED: NEIL J. WELCH, Secretary
RECEIVED BY LRC: October 15, 1982 at 12:45 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Daniel D. Briscoe, Commissioner of Insurance, P.O. Box 517, Frankfort, Kentucky 40602.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Banking and Securities
(Proposed Amendment)

808 KAR 10:010. Forms for application, registration; reporting and compliance.

RELATES TO: KRS Chapter 292
PURSUANT TO: KRS 13.082, 292.500(3)
NECESSITY AND FUNCTION: To promulgate and make available to persons affected by the Kentucky Securities Act the forms necessary for registration, reporting and general compliance.

Section 1. The following forms are incorporated herein by reference, for use by those persons affected by the Act. The requirements and instructions contained in the forms shall have the same force and effect as rules and regulations duly promulgated. Information on obtaining the forms is available through the National Association of Securities Dealers (NASD), 1735 K Street, N.W., Washington, D.C. 20006 (or any regional NASD office) or from the Department of Banking and Securities, 911 Leawood Drive, Frankfort, Kentucky 40601.

(1) Form BD; Application for Registration as Broker-Dealer.

(2) Form U-4 (1981 Rev.); Application for Registration as Agent or Transfer of an Agent.

(3) Form 33-e *(Rev. 10/1/82)* [(amended)]; Application for Renewal of Broker-Dealer and Agent Licenses.

(4) Form 33-e-1; Application for Renewal of Issuer Agents.

(5) [(4)] Form ADV; Application for Registration of an Investment Adviser (may be obtained from Securities and Exchange Commission, Branch of BD and IA Registration, Washington, D.C. 20549).

(6) [(5)] Form 33-h-1 *(Rev. 10/1/82)*; Application for Renewal of Investment Adviser's License.

(7) Form 33-e-1; Application for Renewal of Issuer Agents.

(8) [(6)] Form 34; Report to be Filed by an Issuing Company Registered for the Purpose of Selling Its Own Securities.

(9) [(7)] Form 35-a; Application for Registration by Notification (Non-Issuer Distribution).

(10) [(8)] Form U-1; Application for Registration of Securities by Notification or Coordination.

(11) [(9)] Form ICURA (Investment Company Uniform Report and/or Application); Application for Annual Renewals of Investment Company Registrations.

(12) [(10)] Form 37 (amended); Application for Registration of Securities of Qualification.

(13) [(11)] Form 38-a; Impounding Agreement.

(14) [(12)] Form U-2; Consent to Service of Process and Jurisdiction (Investment Adviser, Broker-Dealer or Issuer).

(15) [(13)] Form U-2A; Resolution (Investment Adviser, Broker-Dealer or Issuer).

NEIL J. WELCH, Secretary
ADOPTED: October 8, 1982
RECEIVED BY LRC: October 15, 1982 at 2:45 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.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Banking and Securities
(Proposed Amendment)

808 KAR 10:150. Registration exemptions.

RELATES TO: KRS 292.410(1)
PURSUANT TO: KRS 13.082, 292.500(3)
NECESSITY AND FUNCTION: To declare that registration is not necessary in the public interest for certain types of business transactions with limited securities implications pursuant to KRS 292.410(1)(q).

Section 1. Pursuant to KRS 292.410(1)(q), the director having found that the enforcement of the Kentucky Securities Act is not necessary or appropriate in the public interest or for the protection of investors, and securities issued under the following classes of transactions shall be exempt from KRS 292.340 to 292.390 and need not file to claim the exemption. However, any persons receiving commissions or other remuneration in connection with sales made pursuant to these exemptions are not relieved of compliance with the registration requirements of KRS 292.330.

(1) Small business organization. Where ten (10) or fewer persons organize a corporation, joint venture, or similar business organization other than a limited partnership, provided that:

(a) There are no more than twenty-five (25) offerees;

(b) The security acquired does not evidence an oil, gas or mineral interest;

(c) Each person purchases with investment intent;
(d) Each purchaser is an organizer on the date the issuer is formed;
(e) Each purchaser has access to information concerning the issuer;
(f) In connection with the organization, no commission or other remuneration is paid or given directly or indirectly to any person for soliciting any prospective buyer in this state;
(g) No public advertising through newspapers, television, radio, handbills, or other such solicitation will be employed in effectuating the proposed transaction.
(2) Professional service corporation. Any security issued by a professional service corporation organized under KRS Chapter 274, provided:
(a) The professional service corporation complies with the ownership and retransfer restrictions set forth in KRS Chapter 274;
(b) The securities are sold to a professional person;
(c) The seller must reasonably believe that each buyer is purchasing for investment; and
(d) Each professional is provided access to information concerning the professional service corporation.
(3) Limited offering of securities related to oil, gas and mineral interests to select persons under select conditions. Any offer or sale of a certificate of interest or participation in an oil, gas or mineral title, lease or assignment, or in payments out of production under such title, lease or assignment, provided each such sale complies with each of the following:
(a) The number of investors cannot exceed thirty-five (35);
(b) Offers and sales can only be made to the following types of investors:
1. A professional geologist, professional oil, gas or mineral landman, geophysicist, petroleum engineer or mining engineer;
2. A person who is regularly engaged in the business of production of or exploration for oil, gas or minerals as a full-time vocation or for his primary source of income;
3. A sophisticated investor who the issuer and any person acting on its behalf in the offer, offer to sell, offer for sale or sale of the securities shall have reasonable grounds to believe and shall believe:
a. Immediately prior to making any offer, that the offeree has such knowledge and experience in financial and business matters that he is capable of evaluating both the merits and risks of the prospective oil, gas or mineral investment;
b. Immediately prior to making any sale, after reasonable inquiry, that the offeree has such knowledge and experience in financial and business matters that he is capable of evaluating both the merits and risks of the prospective oil, gas or mineral investment;
c. That each investor has a minimum net worth of $100,000 exclusive of home, home furnishings and automobiles, and in addition, is able to bear the economic risk of the investment (for purposes of determining the ability to bear the economic risk, the relationship between the investor's net worth and the amount of the investment shall be a substantial factor); and
d. That each purchaser has access to information concerning the issuer.
(c) The offeror must reasonably believe that each purchaser is purchasing for investment and not with a view for resale and each investor must represent in writing that he understands he cannot resell his security without registration or other compliance with the state and federal securities laws; provided, however, solely for purposes of those investors described in paragraphs (b)1 and (b)2 of this subsection, sales may be made exclusively among those persons described in paragraphs (b)1 and (b)2 of this subsection for purposes of assembling lease or other rights for oil, gas or mineral production or exploration, and resales of their whole interests may be made exclusively among those persons described in paragraphs (b)1 and (b)2 of this subsection without regard to a holding period requirement.
(d) Resales by persons described in paragraph (b)3 of this subsection within two (2) years of their purchase of any such security can only be made to persons described in paragraphs (b)1 and (b)2 of this subsection; such resales must be of their whole interests and not fractional interests in the securities.
(e) Sales by persons described in paragraph (b)3 of this subsection of their whole interests back to the issuer shall not be considered to be "resales" for purposes of this regulation.
(f) This exemption shall not be available to any issuer, if it, any officer, director, promoter, sponsor, operator, organizer or agent of such issuer or other authorized person participating in the process of offering or selling such securities shall have been the subject of:
1. Any administrative order issued under any state or federal securities law or regulation or a postal fraud order;
2. Any outstanding injunction, consent order or other legal directive for a securities violation of any state or federal securities law or regulation; or
3. Any court decision granting civil relief for a securities violation of any state or federal securities law or regulation; or shall have been convicted of any criminal violation of the federal securities or postal laws or regulation, the securities laws of any state, or criminal fraud or any felony.
(g) The entire exemption shall not be available upon the occurrence of any one of the following events:
1. Where a single sale is made to a person who is not qualified as an investor under paragraph (b) of this subsection;
2. Where a single offer is made to randomly selected offerees who do not qualify as an offeree under paragraph (b) of this subsection; or
3. Where there has been a willful violation of KRS 292.320.

Section 2. Pursuant to KRS 292.410(1)(q), the director having found that registration is not necessary or appropriate in the public interest or for the protection of investors, the following transaction is determined to be exempt from the registration provisions of KRS 292.340 through KRS 292.390.
(1) Any offer or sale of securities offered or sold in compliance with Securities Act of 1933, Regulation D, Rules 230.501-230.503 and either 230.505 or 230.506 as made effective in Release No. 33-6389 and which satisfies the following further conditions and limitations:
(a) Persons receiving commissions, finders fee, or other remuneration in connection with sales of securities in reliance on this regulation are not relieved of compliance with KRS 292.330.
(b) No exemption under this rule shall be available for the securities of any issuer, if any of the parties or interest described in Securities Act of 1933, Regulation A, Rule 230.252, Sections (c), (d), (e) or (f):

1. Has filed a registration statement which is the subject of a currently effective stop order entered pursuant to any state's law within five (5) years prior to the commencement of the offering.

2. Has been convicted within five (5) years prior to commencement of the offering of any felony or misdemeanor in connection with the purchase or sale of any security or any felony involving fraud or deceit including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud.

3. Is currently subject to any state's administrative order or judgment entered by that state's securities administrator within five (5) years prior to reliance on this exemption or is subject to any state's administrative order or judgment in which fraud or deceit was found and the order or judgment was entered within five (5) years of the expected offer and sale of securities in reliance upon this exemption.

4. Is currently subject to any state's administrative order or judgment which prohibits the use of any exemption from registration in connection with the purchase or sale of securities.

5. Is subject to any order, judgment or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five (5) years prior to the commencement of the offering permanently restraining or enjoining, such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state.

6. The prohibitions of subparagraphs 1 through 3 *and subparagraph 5* of this paragraph shall not apply if the party or interest subject to the disqualifying order is duly licensed to conduct securities related business in the state in which the administrative order or judgment was entered against such party or interest.

7. Any disqualification caused by this section is automatically waived if the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

(c) The issuer shall file with the Division of Securities a notice on Form D (17CFR239.550):

1. No later than fifteen (15) days after the first sale of securities to an investor in this state which results from an offer being made in reliance upon this exemption.

2. No later than thirty (30) days after the completion date of the offering of the issue.

3. Every six (6) months after the first sale of securities from the issue made in reliance on this regulation unless the final notice required by subparagraph 2 of this paragraph has been filed.

4. Every notice on Form D shall be manually signed by a person duly authorized by the issuer.

5. Any information furnished by the issuer to offerees shall be filed with the notice required pursuant to subparagaph 1 of this paragraph and, if such information is altered in any way during the course of the offering, the Division of Securities should be notified of such amendment within fifteen (15) days after an offer using such amended information.

6. If more than one (1) notice is required to be filed pursuant to subparagaphs 1 through 3 of this paragraph, notices other than the original notice need only report the information required by Part C and any material change in the facts from those set forth in Parts A and B of the original notice.

(d) In all sales to nonaccredited investors the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that both of the following conditions are satisfied:

1. The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his other security holdings and as to his financial situations and needs. For the limited purpose of this condition only, it may be presumed that if the investment does not exceed twenty (20) percent of the investor's net worth (excluding principal residence, furnishings therein and personal automobiles) it is suitable.

2. The purchaser either alone or with his/her purchaser representative(s) has such knowledge and experience in financial and business matters that he/she is or they are capable of evaluating the merits and risk of the prospective investment.

(2) Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the anti-fraud provisions of this state's securities law.

(3) Offers and sales which are exempt under this rule may not be combined with offers and sales exempt under any other rule or section of this Act, however, nothing in this limitation shall act as an election. Should for any reason, the offers and sales fail to comply with all of the conditions for this exemption, the issuer may claim the availability of any other applicable exemption.

(4) In any proceeding involving this rule, the burden of proving the exemption or an exception from a definition or condition is upon the person claiming it.

(5) In view of the objective of this rule and the purpose and policies underlying the securities act, the exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this rule.

NEIL WELCH, Secretary

ADOPTED: October 8, 1982

RECEIVED BY LRC: October 15, 1982 at 2:45 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.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
(Proposed Amendment)

815 KAR 25:010. Mobile homes.

RELATES TO: KRS 227.570

PURSUANT TO: KRS 13.082, 227.590

NECESSITY AND FUNCTION: KRS 227.590 requires the Mobile Home Certification and Licensure Board to establish rules and regulations governing the standards for manufacture, sale, and alteration of mobile homes. These

regulations are intended to assure safety for owners and occupiers of mobile homes.

Section 1. Authorization. (1) These rules are authorized by KRS 227.590 and established pursuant to the rule making procedures set forth in KRS Chapter 13, in order to implement, interpret, and carry out the provisions of laws of 1974, as amended in 1976, KRS Chapter 227, relating to mobile homes. In the event that these regulations conflict with the codes promulgated by the National Fire Protection Association NFPA 501 (B) and Title VI of the Federal Housing and Community Development Act of 1974 (Hud Act), the codes or the HUD Act subsequent to the effective enforcement date, shall govern in all cases.

(2) At least thirty (30) days before the adoption or promulgation of any change in or addition to the rules and regulations, the office shall mail to all manufacturers possessing valid certificates of acceptability and dealers possessing valid licenses a notice including a copy of the proposed changes and additions and the time and place that the board will consider any objections to the proposed changes and additions. After giving the notice required by this section, the board shall afford interested persons an opportunity to participate in the rule making through submission of written data, views or arguments with or without opportunity to present the same orally in any manner.

(3) Every rule or regulation, or modification, amendment or repeal of a rule or regulation adopted by the board shall state the date it shall take effect.

Section 2. Enforcement. Subject to the provisions of applicable law, the Office of the State Fire Marshal shall administer and enforce all the provisions of the Mobile Home and Recreational Vehicle Act. Any officer, agent, or employee of the State Fire Marshal's office is authorized to enter any premises in order to inspect any mobile home for which the office has issued a seal of approval, or to inspect such mobile home's equipment and/or its installations to insure compliance with the Act, the code and/or the HUD Act and these regulations. Upon complaint and request by the owner or occupant, a privately owned mobile home bearing a seal may be entered to determine compliance with these regulations. When it becomes necessary to determine compliance he may require that a portion or portions of such mobile homes be removed or exposed in order that a compliance inspection can be made.

Section 3. Definitions. In addition to the definitions contained herein, the definitions of NFPA 501 (B) by the National Fire Protection Association and/or the HUD Act shall apply:

(1) Act. The Mobile Home and Recreational Vehicle Act, KRS 227.550 to 227.660.

(2) HUD Act. Title VI of the "Housing and Community Development Act of 1974—National Mobile Home Construction and Safety Standards."

(3) Agency, testing. An outside organization which is:

(a) Primarily interested in testing and evaluating equipment and installations;

(b) Qualified and equipped for, or to observe experimental testing to approved standards;

(c) Not under the jurisdiction or control of any manufacturer or supplier of any industry;

(d) Makes available a published report in which specific information is included stating that the equipment and installations listed or labeled have been tested and found safe for use in a specific manner; and

(e) Approved by the board.

(4) Alteration or conversion. The replacement, addition, modification or removal of any equipment or installations which may affect the body and frame design and construction, plumbing, heat-producing or electrical systems or the functioning thereof of mobile homes subject to these rules is an alteration or conversion unless excluded by these rules. The above equipment must be installed in accordance with manufacturer's specifications.

(5) Board. Mobile Home Certification and Licensure Board.

(6) Certificate of acceptablility. The certificate provided to the manufacturer signifying the manufacturer's ability to manufacture, import, or sell mobile homes within the state.

(7) Class "A" seal. A device or insignia issued by the office to indicate compliance with the standards, established by the office, or rules and regulations established by the board for new mobile homes not covered by the HUD Act and manufactured after the effective date of the Act.

(8) Class "B" seal. A device or insignia issued by the office to indicate compliance with the standards established by the office or rules and regulations established by the board for used mobile homes.

(9) Dealer. Any person, other than a manufacturer, as defined herein, who sells or offers for sale three (3) or more mobile homes in any consecutive twelve (12) month period.

(10) Established place of business. A fixed and permanent place of business in this state, including an office building and hard surface lot of suitable character and adequate facilities and qualified personnel, for the purpose of performing the functional business and duties of a mobile home dealer, which shall include the books, records, files and equipment necessary to properly conduct such business or a building having sufficient space therein to properly show and display the mobile homes being sold and in which the functional duties of a mobile home dealer may be performed. The place of business shall not consist of residence, tent, temporary stand or open lot. It shall display a suitable sign identifying the dealer and his business.

(11) Hard surfaced lot. An area open to the public during business hours with a surface of concrete, asphalt/macadam, compacted gravel and/or stone, or other material of similar characteristics.

(12) Manufacturer. Any person who manufactures mobile homes and sells to dealers.

(13) Manufactured housing. Mobile homes, recreational vehicles, mobile office or commercial units, add-a-rooms, or cabanas.

(14) Mobile home *or manufactured home.* [For purposes of the scope of the Act and regulations this] Means a structure, transportable in one (1) or more sections, which *in the traveling mode, is* [when erected on site measures] eight (8) body feet or more in width and *forty (40)* [thirty-two (32)] body feet or more in length, *or, when erected on site, is 320 or more square feet,* and which is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein*; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary and complies with the standards established under Title VI of the federal act.* It may be used as a place of residence, business, profession, or trade by the owner, lessee, or their

assigns and may consist of one (1) or more units that can be attached or joined together to comprise an integral unit or condominium structure. It shall include house trailers which are regulated as to length, width and registration by KRS Chapter 186. "Add-a-room" units are not considered an integral part of a mobile home. A new mobile home used or intended to be used as a single family dwelling is covered by the HUD Act and is excluded from these regulations.

(15) NFPA 501 (A). That section of the National Fire Code adopted by the National Fire Protection Association that pertains to mobile home installation.

(16) NFPA 401 (B). That section of the National Fire Code adopted by the National Fire Protection Association that pertains to standards for mobile homes not covered by the HUD Act.

(17) Office. The Office of the State Fire Marshal.

(18) Person. This means a person, partnership, corporation or other legal entity.

(19) Secretary. The Secretary of the U.S. Department of Housing and Urban Development.

(20) Suitable sign. A sign with the dealership name and type of dealership in letters of a minimum height of six (6) inches and minimum width of one and one-half (1½) inches.

Section 4. Scope and Purpose of the Act and Regulations. (1) Except to the extent otherwise stated in the Act and these regulations and in other laws of the Commonwealth which are not inconsistent with or superseded by the Act and these regulations, these regulations govern the design, manufacture and sale of mobile homes not covered by the HUD Act, which are manufactured, sold or leased for use within or outside of the Commonwealth. These regulations apply to mobile homes manufactured in manufacturing facilities located within or outside the Commonwealth. Mobile homes brought into this state for exhibition use only and which will not be sold in this state may be excluded from the coverage of this Act and regulations if inspections reveal no condition hazardous to health or safety.

(2) The state legislature has enacted the mobile home and recreational vehicle Act to protect the health and safety of the owner, occupiers, and all other persons from malmanufactured mobile homes. The office has been given authority to carry out the purpose of the Act. The Act sets out the minimum standards for design and manufacture. Dealers are encouraged to maintain ethical business standards beyond non-fraudulent minimums.

Section 5. Standards for Vehicles in Manufacturers' or Dealers' Possession. (1) The office shall enforce such standards and requirements for the installation of plumbing, heating, and electrical systems in mobile homes not covered by the HUD Act, as it determines are reasonably necessary to protect the health and safety of the occupants and the public.

(2) The office shall also enforce such standards and requirements for the body and frame design and construction of mobile homes as are reasonably necessary in order to protect the health and safety of the occupants and the public.

(3) All mobile homes not covered by the HUD Act, manufactured for sale within the Commonwealth of Kentucky shall be constructed in accordance with NFPA 501 (B), 1977 edition, herein adopted by reference.

(4) On all used mobile homes, said standards shall be that the dealer shall certify that the electric, heating, plumbing systems doors, windows, structural integrity of the unit, smoke detection equipment and all exterior holes have been sealed to prevent the entrance of rodents, and repaired if necessary, and found to be in safe working condition and thus be in conformity with the intent of the Act to protect the health and safety of the occupants and general public.

(5) All mobile homes taken in trade must be reinspected and certified. The existing Class "A" or Class "B" seal may be removed or a new seal may be applied over the existing seal. When a new mobile home purchased under the provision of the HUD Act is resold, it becomes a used mobile home and subject to the provisions of this section. A seal will not be required if such dealer submits an affidavit that the unit will not be resold for use as such by the public.

(6) All new mobile homes shall be installed per manufacturers instructions or NFPA 501 (A), 1977 edition when manufacturers defer to local jurisdiction. All used mobile homes shall be installed in accordance with NFPA 501 (A), 1977 edition.

(7) All new mobile homes purchased outside the Commonwealth of Kentucky not bearing a Class "A" seal of approval or a HUD label and all used mobile homes purchased outside the Commonwealth of Kentucky, regardless of the type seal or label affixed, shall be inspected by a certified Kentucky dealer and a Class "B" seal of approval affixed prior to registration of the home. This inspection shall consist of the following:

(a) Inspection of the plumbing and waste systems.

(b) Inspection of the heating unit to determine adequacy of systems.

(c) Inspection of the electrical systems including the main circuit box and all outlets/switches to detect any damaged coverings, lost screws, or improper installations.

(8) Any licensed Kentucky mobile home dealer that maintains the capability to perform minor maintenance of plumbing, heating and electrical systems of mobile homes shall be permitted to inspect and certify those mobile homes purchased in another state for use within the Commonwealth of Kentucky. Any dealer desiring to perform this service shall make application to the Office of the State Fire Marshal for appropriate certification.

(9) Any unit found to be in non-compliance with the requirements of Section 5(7) of this regulation shall be corrected prior to the dealer certifying the unit. All units requiring repairs or correction prior to unit certification shall be reported to the office specifying the repairs required to correct the deficiencies. Appropriate reporting forms shall be made available to qualified dealers performing inspection.

(10) The fee for the inspection of mobile homes shall be twenty dollars ($20) per hour plus mileage as required and a twenty-five dollar ($25) seal fee.

Section 6. Applicability and Interpretation of Code and Regulation Provisions. Any questions regarding the applicability or interpretation of any provisions or code or regulation adopted shall be submitted in writing by any interested person to the office for resolution. It is the policy of the office that with respect to questions regarding NFPA 501 (B), any such questions shall whenever feasible be submitted to the NFPA in accordance with the established procedures of the organization. The decision of the office shall be in writing.

Section 7. Certificate of Acceptability. (1) No manufac-

turer may manufacture, import, or sell any mobile home in this state after the effective date of this Act, unless he has procured a certificate of acceptability from the board. Compliance shall be enforced through KRS 227.992. Mobile homes not covered by the HUD Act, manufactured in this state and designed for delivery to and for sale in a state that has a code that is inconsistent with NFPA 501 (B) need not comply with this provision.

(2) Requirements for issuance.

(a) The manufacturer must submit and the office must approve inplant quality control systems.

(b) A $400 fee must accompany the application. The fee shall be paid by check or money order and shall be made payable to Kentucky State Treasurer.

(c) The manufacturer must furnish and maintain with the office proof of general liability insurance to include lot and completed operations insurance in the minimum amount of $100,000 bodily injury or death for each person, $300,000 bodily injury or death for each accident, and $50,000 property damage.

(3) To obtain in-plant quality control approval, a manufacturer shall submit a system for in-plant control pursuant to paragraph (b) of this subsection and submit to inspection by the office for field certification of satisfactory quality control. Applications for approval of in-plant quality control systems shall contain the following:

(a) A certified copy of the plans and specifications of a model or model-group for body and frame design, construction, electrical, heating, and plumbing systems. All plans shall be submitted on sheets, the minimum possible size of which is eight and one-half inches by eleven inches (8½" x 11") and the maximum possible size of which is twenty-four inches by thirty inches (24" x 30"). The manufacturer shall certify that the aforementioned systems comply with NFPA 501 (B).

(b) Also a copy of the procedure which will direct the manufacturer to construct mobile homes in accordance with the plans, specifying:

1. Scope and purpose.
2. Receiving and inspection procedure for basic materials.
3. Material storage and stock rotation procedure.
4. Types and frequency of product inspection
5. Sample of inspection control form used.
6. Responsibility for quality control programs, indicating personnel, their assignments, experience and qualifications.
7. Test equipment.
8. Control of drawings and material specifications.
9. Test procedures.

(4) A unit certification format certifying compliance with the Act and regulations shall be submitted to the office no later than the end of the first week of each month for those units manufactured under the state code and not bearing a federal label, i.e., mobile offices, add-a-rooms, duplex units, etc. The unit certification format shall contain the information in the format of Appendix A.

(5) No manufacturer to which a certificate of acceptability has been issued shall modify in any way its manufacturing specifications without prior written approval of the office.

(6) If the manufacturer is also a dealer, he must also comply with dealer licensing provisions.

(7) Should the applicant not conform with these regulations, the applicant shall be *so* [no] notified in writing by the office within ten (10) working days of the date received. Should the applicant fail to submit a corrected application in accordance with the information supplied on the application correction notice, the application will be deemed abandoned and twenty (20) percent of fees due will be forfeited to the office. Any additional submission shall be processed as new application.

(8) Manufacturers shall notify the office in writing within thirty (30) days of any of the following occurrences:

(a) The corporate name is changed;

(b) The main address of the company is changed;

(c) There is a change in twenty-five (25) percent or more of the ownership interest of the company within a twelve (12) month period;

(d) The location of any manufacturing facility is changed;

(e) A new manufacturing facility is established; or

(f) There are changes in the principal officers of the firm.

(9) Any information relating to building systems or in-plant quality control systems which the manufacturer considers proprietary shall be so designated by him at the time of its submission, and shall be so held by the office, and by the inspection, evaluation, and local enforcement agencies unless the board determines in each case that disclosure is necessary to carry out the purposes of the Act.

(10) The office may determine that the standards for mobile homes established by a state or a recognized body or agency of the federal government or other independent third party are at least equal to NFPA 501 (B). If the office finds that such standards are actually enforced then it may issue a certificate of acceptability for such mobile homes.

(11) A certificate of acceptability may be denied, suspended, or revoked on the following grounds:

(a) Evidence of insolvency;

(b) Material misstatement in application for certificate of acceptability;

(c) Willful failure to comply with any provisions of the Act or any rule or regulation promulgated by the board under the Act;

(d) Willfully defrauding any buyer;

(e) Willful failure to perform any written agreement with any buyer or dealer;

(f) Failure to furnish or maintain the required liability insurance;

(g) A fraudulent sale, transaction, or repossession;

(h) Violation of any law relating to the sale or financing of mobile homes.

(12) If a certificate holder is a firm or corporation, it shall be sufficient cause for denial, suspension or revocation of a certificate that any officer, director or trustee of the firm or corporation, or any member in case of a partnership, has been guilty of any act or omission which would be cause for refusing, suspending, or revoking a certificate to such party as an individual. Each certificate holder shall be responsible for any or all of his salesmen while acting as his agent while the agent is acting within the scope of his authority.

(13) Procedure for denial, revocation or suspension.

(a) The office may deny the application for a certificate of acceptability by written notice to the applicant, stating the grounds for such denial.

(b) No certificate of acceptability shall be suspended or revoked by the office except after a hearing thereon. The office shall give the certificate holder at least thirty (30) days notice of the time and place of the hearing and of the charges to be heard.

(c) Any manufacturer who violates or fails to comply with this Act or any rules or regulations promulgated

thereunder shall be notified in writing setting forth facts describing the alleged violation and instructed to correct the violation within twenty (20) days. Should the manufacturer fail to make the necessary corrections within the specified time, the office may, after notice and hearing, suspend or revoke any certificate of acceptability if it finds that:

1. The manufacturer has failed to pay the fees authorized by the Act; or that

2. The manufacturer, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this Act or any regulation or order lawfully made pursuant to and within the authority of the Act.

3. The manufacturer has shipped or imported into this state a mobile home to any person other than to a duly licensed dealer.

(14) Any person aggrieved by any ruling of the office denying a certificate of acceptability within fifteen (15) days after any such ruling of the office may appeal such ruling to the board herein provided for. Such appeal shall be in writing. The board shall state in writing, officially signed by all the members concurring therein, its findings and determination after such hearing and its order in the matter. If the board shall determine and order that any applicant is not qualified to receive a certificate of acceptability, no certificate shall be granted. If the board shall determine that the certificate holder was willfully or through gross negligence been guilty of a violation of any of the provisions of the Act, his certificate may be suspended or revoked.

(15) Any person aggrieved by any ruling of the board may appeal to the Franklin Circuit Court and to the Court of Appeals in the manner provided for by KRS 281.780 and 281.785.

(16) Under proceedings for the suspension of a certificate of acceptability for any of the violations enumerated in the Act, the holder of a certificate of acceptability may have the alternative subject to the approval of the board, to pay in lieu of part or all of the days of any suspension the sum of fifty dollars ($50) per day.

Section 8. Serial Numbers, Model Numbers, Date Manufactured. A clearly designated serial number, model number, and date manufactured shall be stamped into the mobile home tongue, or front cross member of the frame at the lower left hand side (while facing the unit), and if there is no such tongue or cross member, then a data plate with this information shall be affixed on the outside in a conspicuous place.

Section 9. Dealer License. (1) No dealer of mobile homes shall engage in business as such in this state without a license issued by the office upon application.

(2) Application must contain the following information:

(a) Name and address of the chief managing officer;

(b) Location of each and every established place of business;

(c) Social security number and date of birth of chief managing officer;

(d) Affidavit certifying compliance with the Act and regulations;

(e) Names of offices if dealership in corporate form;

(f) Names of partners if dealership in partnership form;

(g) Any other information the office deems commensurate with safe-guarding of the public interest in the locality of the proposed business.

(3) All licenses shall be granted or refused within thirty (30) days after application therefor, and shall expire, unless sooner revoked or suspended, on December 31 of the calendar year for which they are granted.

(4) The license fee shall be *$100* [fifty dollars ($50)]. The fee shall be paid by check or money order and shall be made payable to Kentucky State Treasurer.

(5) The license must be conspicuously displayed at the established place of business. In case such location be changed, the office shall endorse the change of location on the license wihout charge if it be within the same municipality. A change of location to another municipality shall require a new license.

(6) The dealer must furnish and maintain with the office *certification* [proof] of liability insurance in the minimum amount of $50,000 bodily injury or death for each person, $100,000 bodily injury or death for each accident, and $25,000 property damage.

(7) Dealers shall maintain a record of all units sold, new and used, to include serial numbers, Kentucky seal numbers ("A" or "B"), date manufactured, make, and the name and address of the purchaser. This report shall be in the format depicted in Appendix B. The report shall be made available to the field inspector on a monthly basis.

(8) No dealer shall have the authority to alter any mobile home manufactured under the federal code without the express permission of the manufacturer. Any dealer altering a mobile home shall be guilty of a federal violation and shall be subject to the penalties provided in KRS 227.990. Alteration of a mobile home shall include but is not limited to: Addition/deletion of windows, doors, or partitions; conversion of a heat producing appliance from one (1) fuel to another, i.e., electric to gas or gas to electric or oil; addition of an electrical circuit to accommodate a washer or dryer; addition of central air conditioning when the unit is not designed for that purpose; improper or improperly listed materials for the repair of a unit; installing an unlisted heat producing appliance, etc. The following does not constitute an alteration or conversion; replacement of equipment in kind, i.e., gas furnace with gas furnace; replacement or changing *of* [or] furniture to accommodate the consumer and any other cosmetic repairs.

(9) Notification of a change in the application information must be made within thirty (30) days of any of the following occurrences:

(a) Dealership name is changed;

(b) Established place of business is changed;

(c) There is a change in twenty-five (25) percent or more of the ownership interest of the dealership within a twelve (12) month period; or

(d) There are changes in the principal officers of the firm.

(10) A license may be denied, suspended or revoked on the following grounds:

(a) A showing of insolvency in a court of competent jurisdiction;

(b) Material misstatement in application;

(c) Willful failure to comply with any provisions of the Act or any rule or regulation promulgated by the board under the Act;

(d) Willful failure to perform any written agreement with the buyer;

(e) Willfully defrauding any buyer;

(f) Failure to have or to maintain an established place of business;

(g) Failure to furnish or maintain the required liability insurance;

(h) Making a fraudulent sale, transaction or repossession;

(i) Employment of fraudulent devices, methods, or

practices in connection with the requirements under the statutes of this state with respect to the retaking of goods under retail installment contracts and the redemption and resale of such goods;

(j) Failure of a dealer to put the title to a mobile home in his name after said dealer has acquired ownership of the mobile home by trade or otherwise;

(k) Violation of any law relating to the sale or financing of mobile homes.

(11) If a licensee is a firm or corporation, it shall be sufficient cause for the denial, suspension or revocation of a license that any officer, director or trustee of the firm or corporation, or amy member in case of a partnership, has been guilty of any act or omission which would be cause for refusing, suspending, or revoking a license to such party as an individual. Each licensee shall be responsible for any or all of his salesmen while acting as his agent while said agent is acting within the scope of his authority.

(12) Upon proceedings for the suspension of a license for any of the violations enumerated in the Act, the licensee may have the alternative, subject to the approval of the board, to pay in lieu of part or all of the days of any suspension the usm of fifty dollars ($50) per day.

(13) Procedure for denial, revocation, or suspension.

(a) The office may deny the application for a license within thirty (30) days after receipt thereof by written notice to the applicant, stating the grounds for such denial.

(b) No license shall be suspended or revoked by the office except after a hearing thereon. The office shall give the licensee at least thirty (30) days notice of the time and place of hearing and of the charges to be heard.

(c) Any dealer who violates or fails to comply with the Act or any rules or regulations promulgated thereunder shall be notified in writing setting forth facts describing the alleged violation, and instructed to correct the violation within twenty (20) days. Should the dealer fail to make the necessary corrections within the specified time, the office may, after notice and hearing, suspend or revoke any license if it finds that:

1. The dealer has failed to pay the fees authorized by the Act; or

2. The dealer either knowlingly or without the exercise of due care to prevent the same, has violated any provision of the Act or any regulation or order lawfully made pursuant to and within the authority of the Act.

(14) Any person aggrieved by any ruling of the office denying, suspending or revoking a license, within fifteen (15) days after such ruling of the office may appeal such ruling to the board herein provided for. Such appeal shall be in writing. The board shall state in writing, officially signed by all the members concurring therein, its findings and determination after such hearing and its order in the matter. If the board shall determine that the licensee has willfully or through gross negligence been guilty of a violation of any of the provisions of the Act, his license may be suspended or revoked.

(15) Any person aggrieved by any ruling of the board may appeal to the Franklin Circuit Court and to the Court of Appeals in the manner provided for by KRS 281.780 and 281.785.

Section 10. Temporary Licenses. (1) Any dealer other than one duly licensed in Kentucky wishing to show and offer mobile homes within the Commonwealth of Kentucky for the express purpose of retailing said units to the general public, shall be required to purchase from the Office of the State Fire Marshal a temporary license. Said license shall not exceed fifteen (15) days duration and the license fee shall be fifteen dollars ($15) for each authorized event.

(2) Applicant shall meet the following requirements before a temporary license is granted:

(a) Be a duly licensed dealer in a state other than Kentucky;

(b) Must certify to the office that the dealership has proper liability insurance in the minimum amount of $50,000 bodily injury or death for each person, $100,000 bodily injury or death for each accident, and $25,000 property damage;

(c) Provide satisfactory assurance to the office by way of a physical inspection by an authorized representative of this office, that each new unit not covered by the federal Act the dealer intends to display, show or offer for sale, bears a Kentucky Class "A" seal of approval. Used mobile homes are not permitted to be shown or offered for sale within the Commonwealth of Kentucky by non-resident dealers at any time; and

(d) Provide all other information as may be required by the office.

(3) Temporary licenses shall be prominently displayed at the location where the applicant is transacting business.

(4) Temporary licenses shall not be required for those dealers attending a mobile home show within the Commonwealth of Kentucky provided they do not sell or offer for sale to the general public new or used mobile homes.

Section 11. Seals. (1) No manufacturer who has received a certificate of acceptability from the office shall sell or offer for sale to Kentucky dealers in this state mobile homes not covered by the HUD Act, unless they bear a Class "A" seal of approval issued by and purchased from the office. This provision shall not apply to vehicles sold or offered for sale for shipment out of state.

(2) No dealer who has received a license from the office shall sell a mobile home unless it has a seal. Any dealer who has acquired a used mobile home without a seal shall apply to the office for a Class "B" seal by submitting an affidavit certifying either that all electrical, heating, and plumbing equipment has been checked, and if necessary, repaired, and is now in safe working condition, or that the unit meets the applicable code.

(a) Acquistion of seal.

1. Any manufacturer, except one altering a new mobile home not covered by the HUD Act, bearing a seal, may qualify for acquisition of a Class "A" seal by obtaining a certificate of acceptability pursuant to KRS 227.580 and Section 7 of this regulation.

2. Any dealer, except one altering a mobile home bearing a seal, may qualify for acquistion of a Class "B" seal by giving an affidavit certifying either that all electrical, heating, and plumbing equipment has been checked, if necessary, repaired, and is now in safe working condition or that the unit meets the applicable code.

(b) Application for seals.

1. Any person who has met the applicable requirements of Sections 7 or 9 of this regulation shall apply for seals in the form prescribed by the office. The application shall be accompanied by the seal fee of twenty dollars ($20) for each Class "A" seal or twenty dollars ($20) for each Class "B" seal.

2. If the applicant has qualified to apply for seals pursuant to the in-plant quality control approval method, the seal application shall include the certificate of acceptability number.

(c) Alteration or conversion of a unit bearing a seal.

1. Any alteration of the construction, plumbing, heat-producing equipment, electrical equipment installations or fire safety in a mobile home not covered by the HUD Act, which bears a seal, shall void such approval and the seal shall be returned to the office.

2. The following shall not constitute an alteration or conversion for those mobile homes not covered by the HUD Act:

a. Repairs with approved component parts.

b. Conversion of listed fuel-burning appliances in accordance with the terms of their listing.

c. Adjustment and maintenance of equipment.

d. Replacement of equipment in kind.

e. Any change that does not affect those areas covered by NFPA 501 (B).

3. Any dealer proposing an alteration to a mobile home not covered by the HUD Act, bearing a seal shall make application to the office. Such application shall include:

a. Make and model of mobile home.

b. Serial number.

c. State seal number.

d. A complete description of the work to be performed together with plans and specifications when required.

e. Location of the mobile home where work is to be performed.

f. Name and address of the owner of the mobile home.

4. Upon completion of the alteration, the applicant shall request the office to make an inspection.

5. The applicant may purchase a replacement seal, based on inspection of the alteration for a fee of two dollars ($2).

(d) Denial and repossession of seals. Should inspection reveal that a manufacturer is not costructing mobile homes not covered by the HUD Act, according to NFPA 501 (B) and such manufacturer, after having been served with a notice setting forth in what respect the provisions of these rules and the code have been violated, continues to manufacture mobile homes in violation of these rules and the code, applications for new seals shall be denied and the seals previously issued and unused shall be confiscated and credit given. Upon satisfactory proof of compliance, such manufacturer may resubmit an application for seal.

(e) Seal removal. In the event that any mobile home not covered by the HUD Act, bearing the seal is found to be in violation of these rules, the office shall attach to the vehicle a notice of non-compliance and furnish the manufacturer or dealer a copy of same. The office, dealer or manufacturer shall not remove the non-compliance tag until corrections have been made, and the owner or his agent has requested an inspection in writing to the office or given an affidavit certifying compliance.

(f) Placement of seals.

1. Each seal shall be assigned and affixed to a specific mobile home not covered by the HUD Act. Assigned seals are not transferable and are void when not affixed as assigned, and all such seals shall be returned to or may be confiscated by the office. The seal shall remain the property of the office and may be seized by the office in the event of violation of the Act or regulations.

2. The seal shall be securely affixed by the door on the handle side at approximately handle height.

3. No other seal, stamp, cover, or other marking may be placed within two (2) inches of the seal.

(g) Lost or damaged seals.

1. When a seal becomes lost or damaged, the office shall be notified immediately in writing by the owner. The owner shall specify the manufacturer, the mobile home serial number, and when possible, the seal number.

2. All damaged seals shall be promptly returned. Damaged and lost seals shall be replaced by the office with a replacement seal on payment of the replacement seal fee of two dollars ($2).

CHARLES A. COTTON, Commissioner
ADOPTED: October 8, 1982
APPROVED: NEIL J. WELCH, Secretary
RECEIVED BY LRC: October 14, 1982 at 10:45 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Les Westerfield, Chief, Manufactured Housing, Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky 40601.

(See Appendix A and Appendix B on the following pages)

APPENDIX A

UNIT CERTIFICATION FORMAT

_____

Name of Manufacturer

_____

Mailing Address County

_____, _____

City State Zip Code

I hereby certify that the mobile homes described hereon have been constructed in compliance with NFPA 501 B.

No.	Serial #	KY Seal #	Date Mfg.	Model	Size	Dealer
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						
11.						
12.						
13.						
14.						
15.						
16.						
17.						
18.						
19.						
20.						

This form must be used in reporting units to the Office of the State Fire Marshal. The form should be completed in duplicate with the original to be sent to the Office of the State Fire Marshal, and the copy retained by the manufacturer. This form should be mailed to the Office of the State Fire Marshal when the last entry has been filled or not later than the first week of each month.

_____, _____ BY _____

DATE PERSON AUTHORIZED TO CERTIFY THESE UNITS

APPENDIX B

Name of Dealer

Mailing Address

County

City

State

Zip Code

I hereby certify that the used units described hereon have been inspected and are in compliance with the standards as required by KRS 227.550 thru KRS 227.660 and regulations thereto and that the new mobile homes described hereon have the appropriate HUD label.

NO.	SERIAL #	HUD LABEL #/ KY SEAL #	DATE MFG.	MAKE	PURCHASER & ADDRESS

This form must be used in reporting units to the field inspector.

DATE

SIGNATURE

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
(Proposed Amendment)

904 KAR 2:015. Supplemental programs for the aged, blind and disabled.

RELATES TO: KRS 205.245
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources is responsible under Title XVI of the Social Security Act as amended by Public Law 92-603 to administer a state funded program of supplementation to all December, 1973, recipients of aid to the aged, blind and disabled, hereinafter referred to as AABD, disadvantaged by the implementation of the Supplemental Security Income Program, hereinafter referred to as SSI. KRS 205.245 provides not only for the mandatory supplementation program but also for supplementation to other needy aged, blind and disabled persons. This regulation sets forth the provisions of the supplementation program.

Section 1. Mandatory State Supplementation. Mandatory state supplementation payments must be equal to the difference between the AABD payment for the month of December, 1973, plus any other income available to the recipient as of that month and the total of the SSI payment and other income. Also included are those former aged, blind or disabled recipients ineligible for SSI due to income but whose special needs entitled them to an AABD payment as of December, 1973. Mandatory payments must continue until such time as the needs of the recipient as recognized in December, 1973, have decreased or income has increased to the December level.

(1) The mandatory payment is increased only when income as recognized in December, 1973, decreases, the SSI payment is reduced but the recipient's circumstances are unchanged, or the standard of need utilized by the department in determining optional supplementation payments for a class of recipients is increased.

(2) In cases of man and wife, living together, income changes after September, 1974, will result in increased mandatory payment only if total income of the couple is less than December, 1973, total income.

Section 2. Optional State Supplementation. Optional state supplementation is available to those persons meeting technical requirements and resource limitations of the aged, blind or disabled medically needy program as contained in 904 KAR *1:011* [1:003] and 904 KAR 1:004 who require special living arrangements and who have insufficient income to meet their need for care. Special living arrangements include residence in a personal care home as defined in 902 KAR *20:036* [20:030] or family care home as defined in 902 KAR *20:041* [20:040] or situations in which a caretaker must be hired to provide care other than room and board. A supplemental payment is not made to or on behalf of an otherwise eligible individual when the caretaker service is provided by the spouse, parent (of an adult disabled child or a minor child), or adult child (of an aged or disabled parent) who is living with the otherwise eligible individual. When this circumstance exists and a person living outside the home is hired to provide caretaker services, the supplemental payment may be made. Application for SSI, if potential eligibility exists, is mandatory.

Section 3. Income Considerations: In determining the amount of optional supplementation payment, total net income of the applicant or recipient, or applicant or recipient and spouse, including *any* payments made to a third party in behalf of an applicant or recipient, is deducted from the standard of need with the following exceptions:

(1) Income *of the ineligible spouse* is conserved for *the needs of the* [an] ineligible, non-SSI spouse and/or minor dependent children in the amount of *one-half (½) of the SSI standard for an individual for each person* [the medical assistance program basic maintenance scale for family size] adjusted by deduction of sixty-five dollars ($65) *and one-half (½) of the remainder* from monthly earnings of spouse. *Income of the eligible individual is not conserved for the needs of the ineligible spouse and/or minor dependent children. When conserving for the needs of the minor dependent children, income of the children must be appropriately considered so that the amount conserved does not exceed the allowable amount. When the eligible individual and spouse each have earnings, the earnings must be combined prior to the application of the earnings disregard of sixty-five dollars ($65) and one-half (½) of the remainder.*

(2) If one (1) member of a couple is institutionalized and the SSI spouse maintains a home, income in the amount of the SSI standard for one (1) is conserved for the spouse.

Section 4. Standard of Need. (1) The standard, based on living arrangement, from which income as computed in Section 3 is deducted to determine the amount of optional payment is as follows:

(a) Personal care home: not less than $436, effective 7/1/81; not less than $456, effective 7/1/82;

(b) Family care home: not less than $349, effective 7/1/81; not less than $369, effective 7/1/82;

(c) Caretaker:

1. Single individual, *or eligible individual with ineligible spouse (one who is not aged, blind, or disabled)*: not less than $303, effective 7/1/81; not less than $323, effective 7/1/82;

2. Married couple, *both eligible (aged, blind, or disabled), with* one (1) requiring care: not less than $435, effective 7/1/81; not less than $465, effective 7/1/82;

3. Married couple, *both eligible and* both requiring care: not less than $473, effective 7/1/81; not less than $503, effective 7/1/82.

(2) In couple cases, [both requiring a caretaker, and] both eligible, *the couple's income is combined prior to comparison with the standard of need, and* one-half (½) of the deficit is payable to each. [If one (1) is ineligible (neither aged, blind nor disabled) the payment is computed on the basis of a married couple, one (1) requiring care.]

Section 5. Institutional Status. No aged, blind or disabled person shall be eligible for state supplementation while residing in a personal care home or family care home unless such home is licensed under KRS 216B.010 to *216B.131* [216B.130].

Section 6. Residency. (1) To be eligible, an applicant or recipient must be a citizen of the United States, or an alien legally admitted to this country or an alien who is residing in this country under color of law. An alien must have been admitted for permanent residence. The applicant or recipient must also be a resident of Kentucky. Generally, this means the individual must be residing in the state for other than a temporary purpose; however, there are exceptions with regard to applicants for or recipients of a state sup-

plementary payment and institutionalized individuals.

(2) Supplemental payments may be made to Kentucky residents residing outside the state only when the individual has been placed in the other state by this state. In these situations, the other requirements for eligibility shown in other sections of this regulation shall be applicable, except that with regard to the requirement shown in Section 5, the licensure shall be in accordance with a similar licensure act of the other state. If there is no similar licensure act in the other state, the payment may be made only if this state determines that, except for being in another state, the facility meets standards for licensure under the provisions of KRS 216B.010 to *216B.131* [216B.130]. To be eligible for a supplemental payment while placed out-of-state the individual must require the level of care provided in the out-of-state placement, there must be no suitable placement available in Kentucky, and the placement must be pre-authorized by staff of the Department for Social Insurance.

(3) When determining residency, ability of the individual to indicate intent (to become a Kentucky resident) must be considered if the individual is institutionalized. The individual is considered incapable of indicating intent if:

(a) His I.Q. is forty-nine (49) or less or he has a mental age of seven (7) or less, based on tests acceptable to the department; or

(b) He is judged legally incompetent; or

(c) Medical documentation, or other documentation acceptable to the state, supports a finding that he is incapable of indicating intent.

(4) An individual is institutionalized if he is residing in a facility providing some services other than room and board. Personal care facilities are considered to be institutions.

(5) For any non-institutionalized individual under age twenty-one (21) whose eligibility for a supplemental payment is based on blindness or disability, his state of residence is Kentucky if he is actually residing in the state.

(6) For any non-institutionalized individual age twenty-one (21) or over, his state of residence is Kentucky if he is residing in the state and has the intention to remain permanently or for an indefinite period (or, if incapable of indicating intent, is simply residing in the state).

(7) For any institutionalized individual living in Kentucky who is under age twenty-one (21) or who is age twenty-one (21) or older and became incapable of indicating intent before age twenty-one (21), the state of residence is Kentucky if:

(a) The state of residence of the individual's parents, or his legal guardian if one has been appointed, is Kentucky; or

(b) The state of residence of the parent applying for the supplemental payment on behalf of the individual is Kentucky, when the other parent lives in another state and there is no appointed legal guardian.

(8) For any institutionalized individual living in Kentucky who became incapable of indicating intent at or after age twenty-one (21), the state of residence is Kentucky if he was living in Kentucky when he became incapable of indicating intent. If this cannot be determined, the state of residence is Kentucky unless he was living in another state when he was first determined to be incapable of indicating intent.

(9) For individuals subject to determinations of residency pursuant to subsections (7) and (8) of this section, the state of residency is Kentucky when the individual is residing in Kentucky, and a determination of residency applying those criteria does not show the individual to be a resident of another state.

(10) For an individual subject to a determination of residency pursuant to subsections (7) and (8) of this section, the state of residence is Kentucky when Kentucky and the state which would otherwise be the individual's state of residency have entered into an interstate residency agreement providing for reciprocal residency status; i.e., when a similarly situated individual in either state would by written agreement between the states be considered a resident of the state in which he is actually residing.

(11) [(10)] For other institutionalized individuals (i.e., those individuals who are both age twenty-one (21) or over and capable of indicating intent), the state of residence is Kentucky if the individual is residing in Kentucky with the intention to remain permanently or for an indefinite period.

(12) [(11)] Notwithstanding subsections (3) through *(11)* [(10)] of this section, any individual placed by the cabinet in an institution in another state may, with appropriate preauthorization, be considered a resident of Kentucky, and any individual placed in an institution in Kentucky by another state shall not be considered a resident of Kentucky.

(13) [(12)] An individual receiving a mandatory state supplemental payment from Kentucky shall be considered a resident of Kentucky so long as he continues to reside in Kentucky. An individual receiving a mandatory or optional supplemental payment from another state shall not be considered a resident of Kentucky.

(14) [(13)] An individual eligible for and receiving a supplemental payment in October, 1979, shall be considered a Kentucky resident through *June 23* [April 30], 1983, even if he does not meet the residency requirements specified in this section, so long as such individual continues to reside in Kentucky and his receipt of supplementary payments has not since October, 1979 been interrupted by a period of ineligibility.

(15) [(14)] Notwithstanding the preceding provisions of this section, a former Kentucky resident who becomes incapable of indicating intent while residing out of this state shall be considered a Kentucky resident if he returns to this state and he has a guardian, parent or spouse residing in this state. Such individual shall not be considered a Kentucky resident on the basis of this subsection whenever, subsequent to that time, he leaves this state to reside in another state except when the provisions of subsection (11) of this section are met. An individual leaving the state may, however, reestablish Kentucky residency by returning to the state if he has a guardian, parent or spouse residing in this state.

Section 7. Date and Method of Implementation. The policies shown in this regulation, as amended, shall be effective December 1, 1982, except that for current recipients (individuals eligible on November 30, 1982) the policies shall be implemented at the time of the next interim or regularly scheduled redetermination of eligibility.

JOHN CUBINE, Commissioner
ADOPTED: October 15, 1982
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: October 15, 1982 at 2:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

Proposed Regulations

STATE BOARD OF ELECTIONS

31 KAR 2:010. Electronic voting systems.

RELATES TO: KRS 64.300, 65.170, 66.050, 67.260, 67A.020, 68.540, 81A.030, 81A.420, 81A.430, 83A.100, 83A.120, 83A.170, 96.183, 96.360, 96.540, 96.543, 96.640, 96,860, 96A.350, 97.610, 107.360, 108.100, 108.160, 116.025, 116.065, 117.075, 117.255, 117.375, 117.377, 117.379, 117.381, 117.383, 117.385, 117.387, 117.389, 117.391, 117.393, 118.015, 118A.010, 119.005, 132.120, 132.380, 160.220, 160.230, 160.250, 160.260, 160.470, 160.597, 165.175, 173.470, 173.610, 173.620, 173.630, 212.080, 212.720, 215.120, 215.140, 216.317, 216.318, 242.050, 242.070, 242.080, 242.120, 242.125, 242.129, 242.1292, 242.1294, 247.487, 247.560, 247.660, 247.760, 247.860, 262.120, 262.130, 262.220, 262.370, 262.540, 262.730, 262.735, 262.748, 262.778, 424.290, 436.165

PURSUANT TO: KRS 117.383

NECESSITY AND FUNCTION: KRS Chapter 117.383 requires the State Board of Elections to prescribe rules and regulations to achieve and maintain the maximum degree of correctness, impartiality, and efficiency of the procedures of voting. KRS Chapter 117 also permits the use of automatic tabulating equipment or data processing equipment during elections. This regulation sets forth the rules to be followed to comply with KRS Chapter 117.

Section 1. Definitions. An expansion of definitions offered by KRS 117.375 and additional definitions required by this regulation follows:

(1) "Absent voter ballot card" means a ballot card attached to a backing that aids a voter to punch out the scored position on the ballot card.

(2) "Absent voter card" means a ballot card with the names of candidates, issues and questions to be voted on, printed on the card.

(3) "Accuracy test" means a test conducted to determine that the program and the computer being used to tabulate the results of the election count the votes in the manner prescribed by the act.

(4) "Act" refers to Chapter 360 of the Kentucky Acts 1982, which sets forth all of the statutes which this regulation relates to.

(5) "Approved computer" means a manufacturer model which has been approved by the State Board of Elections to tabulate ballot cards in this state.

(6) "Ballot card" means a data processing card approved by the State Board of Elections.

(7) "Ballot label assembly" means the assembled unit containing ballot labels and mask.

(8) "Chad" means the scored portion of the ballot card which is punched out of the ballot card by the voter when casting a vote.

(9) "Computer" means one (1) or more pieces of automatic tabulating equipment which examines, tabulates, and counts votes recorded on ballot cards or magnetic tapes and prints results.

(10) "Console log" means a listing of the computer responses to program instructions and of instructions to the computer by the operator.

(11) "Correction tape" means a tape designed solely for use in correcting errors on data processing cards.

(12) "Demonstration ballot card" means a ballot card of a distinctive color used to instruct voters on the use of the voting device. The card shall have the word "DEMONSTRATION" printed or stamped on it.

(13) "Demonstrator model" means a voting device on which voters are instructed in the use of the device.

(14) "Duplicate ballot card" means a ballot card on which the word "DUPLICATE" is printed, stamped, or written and which is used to transfer a voter's valid selections from the original ballot card.

(15) "End card" means a data processing card which instructs the computer that all ballots of a precinct have been counted.

(16) "Header card" means a data processing card which contains the necessary data to identify a precinct to the computer. A header card may be an end card for the preceding precinct.

(17) "Mask" means a piece of material with defined areas for each voting position, into which holes are punched corresponding only to the voting positions appearing on the ballot label.

(18) "Overvote" means a combination of votes, including write-in votes, which exceeds the number for which the elector is entitled to vote.

(19) "Program" means the operating instructions for a computer by which it examines, counts, tabulates and prints the results of the votes cast on a ballot card.

(20) "Receiving station" means a site which is located at a building or place other than where the counting center is located.

(21) "Specialized computer" means automatic tabulating equipment constructed primarily for the purpose of tabulating ballots and printing results.

(22) "Spoiled ballot" means a ballot card which has been returned by a voter and for which a new ballot card has been issued.

(23) "Template" means a piece of material containing precisely located holes, conical in shape and positioned so that a stylus tip can penetrate only the scored areas of the ballot card.

(24) "Transfer case" means a metal container used for transporting and storing voted ballot cards. The container shall be capable of being sealed with a metal seal and be approved.

(25) "Valid punch" means a punch of a ballot card such that the chad is completely removed or is hanging by one (1) or two (2) corners.

(26) A term defined in the act has the same meaning when used in these rules.

Section 2. General Provisions. (1) The procedures in the general election laws shall be applicable in elections in which electronic voting systems are used, except where such laws are superseded by specific provisions of the act or these rules.

(2) A precinct in which electronic voting systems are used may contain more than the number or registered voters recommended by statute in precincts using voting machines.

(3) Nothwithstanding any other provisions of these rules, the county board of elections and local units of government may enter into a mutual agreement for the

joint use of a computer. Such an agreement shall state that the county clerk has control of the programs to be used for election purposes.

Section 3. Ballot Preparation. (1) The ballot cards used after the effective date of these rules, shall have the words "OFFICIAL BALLOT CARD" printed on the face of the stubs.

(2) One (1) corner of the ballot card shall be cut.

(3) The following statement may be printed or stamped on the back of the stub on official ballot cards in bold face capital letters:

STOP
WRONG SIDE
TURN CARD OVER

(4) A combination ballot card and write-in ballot to be used in an election shall be approved by the State Board of Elections.

(5) A ballot envelope to be used in an election shall be approved by the State Board of Elections and shall satisfy all of the following requirements:

(a) Be of sufficient size, weight, and design to preserve the secrecy of the ballot card.

(b) Have an inner pocket into which the ballot card shall be inserted.

(c) Display printed instructions as to the method of inserting the ballot card after voting, and if the ballot envelope is to be used for write-ins, shall display instructions and space for casting a write-in vote.

(6) The number of ballot cards and envelopes required to be printed and distributed to each precinct shall:

(a) For the general election, be a number equal to the number of registered voters as of the close of registration.

(b) For a primary election, be not less than a number equal to the total number of votes cast in the most recent corresponding primary election.

(c) For a special or local election, be a number determined by the local clerk.

(7) A question, proposal, or proposition shall be placed last on the ballot label following the names of candidates and shall be placed in the following order: state, county, local. An exemption from this requirement may be obtained prior to the election from the State Board of Elections in writing.

(8) For a general election, the name of the party which a candidate represents shall be printed along with the name of the candidate.

(9) Voting instructions shall be printed on the first page of the ballot label. The ballot label shall contain instructions as to where the voter is to continue voting. Additional instructions which conform with the act may be printed on the ballot label.

Section 4. Absentee Ballots: Issuance, Processing and Tabulation. (1) In a community in which electronic voting devices are used and absentee votes are cast on regular paper ballots, the absentee ballots shall be counted by absent voter counting boards as paper ballots.

(2) In a community in which electronic voting devices are used and absentee votes are cast on absent voter ballot cards, the absentee ballots shall be sent to the county clerk to be tabulated with the precinct ballot cards or to an absent voter counting board to be processed and tabulated.

(3) In a county using voting machines, absentee votes may be cast on absent voter ballot cards. The absentee ballot cards shall be sent to county clerk, tabulated, and added to the other precinct returns.

(4) If the voter is to vote by means of an absent voter ballot card, the clerk shall prepare and issue an absent voter ballot packet consisting of the following, when required by the system being used:

(a) Absentee voter ballot card;

(b) Punching tool;

(c) Absent voter instruction ballot;

(d) Ballot envelope for the voter to insert the voted portion of the ballot card after voting;

(e) Return envelope as required in Section 761 of the Act;

(f) A copy of Section 758 of the Act; and

(g) Absent voting instructions prescribed by the State Board of Elections.

(5) Absent voter instruction ballots where used in conjunction with a ballot card shall be printed in plain, clear type and contain instructions for voting. There shall be printed in boldface type alongside each candidate's name and the choice for each measure, a number which corresponds to the respective position number on the ballot card. The words "ABSENT VOTER INSTRUCTION BALLOT" shall appear at the head of the absent voter instruction ballot. An absent voter instruction ballot may be facsimile of the ballot label used in the absent voter's precinct. Arrows placed on the ballot labels may be omitted from the absent voter instruction ballot.

Section 5. Preparation of Program. (1) A program shall be written so as to accurately tabulate a voter's choice for each candidate, office, and measure for which the voter is lawfully entitled to vote, in conformity with the act and these rules.

(2) A program shall include an instruction requiring that header card precede the deck of ballot cards for each precinct. In programs to be used on a specialized computer, one (1) header card is required, unless the function of the header card is performed by the program.

(3) An end card shall follow the ballots of each precinct. The program may provide that if a header card contains instructions to the computer that all ballots of the preceding precinct have been counted, a separate end card is not required. In a program to be used in a specialized computer, an end card is not required.

(4) A program may be maintained by a generally accepted method, within the computer industry, of input or output or a combination of methods.

(5) Two (2) edit listings shall be prepared and, not less than three (3) days before the preliminary accuracy test, shall be delivered to the county board of elections responsible for supplying the program.

(6) The county board of elections responsible for supplying the program shall provide necessary information to the person or company designated to write or prepare the program.

(7) The program for an election and a duplicate copy shall be completed and delivered to the county board of elections responsible for supplying the program not less than three (3) days before the preliminary accuracy test. A duplicate is not required where a specialized computer is used.

(8) If a program is written to be used on a general purpose computer, the person or company providing the program shall, at the time the program is delivered, submit to the county board of elections a certificate stating that the program was prepared from all relevant input data, describing the procedures which were used to determine its accuracy, and stating that the program has been written pursuant to the act and these rules.

(9) The person preparing the program shall submit to the

county board of elections, responsible for supplying the program, instructions containing the information and procedures required to operate the program. The county board of elections shall make the instructions available to the computer operators.

(10) The vote tabulation portion of the program shall be written:

(a) In statewide races to reflect the rotation sequence of the candidate's names and ballot position numbers (when required by the system being used) as they appear on the ballot labels in the various congressional districts.

(b) To count valid votes cast by a voter for candidates of an office.

(c) To count valid votes cast by a voter for or against any question.

(d) So as not to count votes cast by a voter for an office or question if the number of votes cast by a voter exceeds the number which the voter is entitled to vote for on that office or question.

(e) To ignore punches in a ballot card in positions where a candidate's name or questions do not appear on the official ballot. These punches shall not have effect on the ballot.

(f) So that the partisan, nonpartisan, and proposal sections of the ballot are considered separate sections of the ballot. The action of a voter in one (1) section on the ballot shall not affect the voter's action on another section of the ballot.

(11) For a partisan primary election, the vote tabulation section of the program shall be written to determine if a voter has cast votes for candidates of more than one (1) political party.

(12) For a general election, the vote tabulation section of the program shall be written so that a vote shall be counted for each candidate of the political party indicated by the voter's straight ticket vote.

Section 6. Preparation of Official Test Deck. (1) The county board of elections providing the program or its authorized assistant shall prepare a test deck with predetermined results.

(2) The test deck shall consist of ballot cards of the same type to be used in the election.

(3) A document, record, chart or listing shall be prepared indicating the punches, recorded in the test ballot card. This documentation shall indicate each valid or invalid vote.

(4) A duplicate of the test deck shall be prepared. The duplicate of the test deck may consist of standard data processing cards.

(5) The approved test deck by the company providing the services may be used for this purpose.

Section 7. Preliminary Accuracy Test. (1) The county board of elections providing the program or its authorized assistant shall conduct a preliminary accuracy test of the computers and programs for all precincts prior to the accuracy test.

(2) The preliminary accuracy test shall be conducted using the test decks prepared under the direction of the board. For the purpose of this test, the test deck may be reproduced onto standard data processing cards.

Section 8. Accuracy Test. (1) The county board of elections providing the program shall designate a time and place for an accuracy test, which shall be held not less than five (5) days before the election.

(2) The accuracy test shall be conducted by an accuracy board, which shall be the county board of elections supplying the program. A member of the board may designate a person to serve in his or her place on the accuracy board. A member of the county board of elections who so designates a person to serve at the accuracy test shall notify the clerk before the test. The clerk or the designated representative of the clerk shall be chairperson.

(3) The clerk in charge of the program may limit the number of persons who may be in the computer room and the duration of their stay in the computer room.

(4) The initial testing of the computers and programs shall be with the test deck prepared under the direction of the county board of elections. The number of precincts to be tested shall be determined by the accuracy board. The members of the accuracy board may prepare or cause to have prepared additional ballot cards to be included in the test deck.

(5) Each program and test deck shall be tested on the computer on which it is to be used for the election.

(6) After demonstrating the accuracy of the programs and computers, the following persons may prepare test ballot cards for testing:

(a) The county chairperson of each political party appearing on the ballot or a designated representative.

(b) A candidate whose name appears on the ballot or a designated representative.

(c) A representative from each group interested in a proposal or measure who has informed the board in writing of that person's intent to participate in the testing procedure.

(7) The number of cards each eligible person is allowed to prepare shall be determined by the board, except that an eligible person shall not be limited to less than ten (10) cards.

(8) The county board of elections supplying the program shall provide the following items at the accuracy test:

(a) An edit listing.

(b) Test ballot cards.

(c) At least one (1) set of ballot labels for sample ballots for each precinct.

(9) If an error is detected in the testing, the cause shall be ascertained, the error shall be corrected, and an errorless count shall be made for all precincts. If determined by the board, the meeting may be adjourned to a time and date certain.

(10) The State Board of Elections or designated representative may provide a test deck for a program. If so, it shall be delivered at the accuracy test. At the discretion of the State Board of Elections, it may be used in place of, or in addition to, the test deck prepared by the county board of elections.

(11) The county board of elections shall certify the accuracy of the test. The certification may be attached to, or written on, the computer results of the accuracy test.

(12) The county board of elections shall secure all programs, test decks, certified computer results of the test and the predetermined results in a metal container which shall be sealed with a metal seal in a manner so that the container cannot be opened without breaking the seal. Attached to or inside the container shall be a certificate describing its contents and on which the number of the seal has been recorded. The certificate shall be signed by the members of the board and, if attached to the container in a plastic envelope, it shall be attached in such a manner that it cannot be removed without breaking the seal.

(13) The board shall immediately deliver to the clerk in charge of the election the metal case containing the pro-

grams and the test decks. The clerk shall retain and secure the programs.

Section 9. Preparation of Voting Device. The following rules apply to those systems which require a special voting device to be used during the election:

(1) The clerk or an authorized assistant shall prepare each voting device pursuant to the provisions of these rules.

(2) A voting device shall be identified with the precinct number in which it shall be used.

(3) A ballot label page used in the voting device shall be firmly attached for insertion and positioning in the ballot frame. A person shall not attach a ballot label by tape to a rod, or place a ballot label into a clear plastic envelope through which a rod is inserted.

(4) The ballot label assembly shall be inserted and sealed into each voting device so that the ballot label assembly cannot be removed without breaking the seal.

(5) The ballot label of each voting device of a precinct shall be compared against the edit listing and instruction ballot for the precinct to ascertain that the offices, candidates' names, and ballot position numbers are the same and appear in the same position.

(6) The ballot labels of each device shall be examined to ascertain that holes in the mask appear directly opposite each arrow, that other holes do not appear in the mask, and that the ballot labels are in proper sequence.

(7) An assembled voting device shall be tested to determine if it is operating properly.

(8) The identifying number of the voting device and the seal number used to seal the ballot label assembly to the device shall be recorded on the certificate in the poll book for the precinct in which the device is to be used. The clerk or an authorized assistant who sealed the device shall sign the certificate.

(9) When a voting device has been prepared for the election, the county board of elections shall execute a certificate in writing, which shall be filed with the county board of elections of the jurisdiction in which they are authorized to act. The certificate shall contain the precinct number, the identifying number of the device, and the number of the seal or seals used to seal the device, and state that the ballot labels have been compared against the edit list for that precinct and that the candidates' names and ballot numbers agree and appear in the same position and that the device has been properly prepared and tested. If the certificate is signed by other than the county board of elections, the county board of elections shall be offered an opportunity to inspect the voting devices to determine whether they are properly prepared.

(10) If a system is being used which has the candidates' names, issues and questions printed on the ballot, in such instances the ballot itself will be inspected prior to issuing the ballots to the precincts, in lieu of inspecting the voting device.

Section 10. Preparation and Delivery of Election Supplies. (1) The clerk of the unit of government providing the voting devices or an authorized assistant may place into a transfer case the ballot cards, envelopes and ballot frames for each precinct. The transfer case shall be secured with a seal and contain a certificate signed by the clerk or an authorized assistant setting forth the number of ballots in the case and that the ballots were counted and sealed by the clerk or by an authorized assistant. Ballot cards not issued to a precinct or assigned for absentee voting shall be secured and accounted for by the clerk. The clerk shall maintain a record of the number of ballot cards and serial numbers issued to each precinct. The ballot cards shall be delivered to a member or judge of the precinct election officers in the proper precinct.

(2) Precinct supplies shall include the following items:

(a) A specimen ballot for posting.

(b) A pencil for each voting device.

(c) A set of instructions for operating the precinct on election day.

(d) An envelope labeled "SPOILED BALLOT CARDS."

(e) An envelope labeled "ORIGINAL BALLOT CARDS FOR WHICH DUPLICATES HAVE BEEN MADE FOR ANY REASON" if the duplication is to be done at the precinct.

(3) If the precinct header card is sent to the precinct, it shall be contained in an envelope for that purpose and included in the transfer case for the precinct.

(4) The voting devices, demonstration voting devices, voting booths, ballot cards, ballot envelopes, transfer case, and all other necessary supplies shall be delivered to the precinct not later than 5:45 a.m. on election day.

(5) A ballot box shall be provided to each precinct for the deposit of voted ballot cards. The ballot box shall be capable of being locked or sealed during elelction day.

Section 11. Precinct Election Officers' Duties Prior to Opening the Polls. (1) Voting devices shall be used in voting booths or in self-contained voting stations.

(2) If voting devices are used in self-contained voting stations, the stations shall be arranged so that the secrecy of the ballot is not violated.

(3) The precinct election officers shall do all the following if it is applicable to the system being used in the precinct:

(a) Compare the seal number and identifying numbers on the devices with the numbers recorded in the poll book.

(b) Compare the names, proposals, and ballot position printed on the ballots or ballot labels, edit listing, and precinct instruction ballot to ascertain that the offices, proposals, and candidate names are the same.

(c) Verify that the ballot label pages are in the proper order.

(d) Check the mask to see that holes only appear directly opposite each arrow and that the arrow points directly to the hole opposite it.

(e) On a mechanical punch system, a sufficient number of votes shall be voted with demonstration cards to assure that the machine is functioning properly.

(f) Verify that there is a pencil or pen provided for each device for general elections only.

(g) If a stylus is used, check each stylus to assure that it is not broken.

(h) Determine that there is adequate lighting.

(4) In the event of a discrepancy, the election inspectors shall notify the clerk immediately and the voting device shall not be used until the discrepancy is resolved.

(5) The demonstration voting device shall be placed so as to afford each voter an opportunity to use it prior to voting.

Section 12. Conduct of Election and Manner of Voting. (1) Before being issued a ballot, each voter shall be instructed by the use of a demonstration ballot on the device to be used in that particular precinct. Training instructions shall also be displayed for the voters to see.

(2) The precinct election officers having charge of the ballots shall deliver to the voter an official ballot card and envelope or folder.

(3) The ballot card number issued to the voter shall be placed beside the voter's name in the poll book or precinct roster.

(4) Upon being issued a ballot card and envelope, the voter shall enter a voting station and record his or her selections on the ballot card. Before leaving the booth, the voter shall insert the ballot card in the ballot holder with the detachable stub on the outside in such a manner that the voting portion of the ballot card is not exposed.

(5) The precinct election officers designated to receive the ballot from the voter may ascertain by comparing the number on the ballot with the number recorded on the precinct list whether the ballot given to the precinct election officer/or deposited is the same ballot furnished to the voter. If it is the same ballot, the voter or the precinct election officer shall remove the detachable stub and in the presence of the voter deposit the ballot into the ballot box or insert it in the counter for tallying.

(6) The precinct election officers shall frequently check the seals and ballot label pages of the voting devices to ensure that none have been altered or defaced. If the officers find that the ballot pages of a device have been altered, multilated, or damaged in such a manner that the precinct election officers cannot correct them without doing damage to the offices, names and proposals appearing on the pages, the device shall not be used until the condition is corrected. A note of the occurrence shall be made in the remarks section of the precinct roster.

(7) A ballot card found in a booth or device shall be marked with the words "FOUND IN BOOTH." The card shall be placed in an envelope which shall be placed in the transfer case. A note of the occurrence shall be made in the remarks section of the precinct roster.

Section 15. Precinct Election Officers; Duties After Polls are Closed. (1) The ballot labels and seals of each voting device shall be inspected to ensure that they have not been altered and are intact and that seal numbers agree with the numbers as verified at the opening of the polls. A discrepancy shall be noted in the remarks section of the poll book.

(2) If the votes are tabulated at the precincts, the precinct election officers shall open the ballot box and remove the ballots. Prior to removing the ballots from their envelopes, they shall be counted to determine the total number. If the number of ballots counted is less than the number of voters according to the poll lists, the reason for the discrepancy shall be noted in the remarks section of the poll book. If the precinct election officers are unable to explain the discrepancy, they shall so state in the remarks section of the poll book. The inspectors' determination shall constitute conclusive and sufficient explanation for purposes of recount.

(3) At an election where a candidate's name has been written in on the ballot, the election inspectors shall identify each ballot card and its corresponding official ballot envelope.

(4) At the discretion of the county board of elections in charge of the election, the examination of ballot cards for damage, hanging chads, distinguishing marks made by the voter, and for indications of write-in votes may be done at the precinct or at the counting center.

(5) When the ballot cards have been processed and checked, the precinct election officers shall determine that the number of ballot cards which they are submitting to the counting center for tabulation agrees with the number of names recorded on the precinct roster less discrepancies for which notations have been made in the precinct roster the number of ballot cards which are being submitted for tabulation shall be entered in the appropriate place on the certification prepared by the precinct election officers.

(6) The precinct election officers shall prepare a certificate indicating the number of ballot cards issued to the precinct, number of ballot cards issued to the voters, number of spoiled ballot cards, and the number of unused ballot cards. The certificate shall be placed in the transfer case or included on the precinct roster.

(7) The precinct election officers shall place into the transfer case and/or ballot box for delivery, as directed, all of the following, if required by the system being used:

(a) Voted ballot cards.

(b) Ballot envelopes used in the election, unless they are placed and sealed in a separate metal container at which time they may be delivered to a place other than the counting center at the direction of the clerk.

(c) An envelope marked "ORIGINAL BALLOT CARDS FOR WHICH DUPLICATES HAVE BEEN MADE FOR ANY REASON" and containing those ballots, if used.

(d) An envelope containing spoiled ballot cards.

(e) Envelopes with notations and contents, containing any other issued ballot cards which are not to be counted.

(f) A certificate signed by the precinct election officers indicating the number of ballot cards issued, spoiled, and unused, unless included in the precinct roster.

(g) The write-in tally return sheet, unless included in poll book or precinct roster.

(h) Unused ballot cards, unless sealed in a separate container.

(8) All of the precinct election officers shall sign a certificate stating the following if it applies to the system being used in their precinct:

(a) The number of voters who voted as shown by the poll list.

(b) That the challenged and disable voter list is correct.

(c) That prior to opening the polls, each device was examined and found to be sealed with metal seals bearing the same number as certified by the county board of elections.

(d) That the ballot labels were in their proper places and conformed to the instruction ballots.

(e) That the position of candidate names and ballot numbers on the ballot labels was the same and appeared in the same position as indicated on the edit listing.

(f) That at the close of the polls, each device was examined and found to be sealed with the same numbers as verified at the opening of the polls and that the ballot labels were in their correct position.

(g) The number of ballot cards submitted for tabulation.

(h) That if the number of ballots being submitted for tabulation does not agree with the number of voters as indicated by the precinct roster, the discrepancy is noted in the remarks section of the precinct roster.

(i) That ballot cards with write-in votes have been identified to their corresponding ballot envelopes.

(j) That ballot cards required to be duplicated by the precinct election officers have been properly duplicated.

(k) That write-in votes if counted at the precinct have been properly recorded, that ballot cards, duplicated cards, and ballot envelopes used in the election have been placed in the transfer case and/or ballot box and that the case or box was securely sealed with an official metal seal in such a manner as to render it impossible to open the case without breaking the seal.

(l) The number of the seal used to seal the transfer case and/or ballot box.

(9) The precinct election officers shall either place the

precinct roster in the envelope, seal it with a red paper seal, and deliver it with the transfer case or insert the precinct roster into the transfer case for delivery.

(10) If the space in one (1) transfer case is inadequate, a second transfer case or metal container of a type approved by the county board of elections for the storage of ballots shall be used and the sealing and security handled in the same manner as the transfer case.

(11) The transfer case shall be sealed with a metal seal in a manner as to render it impossible to open the case or insert or remove ballots without breaking the seal. The seal number shall be recorded in the certificate of the precinct election officers in the poll book.

(12) The poll book and the transfer case containing the required items shall be delivered by two (2) precinct election officers to the location designated by the clerk.

Section 16. Hanging Chads. (1) A ballot card with a hanging chad shall be processed by not less than two (2) precinct election officers of differing political party preference.

(2) A ballot card with a hanging chad shall be processed as follows:

(a) When a chad is found attached to the card by one (1) or two (2) corners, the chad shall be removed by the election officer and the ballot card placed with the other ballot cards to be tabulated.

(b) When a chad is found attached to the card by three (3) corners, the number not punched shall be circled on the original card. The original ballot card shall then be placed in the envelope for "ORIGINAL BALLOT CARDS FOR WHICH DUPLICATES HAVE BEEN MADE FOR ANY REASON;" and the duplicate ballot card, if made, placed with the other ballot cards to be tabulated. A chad hanging by three (3) corners may be covered with a piece of correction tape instead of being duplicated. The originial ballot card, after being corrected, shall be placed with the other ballot cards to be tabulated.

Section 17. Processing Write-In Ballots. Write-in ballots shall be processed by not less than two (2) precinct election officers of differing political party preference.

Section 18. Duplication of Ballot Cards. (1) When a ballot card is duplicated, the duplication process shall be performed by not less than two (2) precinct election officers of differing political party preference.

(2) A duplicate ballot card shall be marked "DUPLICATE #_____." The number to be recorded on the duplicate card shall be the same identifying number recorded on the original card by the precinct election officer. The precinct number shall be recorded on the duplicate card.

(3) A duplicate ballot card shall be compared against the original ballot card to ensure that it has been accurately duplicated.

(4) An original ballot card which required duplication shall be placed in the envelope marked "ORIGINAL BALLOT CARDS FOR WHICH DUPLICATES HAVE BEEN MADE FOR ANY REASON." The duplicate ballot cards shall be placed with the ballot cards to be tabulated.

Section 19. Receiving Station. (1) At the option of the clerk in charge of the election, a transfer case and/or ballot box may be delivered by the precinct election officers to a receiving station instead of directly to the counting center. If a receiving station is used, the clerk shall appoint at least one (1) receiving board.

(2) The county board of elections in charge of the election shall determine the number of precincts which may be received by a receiving station (stationary or mobile).

(3) Upon receipt of the transfer case and/or ballot box from the precinct election officers, the receiving board shall verify that the seal number on the transfer case and/or ballot box is the same as that recorded by the precinct election officers.

(4) The receiving board shall issue a receipt for the transfer case and/or ballot box to the precinct election officers delivering the case. The receipt shall indicate in general terms the condition of the transfer case and be made in duplicate. The original copy shall be given to the precinct election officers delivering the transfer case and/or ballot box and the duplicate retained for delivery to the clerk in charge of the election.

(5) The receiving board shall deliver the transfer case and/or ballot box to the counting center.

(6) The transfer case and/or ballot box identification tag shall be attached to the transfer case or ballot box by the seal.

(7) The receiving station certificate section of the precinct roster shall read substantially as follows:

RECEIVING STATION CERTIFICATE

We hereby certify that the transfer case and/or ballot box properly sealed, for this precinct was received by the receiving board. The seal number agreed with the number recorded in the precinct roster.

We further certify that after examining the transfer case and/or ballot box the original seal was attached to the transfer case and/or ballot box.

Section 20. Canvass. (1) The county board of elections may, for reasonable cause, require the person who prepared the program to appear before the board, to bring documents pertinent to the program, and to answer questions relevant to the program.

(2) The county board of elections may, for reasonable cause, require the person having the custody of the program to appear with the program before the board. A board of canvassers may conduct a test to determine the accuracy of the program.

(3) After testing, if it is found that the program which was used to tabulate the ballots produced incorrect returns, a board of elections may require the person who prepared and supplied the program to correct the portions of the program found to be in error and submit to it a corrected program to be used to retabulate the ballots. In that event, an accuracy test shall be held under the direction of the board of elections at which time the corrected program shall be tested and certified as provided in these rules. The ballots of the precincts shall be retabulated using the corrected program in the same manner as prescribed. A board of elections may summon the certifying board which originally certified the returns to retabulate the ballots and make correct returns. The board of elections shall canvass the votes from the corrected returns.

(4) When an examination of documents or programs is completed or the ballots have been counted or retabulated, they shall be returned to the transfer case or containers and shall be sealed and delivered to their legal custodian. The number of the seal shall be recorded on a certificate to be filed with the clerk of the board of elections.

Section 21. Challengers/Party Inspectors. Challengers designated pursuant to KRS 117.315(5) may be at the coun-

ting center and a receiving station, including one (1) challenger for each separate receiving, ballot inspection, duplicating and certifying board for each computer being used to tabulate the ballots.

Section 22. Counting Center; Election Inspectors; Appointment. (1) If a counting center is used, the county board of elections of a local unit of government using that counting center shall appoint not less than one (1) receiving board and one (1) certifying board.

(2) If the county owns the devices and supplies the program, and when more than one (1) local unit of government shares a computer center and a mutual agreement exists with the county, the county board of elections shall appoint not less than one (1) receiving board and one (1) certifying board. In this case, the county clerk shall be in charge of the counting center.

(3) The county board of elections may appoint a separate board for the purpose of examining, processing and duplicating ballot cards. The board shall consist of not less than two (2) members of differing political party preference.

(4) The county board of elections in charge of the computer counting center may appoint the same persons to the receiving, certifying and other boards.

(5) The county board of elections supplying the program shall appoint a person knowledgeable and capable of operating the computer on which the ballots shall be tabulated. They may, in addition, appoint another person to observe the operation of the computer. These persons shall be considered election officials. When more than one (1) local unit of government shares a computer and an agreement has been made with the county as provided, the county board of elections shall make the appointment.

(6) A member of the county board of elections which certifies all or part of the election shall not serve on any board established under this rule.

Section 23. Counting Center; Receiving, Tabulating and Certifying Ballots. (1) The county board of elections shall determine that the seal number on the container containing the programs, official test deck, and predetermined results agree with those recorded in the certificate of the accuracy board.

(2) The county board of elections shall test the program and computer as to accuracy prior to the tabulation of ballots and again after the last precinct has been counted, and shall certify the results. The accuracy test shall be conducted using the official test deck prepared under the direction of the county board of elections and certified by the accuracy board. The county board shall use the same test as was conducted by the accuracy board. The county board of elections shall ascertain that the results agree with the results as certified by the accuracy board. The computer results of the county board of elections accuracy test shall be identified as to date and time they were conducted. The county board of elections shall certify that the required tests have been performed. This certification shall be placed under seal with the program, test deck results, and other required materials and shall be delivered to the clerk in charge of the election.

(3) The county board of elections at least once during the tabulation of ballots must test the program and computer using the official test deck.

(4) A console log of the ballot tabulation shall be maintained and, at the completion of the count and accuracy test, certified by the computer operator and any observer appointed by the county board of elections. The console log shall be delivered to the clerk in charge of the election. If the computer used to tabulate the ballots is not capable of generating a console log, then a manual log of any abnormal events shall be maintained.

(5) Upon receipt of the transfer case and/or the ballot box from the stationary or mobile receiving board, the inspectors shall verify that the seal number on the transfer case and/or ballot box is the same as that recorded by the precinct election officers. The case or box shall then be opened and the computer center receiving board shall determine whether it contains ballot cards and other required items. A discrepency in the seal number or contents shall be noted and explained in the remarks section of the precinct roster by the election inspectors delivering the transfer case and/or ballot box.

(6) The computer center receiving board shall issue a receipt for the transfer case and/or ballot box to the election inspectors delivering the case. The receipt shall indicate in general terms the contents of the transfer case or box and shall be made in duplicate. The original copy shall be given to the inspectors delivering the transfer case or box and the duplicate retained for delivery to the clerk in charge of the election.

(7) The computer center receiving board shall place the metal seal with which the case was sealed inside the transfer case or ballot box. The receiving board shall complete the certificate in the poll book, which shall read substantially as follows:

RECEIVING BOARD CERTIFICATE

We hereby certify that the transfer case and/or ballot box, properly sealed, containing the ballot cards for this precinct was received by the counting center receiving board. The seal number agreed with the number recorded on the transfer case or ballot box identification tag and in the precinct roster.

(8) The computer center receiving board shall place the cards in a sealed file.

(9) The clerk in charge of the election, the designated representatives of the clerk, the observer appointed by the county board of elections, computer personnel, data processing installation employees, authorized challengers, and the certifying board shall be allowed in the immediate area of the computer. The immediate area of the computer shall be defined by the clerk, but the clerk shall provide the public with a means of observing the computer.

(10) The clerk in charge of the election or the designated representative of the clerk shall be present in the computer room until the count is completed and all items required to be sealed have been sealed.

(11) The certifying board shall determine if the number of ballot cards tabulated by the computer agrees with the number of ballot cards submitted by the inspectors as indicated by the poll book. If a discrepancy exists, the board shall endeavor to correct it. If the discrepancy cannot be resolved, a notation of the pertinent facts shall be made in the remarks section of the poll book.

(12) The certifying board shall complete and certify a statement of returns in duplicate. The certificate of the statement of returns shall read substantially as follows:

STATEMENT OF RETURNS CERTIFICATE

We hereby certify that this is a statement of votes cast in this precinct as indicated by the tabulating equipment and that upon completion of the count, all ballots were placed in the transfer case or ballot box, that the case was sealed with seal number _____, and that the seal number was recorded in the poll book.

(13) County board of election members may serve as members of the certifying board at the discretion of the clerk in charge of the election.

(14) Upon the completion of the count of a precinct, the ballot cards shall be returned to a transfer box or ballot box. The transfer case or ballot box shall be either secured by a metal seal or placed in a secured place so as to render it impossible to open the case or box, to insert or remove ballots without breaking the seal, or impossible to enter the secured area where the ballots are stored. If the transfer case or ballot box is identified as to political unit and precinct, the identification tag shall be placed in the transfer case or ballot box or attached to the case or box in some manner.

(15) The precinct statement of returns and precinct roster shall be delivered to the persons authorized by statute to receive them. If permitted by the clerk of the board of elections, precinct statements of returns from one (1) or more precincts and poll books may be included in a single envelope or package.

(16) The clerk in charge of the counting center may require that a manual count of one (1) or more proposals in a precinct be conducted by the certifying board prior to certification of the computer tabulated results for that precinct.

(17) If the manual count and the computer count tabulated results do not agree, the certifying board shall not certify the results until the discrepancy has been reconciled.

(18) After the last precinct has been counted and the final accuracy test has been conducted, the certifying board shall secure all programs, test decks, certified results of accuracy tests, and other related material in a metal container, or in a secured place that cannot be entered by anyone without authority to do so. If these documents are placed in a container, the container must be sealed and have a certificate, signed by the certifying board, attached to it describing the contents. If these documents are placed in a secured place other than a sealed metal container, a certificate shall be attached to the container and the secured place shall not be entered unless two (2) members of the county board of elections of differing political parties are present.

(19) The clerk in charge of the election shall secure the container containing the programs, test decks, accuracy test results, and other related materials, and the original edit listing until fifteen (15) days following the certification of the election if a recount has not been requested or until a date prescribed by the State Board of Elections.

(20) Ballots used at an election may be destroyed after fifteen (15) days following the final determination of the county board of elections with respect to the election, unless their destruction has been stayed by an order of the court. Ballots shall not be released for examination, review or research unless prior approval is obtained by the county board of elections.

BRADY A. MIRACLE, Executive Director
ADOPTED: September 20, 1982
RECEIVED BY LRC: September 23, 1982 at 3:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Brady Miracle, State Board of Elections, Capitol Building, Frankfort, Kentucky 40601.

FINANCE AND ADMINISTRATION CABINET
Kentucky Board of Pharmacy

201 KAR 2:160. Licenses; inactive status.

RELATES TO: KRS Chapter 315
PURSUANT TO: KRS 13.082, 315.065, 315.110, 315.120, 315.191(1)
NECESSITY AND FUNCTION: Senate Bill 241 of the General Assembly, Commonwealth of Kentucky, Regular Session 1982, provided for changes in KRS Chapter 315. This necessitated requirements for licensees to be issued inactive status and for those who desire to apply for renewal of a license to return to active practice.

Section 1. A pharmacist may apply for inactive status by:
(1) Completing annual renewal application; and
(2) Paying annual fee for inactive status.

Section 2. Pharmacists maintaining an active license to practice in another state or jurisdiction are ineligible for inactive status in Kentucky.

Section 3. Pharmacists seeking relicensure from inactive to active status must fulfill the following requirements:
(1) If the pharmacist has been inactive for no more than three (3) consecutive years, he must:
(a) Provide written notice to the board requesting their consideration to active status. The board shall act upon such request within sixty (60) days.
(b) Satisfy the board's continuing education requirements for each year of inactive status.
(c) Successfully complete a jurisprudence examination given by the board.
(d) Pay all cumulative annual renewal fees required of active licensees.
(2) If a pharmacist has had inactive status for more than three (3) consecutive years, he must:
(a) Provide written notice to the board requesting their consideration to active status. The board shall act upon such request within sixty (60) days.
(b) Successfully complete a satisfactory examination before the board.
(c) Pay all cumulative annual renewal fees required of active licensees.

J. H. VOIGE, Executive Director
ADOPTED: September 15, 1982
RECEIVED BY LRC: October 13, 1982 at 4:25 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: J. H. Voige, Executive Director, Kentucky Board of Pharmacy, P. O. Box 553, Frankfort, Kentucky 40602.

COMMERCE CABINET
Department of Fish and Wildlife Resources

301 KAR 2:113. Deer hunting on the Blue Grass Ordnance Depot.

RELATES TO: KRS 150.025, 150.170, 150.175, 150.305, 150.330, 150.340, 150.360, 150.370, 150.390
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: This regulation pertains to the deer gun and archery hunting seasons on the

Blue Grass Ordnance Depot. Due to a conflict between military priorities and previously established hunting dates, it is necessary to establish new hunting dates which will afford hunters sport and recreational opportunities consistent with the potential of the wildlife resource present on the area. The function of this regulation is to provide for the prudent taking of deer within reasonable limits based upon adequate supply.

Section 1. Blue Grass Ordnance Depot Located in Madison County. (1) Deer archery hunts: Either sex, October 10, 17, and 24.

(2) Deer gun hunts: Either sex, December 4, 11, and 18.

(3) Bag limits: The post bag limit is one (1) deer of either sex. Persons who have taken their first deer elsewhere in Kentucky, including other designated special areas, may take their second deer on Blue Grass Ordnance Depot by any legal weapon permitted on this area. Persons who take their first deer on Blue Grass Ordnance Depot are eligible to take their second deer elsewhere in Kentucky, including other designated special deer areas by means of any legal deer hunting weapon. Under no circumstances may an individual hunter take more than two (2) deer anywhere in the state.

(4) Applications: Separate applications are required for archery and gun hunts. Applications for drawings must be made on a postcard with only one (1) hunter allowed per card. More than one (1) postcard per individual will disqualify the applicant. When a husband and wife or father (or other adult) and juvenile desire to hunt together, the required information may be written on individual three (3) by five (5) inch cards, stapled together, and mailed in one (1) envelope. Each applicant must furnish name and address (including zip code), telephone number and specify whether gun or archery hunting is desired. Hunting dates and areas will be decided by a drawing. All cards or envelopes must be postmarked no earlier than August 10 or later than September 10 to be eligible for the drawing. A fifteen dollar ($15) per person fee will be charged for hunting, payable on the assigned hunting date. Mail all applications to: Deer Hunt, Building S-14, Lexington Blue Grass Depot Activity, Lexington, Kentucky 40511.

(5) Age limits: No one under the age of fourteen (14) will be allowed to hunt. Hunters under sixteen (16) must be accompanied by an adult.

(6) Prohibited and permitted weapons: Only breechloading shotguns of ten (10) gauge maximum and twenty (20) gauge minimum firing a single projectile are permitted. Longbows and compound bows are permitted. Crossbows are prohibited.

(7) Harvest quota: Hunting will be discontinued whenever the designated deer harvest quota is reached.

(8) Hunter safety certificates: All deer hunters under the age of sixteen (16) years must possess a hunter safety certificate.

Section 2. This regulation will not be valid after December 18, 1982.

CARL E. KAYS, Commissioner
ADOPTED: October 1, 1982
APPROVED: W. BRUCE LUNSFORD, Secretary
RECEIVED BY LRC: October 1, 1982 at 11 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.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 7:050. Coal processing waste disposal sites.

RELATES TO: KRS 151.125, 151.297, 224.071, 350.020
PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.020
NECESSITY AND FUNCTION: KRS 350.020 states that unregulated surface coal mining operations create hazards dangerous to life and property and that it is the purpose of KRS Chapter 350 to provide such regulation and control of these operations in order to minimize or prevent injurious effects on the people and resources of the Commonwealth. KRS 350.020 directs the department to adopt whatever regulations are found necessary to accomplish the purpose of KRS Chapter 350. Furthermore, KRS 151.125 and 151.297 provide for the issuance of remedial orders whenever life or property are or may be endangered by the failure of any dam, reservior, levee, embankment, or other water barrier. In addition, KRS 224.071 provides for the issuance of abate and alleviate orders when there is a danger to the health or welfare of the people of the Commonwealth or to natural resources. This regulation provides for the control of coal processing waste dams, waste impoundments, and waste banks in order to prevent loss of life, damage to property, and injurious effects on the environment of the Commonwealth due to structural failure of these facilities and is necessary because such facilities are not otherwise adequately regulated. This regulation provides, among other things, for submittal of engineering reports, performance standards, and remedial measures to correct dangerous facilities.

Section 1. Applicability. This regulation applies to all coal processing waste disposal sites, whether dams, waste impoundments, or waste banks, that were constructed or utilized after August 3, 1977, regardless of whether or not the sites are or have been under permit or bond under KRS Chapter 350.

Section 2. Reports. (1) Within sixty (60) days of September 21, 1982, operators or owners of coal processing waste disposal sites shall submit two (2) copies of the following to the department regional office:

(a) All existing information currently available to the operator or owner including complete design of the facility, stability analyses, and a description of the coal processing waste material at the site including moisture content and particle size gradation. This shall also include copies of plans submitted to and/or approved by MSHA. If such plans submitted to MSHA include all of the information required by this paragraph, then submittal of copies of such plans shall suffice. Where information required by this paragraph has already been submitted to the department as a part of a permit application, the operator or owner shall so notify the department regional office in writing and need not resubmit duplicate material.

(b) As-built drawings of the current phase of construction or of the completed facility as applicable, including a map showing the location of the facility.

(2) Analyses and descriptions submitted under subsection (1)(a) of this section shall be based upon current information available to the operator or owner. However, on a case-by-case basis, at any time, the department may re-

quire the operator or owner to submit such additional plans and analyses or to conduct such investigations and testing of materials as necessary to determine the stability of the facility where failure of the facility could cause damage to life or property or injurious effects on the environmment of the Commonwealth. This may include, but is not limited to, seepage investigations, settlement studies based on compressibility and mining subsidence, foundation investigations including borings or test pits, laboratory testing of foundation materials, and determination of strength parameters based on laboratory testing of site specific coal processing waste materials.

Section 3. Performance Standards. (1) Any coal processing waste disposal site impounding water, or impounding coal processing waste which is physically unstable due to excessive moisture content or excessive fine-grained material, and any dam containing coal processing waste in the embankment shall comply with either 405 KAR 1:210 or 405 KAR 3:180.

(2) All other coal processing waste disposal sites shall comply with 30 CFR 77.214 and 30 CFR 77.215, provided, however, no facility shall be constructed in such manner that it may cause loss of life, damage to property, or injurious effects on the environment of the Commonwealth due to structural failure of the facililty.

(3) Those portions of structures that have already been constructed and structures that have been completed need not be reconstructed except where reconstruction is determined by the department to be necessary to ensure stability of the facility in order to eliminate potential hazards to life or property or to prevent injurious effects on the environment of the Commonwealth.

(4) Nothing in this regulation shall be construed as relieving an operator from the obligation to comply with any other provision of this Title, including, but not limited to, compliance with the permanent program performance standards and the requirements for existing structures in 405 KAR 7:040, Section 4.

Section 4. Remedial Measures. Operators or owners of coal processing waste disposal sites may be required by the department to revise the facility design and/or to implement such remedial measures as necessary to comply with Section 3 of this regulation.

Section 5. Certifications. (1) All designs, maps, plans, and drawings submitted under this regulation shall be prepared and certified by a qualified registered professional engineer.

(2) Construction or reconstruction of coal processing waste disposal sites shall be inspected during and after construction by a qualified registered professional engineer or by qualified persons under the engineer's supervision and the facility shall be certified within two (2) weeks of each inspection by the responsible qualified registered professional engineer as having been constructed in accordance with the design approved by the department. Where the department has not yet reviewed and approved the design, the engineer shall make the certifications based upon the design approved by MSHA.

ELMORE C. GRIM, Commissioner
ADOPTED: September 15, 1982
APPROVED: JACKIE SWIGART, Secretary
RECEIVED BY LRC: September 21, 1982 at 11:15 a.m.
See public hearings scheduled on page 533.

CORRECTIONS CABINET
Office of Community Services

501 KAR 3:010. Definitions.

RELATES TO: KRS 441.011
PURSUANT TO: KRS 13.082, 441.011
NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth definitions.

Section 1. Definitions. (1) "Jail" means county jails and correctional or detention facilities, including correctional facilities defined in KRS 67B.020 and juvenile detention facilities, operated by and under the supervision of any county, city or urban county government.

(2) "Jailer" means the duly elected or appointed official charged with the responsibility of administering the jail.

(3) "Jail staff" means deputy jailers, matrons, cooks, and other food service personnel involved in the supervision, custody, care or treatment of prisoners in the jail.

(4) "Inmate" means any person confined in the jail pursuant to any code, ordinance, law or statute of any unit of government and who is:

(a) Charged with or convicted of an offense;
(b) Held for extradition or as a material witness; or
(c) Confined for any reason.

(5) "Cabinet" means the Corrections Cabinet.

(6) "Medical authority" means the person or persons licensed and certified to provide medical care to inmates in the jail.

(7) "Security area" means a defined space whose physical boundaries have controlled ingress and egress.

(8) "Inmate living area" means a group of rooms or cells which provide housing for the inmate population.

(9) "Holding area" means an area used to hold one (1) or more persons temporarily while awaiting processing, booking, court appearance, discharge or until they can be moved to general housing areas.

(10) "Detoxification area" means an area used to temporarily hold one (1) or more chemically impaired persons during the detoxification process until they can care for themselves.

(11) "Dormitory" is an area equipped for housing more than one (1) person.

(12) "Dayroom" means a secure area with controlled access from the inmate living area, to which inmates may be admitted for daytime activities such as dining, bathing, and selected recreation or exercise.

(13) "Safety vestibule" is a defined space that promotes security by the use of two (2) or more doors and can be used to observe those who pass.

(14) "Sallyport" is a drive-through made secure by electrically or manually operated doors for entrance and exit. It is generally located in close proximity to the jail intake area.

GEORGE W. WILSON, Secretary
ADOPTED: October 1, 1982
RECEIVED BY LRC: October 14, 1982 at 11:45 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO; Doug Sapp/Alex Brodrick, Corrections Cabinet, Room 514, State Office Building, Frankfort, Kentucky 40601.

CORRECTIONS CABINET
Office of Community Services

501 KAR 3:020. Administration; management.

RELATES TO: KRS 441.011
PURSUANT TO: KRS 13.082, 441.011
NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth procedures to be followed for the administration and management of jails.

Section 1. Policy and Procedure—Organization. (1) The jailer shall develop and maintain an organizational chart and an operations manual of policy and procedure which has been adopted by the fiscal court and filed with the Corrections Cabinet.

(2) The written policy and procedures manual shall be made available to employees.

(3) The operations manual shall include but not be limited to the following aspects of the jail's operation:

(a) Administration.
(b) Fiscal management.
(c) Personnel.
(d) Security and control.
(e) Sanitation and management.
(f) Medical services.
(g) Food services.
(h) Emergency and safety procedures.
(i) Classification.
(j) Inmate programs.
(k) Inmate services.
(l) Admission and release.

(4) The operations manual shall be reviewed and updated at least annually.

(5) The provisions of this section shall be effective as of July 1, 1983.

Section 2. Legal Assistance. (1) The jailer shall be represented and advised by the county attorney as provided in KRS 69.210.

(2) The county attorney shall advise the fiscal court in writing when legal representation or legal advisement to the jailer by that office is inappropriate or creates a conflict of interest. The fiscal court shall provide funds for adequate legal representation for the jailer when the jailer has acted within his official capacity and is involved in civil or criminal litigation as a result. The fiscal court shall be encouraged to carry liability insurance for the jail staff and other county officials.

(3) The provisions of this section shall be effective as of January 1, 1983.

Section 3. Public Information. (1) The jailer shall develop and implement a plan for the dissemination of information about the jail to the public, to government agencies, and to the media. The public and inmates shall have access to:

(a) The plan; and

(b) Specific jail rules and procedures affecting inmates as developed in accordance with this plan.

(2) With the consent of the inmate, news media shall be permitted to interview any inmate as set forth in the jail's policy and procedure manual except when the safety and security of the jail is affected.

(3) Written policy and procedure shall set forth the time and length allowable for inmate interviews.

(4) All official statements to the news media, relating to jail administration policy, shall be made by the jailer only or his designee.

(5) Release of inmate information shall include the following:

(a) All requests for information shall be addressed to the jailer;

(b) Governmental agencies shall be provided with information pertinent only to their specific function and with the consent of the inmate; and

(c) Relatives and private citizens shall only be provided with information supplied to the media.

(6) No information shall be released that is detrimental to another inmate.

(7) The provisions of this section shall be effective as of July 1, 1983.

Section 4. Information Systems. (1) The jailer shall establish and maintain an information system which shall comply with the requirements of this section.

(a) Jail information and inmate records shall be retained in written form or within computer records.

(b) Jail information and inmate records shall be stored in a secure manner so that they are protected from theft, loss, tampering, and destruction. Written guidelines shall specify the length of time an inmate record shall be maintained after an inmate's release from custody and the conditions under which archives are maintained.

(c) A written report shall be made of all extraordinary or unusual occurrences within forty-eight (48) hours of the occurrence. This report shall be placed in the inmate's folder. Extraordinary or unusual occurrences shall include but not be limited to:

1. Death of an inmate.
2. Attempted suicide or suicide.
3. Serious injury, whether accidental or self-inflicted.
4. Attempted escape or escape from confinement.
5. Fire.
6. Riot.
7. Battery, whether by a staff member or inmate.
8. Sexual assaults.
9. Occurrence of contagious or infectious disease, or illness within the facility.

(d) All jails shall keep a log of daily activity within the jail.

(e) Each jail shall maintain records on the types and hours of training completed by each employee. A current and accurate personnel record shall be maintained on each employee. Each employee shall have access to his individual record.

(2) The provisions of this section shall be effective as of July 1, 1983.

Section 5. Inmate Records. (1) The information required by 501 KAR 3:120 and 3:130 for admission and release shall be retained for each inmate. Other information retained in each inmate's jail record shall include but not be limited to:

(a) Court orders.
(b) Personal property receipts.
(c) Infraction reports.
(d) Reports of disciplinary actions.
(e) Work record and program involvement.
(f) Unusual occurrences and in the case of death of an inmate, disposition of the inmate's property and remains.

(2) Medical records shall be maintained as required by 501 KAR 3:090.

(3) The jailer shall ensure that inmate records are

safeguarded in accordance with relevant federal and state laws and regulations.

(4) The jailer shall require that inmates sign a "Release of Information Consent Form" prior to the release of information to individuals other than law enforcement or court officials. A copy of the signed consent form shall be maintained in the inmate's record. This form shall include but not be limited to:

(a) Name of person, agency or organization requesting information.

(b) Name of facility releasing information.

(c) Specific information to be disclosed.

(d) Purpose of the information.

(e) Date consent form is signed.

(f) Signature of inmate.

(g) Signature of employee witnessing the inmate's signature.

(5) Juvenile jail records shall be kept separate from adult jail records and shall be made available for examination only as provided in KRS 208.340. Upon an order of expungement pursuant to KRS 208.275, the jailer shall seal the records and the juvenile's detention shall be deemed never to have occurred.

(6) All jail records maintained on mental inquest detainees held under KRS Chapter 202A shall be kept separate from any other jail records. Mental inquest records are confidential and shall be made available for examination only as provided in KRS 202A.091. Upon an order of expungement pursuant to KRS 202A.091(2), the jailer shall seal the records and the mental inquest detainee's stay at the jail shall be deemed never to have occurred.

(7) The provisions of this section shall be effective as of July 1, 1983.

GEORGE W. WILSON, Secretary

ADOPTED: October 1, 1982

RECEIVED BY LRC: October 14, 1982 at 11:45 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Doug Sapp/Alex Brodrick, Corrections Cabinet, Room 514, State Office Building, Frankfort, Kentucky 40601.

(3) The State and Local Finance Office shall submit budget forms to the jailer by March 1 of each year.

(4) The provisions of this section shall be effective as of March 1, 1983.

Section 2. Accounting. (1) The county treasurer shall maintain fiscal records which clearly indicate the local cost for operating the jail in accordance with KRS 68.020 and 441.008.

(2) Fiscal records shall have an itemized breakdown of the total operating expenses including but not limited to wages, salaries, food and operating supplies.

(3) The provisions of this section shall be effective as of March 1, 1983.

Section 3. Canteen. (1) As provided in KRS 441.067, each jailer may establish a canteen to provide inmates with approved items not supplied by the jail.

(2) The provisions of this section shall be effective as of January 1, 1983.

Section 4. Audits. (1) The county jail budget shall be audited in accordance with KRS 43.070.

(2) The provisions of this section shall be effective as of January 1, 1983.

Section 5. Payroll. (1) Jail employees shall be paid on the same dates as county employees.

(2) The provisions of this section shall be effective as of July 1, 1983.

Section 6. Inventory. (1) Each jailer shall implement and utilize the established inventory procedure of the county.

(2) The provisions of this section shall be effective as of January 1, 1983.

GEORGE W. WILSON, Secretary

ADOPTED: October 1, 1982

RECEIVED BY LRC: October 14, 1982 at 11:45 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Doug Sapp/Alex Brodrick, Corrections Cabinet, Room 514, State Office Building, Frankfort, Kentucky 40601, (502) 564-4221.

CORRECTIONS CABINET
Office of Community Services

501 KAR 3:030. Fiscal management.

RELATES TO: KRS 441.011(6)

PURSUANT TO: KRS 13.082, 441.011(6)

NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth physical management procedures to be followed in jails.

Section 1. Budgeting. (1) The jailer shall prepare and present a line item budget request to the fiscal court in accordance with KRS 441.008.

(2) The jailer shall use the format for budget development on forms prepared by the State and Local Finance Office.

CORRECTIONS CABINET
Office of Community Services

501 KAR 3:040. Personnel.

RELATES TO: KRS 441.011

PURSUANT TO: KRS 13.082, 441.011

NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth personnel procedures to be followed in jails.

Section 1. Staffing. (1) Each jail shall provide twenty-four (24) hour awake supervision for all inmates.

(2) When female inmates are lodged in the jail, female staff shall be made available as needed to perform sensitive procedures to include but not limited to:

(a) Admission.
(b) Searches.
(3) The provisions of this section shall be effective as of July 1, 1983.

Section 2. Background Checks; Qualifications. (1) Prior to employment, all employees of the jail shall be subject to thorough background investigation to include criminal, medical, and employment history.
(2) All security employees of the jail shall be at least twenty-one (21) years of age.
(3) The provisions of this section shall be effective July 1, 1983.

Section 3. Compensation. (1) All employees of the jail shall receive salaries at least equal to the State Minimum Wage Law except where Federal Minimum Wage Law has to be applied.
(2) The provisions of this section shall be effective July 1, 1983.

Section 4. Training; Curriculum. (1) In order to qualify for the training expense allowance under KRS 441.017, the jailer shall receive a minimum of forty (40) hours annual in-service training certified by the Corrections Cabinet.
(a) Local corrections training efforts shall be certified by the Corrections Cabinet.
(b) The Curriculum Advisory Committee shall advise the Corrections Cabinet on topics for training curriculum.
(c) Jailer training shall be delivered on a regional basis by the Corrections Cabinet.
(2) The jail staff shall receive a minimum of sixteen (16) hours annual in-service training delivered by the Corrections Cabinet on a regional or local basis.
(3) The provisions of this section shall be effective as of January 1, 1983.

Section 5. Policy and Procedures. (1) Written policy shall specify that equal employment opportunities exist for all positions.
(2) The provisions of this section shall be effective as of July 1, 1983.

Section 6. Physical Fitness. (1) The jailer shall ensure that all employees maintain a level of physical fitness that will allow the employees to satisfactorily perform their duties.
(2) The provisions of this section shall be effective as of January 1, 1983.

Section 7. Code of Ethics. (1) The jailer shall make available to all employees a written code of ethics.
(2) The written code of ethics shall be incorporated in the jail's policy and procedures manual and shall include but not be limited to the following:
(a) Employees shall not:
1. Exchange personal gifts or favors with inmates, their family, or friends;
2. Accept any form of bribe or unlawful inducement;
3. Perform duties under the influence of intoxicants or consume intoxicants while on duty;
4. Violate or disobey established rules, regulations, or lawful orders from a superior;
5. Discriminate against any inmates on the basis of race, religion, creed, gender, national origin, or other individual characteristics;
6. Employ corporal punishment or unnecessary physical force;
7. Subject inmates to any form of unwarranted physical or mental abuse;
8. Intentionally demean or humiliate inmates;
9. Bring any type of weapon or item declared as contraband into the jail without proper authorization;
10. Engage in critical discussion of staff members or inmates in the presence of inmates;
11. Divulge confidential information without proper authorization;
12. Withhold information which, in so doing, threatens the security of the jail, its staff, visitors, or the community;
13. Through negligence, endanger the well-being of self or others;
14. Engage in any form of business or profitable enterprise with inmates; and
15. Inquire about, disclose, or discuss details of an inmate's crime other than as may be absolutely necessary in performing official duties.
(b) Employees shall:
1. Comply with all established rules, regulations, and lawful orders from superiors;
2. Treat all inmates in a fair, impartial manner; and
3. Report all violations of the code of ethics to the jailer.
(3) Any employee violation of this code of ethics shall be made a part of that employee's personnel file.
(4) The provisions of this section shall be effective as of January 1, 1984.

Section 8. Grievance Procedure. (1) Jail employees shall have access to the established grievance procedure of their respective county.
(2) The provisions of this section shall be effective as of January 1, 1984.

Section 9. Hiring Procedures. (1) The jailer shall have a written personnel plan governing the selection, training, promotion, and retention of jail personnel.
(2) Personnel assignments shall be based on merit.
(3) The provisions of this section shall be effective as of January 1, 1984.

Section 10. Performance Evaluation. (1) A written standardized performance evaluation shall be conducted at least annually by the jailer.
(2) The provisions of this section shall be effective as of January 1, 1984.

GEORGE W. WILSON, Secretary
ADOPTED: October 1, 1982
RECEIVED BY LRC: October 14, 1982 at 11:45 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Doug Sapp/Alex Brodrick, Corrections Cabinet, Room 514, State Office Building, Frankfort, Kentucky 40601.

CORRECTIONS CABINET
Office of Community Services

501 KAR 3:050. Physical plant.

RELATES TO: KRS 441.011
PURSUANT TO: KRS 13.082, 441.011
NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth standards and procedures to be followed in the design and construction of jails.

Section 1. Purpose. The purpose of this regulation is to provide minimum standards for the renovation or construction of jail facilities and for measuring compliance of existing jails in accordance with KRS 441.011, 441.012, and 441.013.

Section 2. Consultation. The Corrections Cabinet shall provide for any county government which wishes to remodel an existing jail or construct a new jail, a consultant knowledgeable in the design, utilization, and operation of jails. The consultant shall meet with the appropriate officials of that county and advise them in matters including but not limited to:
(1) Site selection.
(2) Probable need as it relates to capacity and types of inmates to be housed.
(3) Sources of financing for constructing.
(4) Laws and regulations relating to treatment of inmates.
(5) Laws and regulations relating to facilities for inmates.
(6) Sources of revenue for operations of the jail.
(7) Probable cost for operation of the jail.
(8) Potential for shared facilities with adjoining counties.

Section 3. Site Acceptance. No jail shall be built without site acceptance by the Corrections Cabinet. The following criteria shall be considered in site selection including but not limited to:
(1) Size.
(2) Proximity to courts.
(3) Proximity to community resources.
(4) Availability of public transportation.
(5) Environmental health.
(6) Adequate parking.
(7) Provisions for future expansion.

Section 4. Construction Documents. Prior to the renovation or construction of any jail, plans and specifications shall be submitted to the Corrections Cabinet for review and acceptance as follows:
(1) Schematic outline. This submission shall show:
(a) Control of the site.
(b) Acceptance of the site for a jail by the planning and zoning commission, if any, and all other interested government agencies.
(c) A list of all proposed rooms and areas and their dimensions.
(d) A circulation diagram.
(e) An estimate of cost of land, services, construction, and financing.
(f) Sources of development funds.
(g) Post assignment and staffing needs.
(2) Preliminary drawings. This submission shall include:
(a) Scale drawings one-eighth (1/8) inch to the foot or larger of each floor plan.
(b) Scale drawings (one (1) inch equals fifty (50) feet or larger) of the site, locating the buildings, parking, and other facilities.
(c) Sections through the proposed structure indicating ceiling heights of all rooms, mechanical spaces, roof slopes, and other related information.
(d) Elevation drawings (one-eighth (1/8) inch to the foot or larger) of all exterior walls.
(e) A current estimate of the costs.
(f) A statement regarding the sources of the development funds.
(g) A map of the community locating the proposed jail, the courts, community facilities, population centers, business districts, highways, roads, and police department.
(3) Final construction drawings shall be submitted to the Corrections Cabinet, the Department for Housing, Buildings and Construction, and any other applicable state agency for review and acceptance and shall include:
(a) All necessary construction drawings including construction details.
(b) Specifications for all materials and workmanship.
(c) A proposed contract with general conditions and special conditions.
(d) Engineering calculations for the foundations, structures, heating, ventilating, air conditioning, lighting, and plumbing, signed by licensed architects and engineers.
(e) Detailed estimates of the costs of land, land improvements, construction, financing, professional services, and building permits.
(f) An updated statement in detail regarding the sources of development funds.
(4) Construction documents. This submission shall include:
(a) Construction drawings and specifications signed by an architect registered in the Commonwealth of Kentucky and revised if necessary to include all changes required by the Corrections Cabinet.
(b) Signed copies of all contracts for construction, financing, and bonding revised as necessary to include all changes required by the Corrections Cabinet.
(c) Signed copies of all construction permits.
(d) Documents will bear signed approvals from all other applicable state agencies.
(5) The Corrections Cabinet will review all submissions within thirty (30) days of receipt and issue a letter of acceptance, acceptance with required changes, or rejection with reasons. No construction shall be started until the construction documents as required in subsection (4) of this section have been accepted with required changes by the Corrections Cabinet.

Section 5. Waiver of Compliance. (1) The Corrections Cabinet may grant a waiver of the implementation of the physical plant standards for an existing jail if the cabinet determines:
(a) That strict compliance will cause unreasonable difficulties;
(b) That a waiver will not seriously affect the security, supervision of prisoners, programs, or the safe, healthful, or efficient operation of the jail; and
(c) That compliance is to be achieved in a manner other than that which is specified, but in a manner which is sufficient to meet the intent of these standards.
(2) When a waiver from a standard is desired, the

responsible local authority shall submit a written request to the Corrections Cabinet. The written request shall include the following information:

(a) Citation of the specific standard involved;

(b) Specification of the efforts made to bring the jail into strict compliance;

(c) Identification and description of the specific difficulties involved in meeting strict compliance;

(d) Description of the alternative proposed; and

(e) Provision of sufficient documentation which will demonstrate that the waiver, if granted, will not jeopardize the security, supervision of inmates, programs, or the safe, healthful, or efficient operation of the jail.

(3) A waiver, if granted by the Corrections Cabinet, shall apply only to the petitioner for the specific situation cited and for the period of time specified and shall include any requirements imposed by the Cabinet as conditions upon the waiver. No waiver shall be granted for longer than twelve (12) months. Any waiver granted for a twelve (12) month period shall be reviewed at the end of the period for reapproval.

Section 6. Facility Design. (1) Depending upon its size and intended use, every jail shall include within its walls the following facilities and equipment:

(a) Entrances. Every jail shall have three (3) separate and distinct entrances: a public entrance, an adult inmate entrance, and a service entrance. The Corrections Cabinet may permit these entrances to be combined.

1. Public entrance: The purpose of this entrance is to divert the general public from the security area of the jail and from contact with incoming inmates. This area will be the location for the general public to conduct their business at the jail. The following design features shall be incorporated:

a. Provide a clear view of this from the control room.

b. Meet the requirements for handicapped persons.

2. Service entrance: The purpose of this entrance is to provide access to service vehicles and delivery trucks with minimum security risks. It may contain a loading dock and shall be located in close proximity to storage rooms and the kitchen area.

3. Adult inmate entrance: The purpose of this entrance is to provide secure and private access to the jail for incoming inmates. This entrance may be serviced by a drive-in sallyport and shall incorporate the following design features:

a. Be located adjacent to the booking area.

b. Be monitored from the control room.

c. Be free of steps or other obstacles.

d. Be protected from inclement weather.

e. Have metal lockers to secure weapons separate from inmate ingress.

f. All hardware and equipment shall be of approved penal type.

(b) Exits. No exits other than those entrances specified above shall be permitted except for fire exits. Such fire exits, when possible, shall open into controlled, secured courts and exercise areas only.

(c) Administrative areas. This area will provide space outside the secured area of the jail to house the administrative offices and to accommodate the public. This shall contain the following:

1. Waiting area: To provide space for the general public which is protected from inclement weather. This area may have toilet facilities and drinking fountains.

2. Visiting area, public side: This area shall provide for private communication with inmates and be located in close proximity to the waiting area. All furnishings of this area shall be of approved penal type and permanently attached.

3. Office area: This area shall be of sufficient space to house the administrative function of the jail.

4. Entrance to security area: The purpose is to provide secure access to the security area of the penal type and access shall be controlled from the security area.

(d) Security areas. The area shall enclose all facilities and services required for or used by the inmates. It shall contain the following function areas:

1. Booking area: The purpose is to provide a private and separate area, properly equipped to carry out admission and release procedures. All equipment shall be of approved penal type. This area shall be designed for different classes of inmates. Design features for this area shall include:

a. Close proximity to a secure area for storage of inmate personal property.

b. Close proximity to an area for photography and fingerprinting.

c. Close proximity to an area for showering, delousing, and strip searching inmates which assures privacy for the inmate.

d. Close proximity to storage areas for jail clothing, beddng, etc.

e. Close proximity to temporary holding and detoxification cells.

f. Located in a manner to be monitored by the control room.

(e) Detoxification area. The purpose is to provide an area to separate intoxicated inmates from the general inmate population. Design features shall include:

1. A minimum of fifty (50) square feet per inmate.

2. A minimum of eight (8) feet ceiling height.

3. One (1) slab or bench of approved material thirty (30) inches wide by seventy-two (72) inches long by four (4) inches high for each inmate.

4. An approved penal commode and a flush floor drain controlled from outside the cell.

5. A bubble-type drinking fountain.

6. All fixtures and equipment shall be approved penal type.

7. All surfaces inside the area shall be smooth, flush, and free of sharp edges and protrusions.

8. All horizontal surfaces (the bench and the floor) shall be sloped (one-fourth (¼) of an inch to the foot) to a floor drain.

9. All corners (except at ceiling) shall be coved.

10. Ceiling, walls, surfaces of the wall base and floors shall be of approved masonry or steel construction.

(f) Holding area. The purpose of this area is for temporary detention. Design features shall include:

1. A minimum of fifty (50) square feet area.

2. Eight (8) feet ceiling height.

3. One (1) penal type table and bench per rated capacity.

4. All equipment shall be of approved penal type.

5. One (1) approved penal type lavatory/commode.

6. One (1) penal type light fixture capable of providing fifty (50) footcandles of light.

7. Ceilings, walls, surfaces of wall bases and floors shall be of approved masonry or steel construction.

(g) Medical exam room. The purpose of this room is to provide a separate and secure area for medical examinations and rendering medical treatment. Design features shall include:

1. Minimum dimension shall be eight (8) feet.
2. Minimum ceiling height shall be eight (8) feet.
3. One (1) lavatory or counter sink.
4. One (1) work counter.
5. Secured lockers for medical equipment, medical instruments, medications, bandages, etc., secured to the floor or walls.
6. One (1) or more medical examination tables secured to the floor.
7. Electrical power outlets shall be provided in this room.
8. All ceilings, walls, and floors shall be approved masonry construction.

(h) Visiting area, inmate side. The purpose is to provide secure and private visitation for the inmates. All equipment and furnishings shall be of approved penal type and permanently attached.

(i) Conference room. The purpose of this room is to provide space for confidential conferences between inmates and lawyers, probation officers, clergy, etc. Design features shall include:

1. Doors, windows, and light fixtures shall be approved penal type.
2. Walls, floors, and ceilings shall be of approved masonry construction.
3. Furnishings shall be of approved penal type and permanently attached.

(j) Multi-purpose room. The purpose of this area is to provide space for assembly of inmates for specific program activities. Design features shall include:

1. Doors, windows, and light fixtures shall be approved penal type.
2. Walls, floor, and ceiling shall be of approved masonry construction.

(k) Outdoor recreation. The purpose of this area is to provide secure outdoor space for recreational activities. This area shall be at least thirty-five (35) square feet per inmate in an area.

(l) Kitchen. The purpose of this area is to provide sufficient space and equipment for preparing meals for the maximum rated capacity of the jail. Design features shall include:

1. Compliance with standards of the State Food Service Code, 902 KAR 45:005.
2. Commercial type stoves and refrigeration units.
3. Doors and windows will be of approved penal type.
4. Walls, floors, and ceilings will be approved fire rated masonry construction.

(m) Control room. The purpose of this area is to control all movement of inmates within the jail and traffic in and out of the security area. Also, this area will be the hub for operations within the jail. Design features shall include:

1. Doors and windows shall be of approved penal type.
2. Walls, floors, and ceiling shall be approved masonry or steel construction.
3. Audio and video monitors shall be located in this area.
4. Gauges, indicators, and alarms shall be located in this area.
5. Central control panels shall be located in this area.
6. This area shall permit visual observation of all corridors, entrances, and exits under its supervision.

(n) When jail staff are not within normal hearing distance of inmates, an audio communication system shall be installed to allow staff to communicate with inmates.

(o) A panic button may be installed in corridors and staff observation areas, which shall sound an alarm in the control center in the event of an emergency situation.

(p) Confinement areas. The purpose of these areas is to provide suitable living conditions for all types of inmates lodged in the jail. Design features for all living areas shall include:

1. Providing sufficient natural or artificial light to provide fifty (50) footcandles of light for reading purposes and twenty (20) footcandles for all other purposes.
2. Providing ventilation to meet air exchange as required in the Kentucky Building Code, as adopted in 815 KAR 7:020.
3. Providing temperature ranges within comfort zones (sixty-five (65) degrees Fahrenheit—eighty-five (85) degrees Fahrenheit).
4. Shall be of approved masonry or steel construction.
5. All furnishings and equipment shall be approved penal type and permanently attached.
6. Each confinement area shall have approved floor drains outside the immediate living area.
7. Be equipped with an approved securable food pass.
8. Electrical outlets when provided shall have ground-fault circuit breakers.

(q) All cells and housing areas design features shall include:

1. Prisoner living areas shall be equipped with the security hardware to meet the security requirements of the inmate(s) housed in the area. Depending on the size of the jail at least one (1) living area shall be designed at high security and be equipped with a safety vestibule to enter the living area.
2. Depending on the size of jail one (1) or more isolation single-man cells shall be provided.
3. All cells shall open into a dayroom and no cell shall be less than seventy (70) square feet. No cell shall have more than two (2) penal type bunks. When two (2) persons are housed in a cell, they shall not be detained in the cells for longer periods than twelve (12) hours.
4. Each cell shall contain:

a. An approved penal type commode, lavatory and drinking fountain, penal type bunks secured to floor and/or wall, penal type table with two (2) seats, and penal type storage shelf with breakaway hangers.
b. A light fixture of approved penal type with controls non-accessible to inmates.

5. The jail shall provide living space for low security inmates including work release and community service workers. This area shall be either cells opening into a dayroom or a combination of this and multiple-occupancy dorms. If dorms are used, they must include:

a. Fifty (50) feet per inmate.
b. One (1) commode/lavatory/drinking fountain per eight (8) inmates.
c. One (1) shower per fifteen (15) inmates.
d. Sufficient tables and benches to handle the number of inmates housed in the dorm.
e. One (1) penal type shelf with breakaway hangers per inmate.
f. One (1) penal type bunk secured to the floor or wall per inmate.

6. Each dayroom area shall contain:

a. Thirty-five (35) square feet per inmate.
b. One (1) commode per eight (8) inmates.
c. One (1) lavatory per eight (8) inmates.
d. One (1) drinking fountain per fifteen (15) inmates.
e. One (1) shower per fifteen (15) inmates.

f. Tables and benches with space twenty-four (24) inches wide and eighteen (18) inches deep per inmate.

(2) The provisions of this section shall be effective as of January 1, 1983.

GEORGE W. WILSON, Secretary
ADOPTED: October 1, 1982
RECEIVED BY LRC: October 14, 1982 at 11:45 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Doug Sapp/Alex Brodrick, Corrections Cabinet, Room 514, State Office Building, Frankfort, Kentucky 40601.

CORRECTIONS CABINET
Office of Community Services

501 KAR 3:060. Security; control.

RELATES TO: KRS 441.011
PURSUANT TO: KRS 13.082, 441.011
NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth security procedures to be followed in local jails.

Section 1. Policy and Procedure. (1) Each jailer shall develop a written policy and procedure governing all security aspects of the jails operations.

(2) The Corrections Cabinet shall provide technical assistance to the jailer in his efforts to formulate such written policy and procedure.

(3) These policies and procedures shall include but not be limited to:

(a) Inmate rules and regulations;
(b) Staffing;
(c) Searches of inmate and of secure areas;
(d) Visitation;
(e) Key and weapon control;
(f) Inmate head counts;
(g) Emergency situations; and
(h) Jail schedule.

(4) The provisions of this section shall be effective as of July 1, 1983.

Section 2. Inmate Supervision. (1) Jail personnel shall conduct direct, in-person surveillance of each inmate on an irregular schedule, no less than every sixty (60) minutes.

(2) Jail personnel shall conduct direct, in-person surveillance every twenty (20) minutes on the following classes of inmates:

(a) Suicidal;
(b) Assultive;
(c) Escape risk;
(d) Mentally or emotionally disturbed;
(e) Inmates in segregation;
(f) Inmates in detox cell; and
(g) Juveniles, if housed in the jail.

(3) When available, closed-circuit television shall be used primarily to monitor hallways, stairwells, sallyports, perimeter security, points of egress, and common areas.

(4) There shall be at least three (3) documented inmate counts every twenty-four (24) hours during which each inmate's physical presence, movement, or speech shall be observed. At least one (1) count shall be conducted per shift.

(5) The provisions of this section shall be effective as of July 1, 1983.

Section 3. Security Procedures. (1) Each jailer shall establish a procedure for inspecting all facility areas accessible to inmates for contraband and physical security at least weekly.

(a) Isolated security spot checks shall be conducted daily.

(b) Items considered as contraband or items permitted in the jail shall be clearly defined in the jail rules.

(c) There shall be a written procedure for reporting security irregularities.

(2) No weapon, ammunition, chemical agent, related security equipment, or any object which represents the potential of being used as a weapon shall be permitted in the security area unless authorized by the jailer.

(3) All firearms, weapons, and chemical agents assigned to the jail shall be stored in an arsenal, vault, or other secure room under lock.

(a) This area shall be inaccessible to all unauthorized persons.

(b) There shall be a written procedure for issuing and accounting for all weapons.

(4) All security devices and safety equipment shall be inspected monthly to ensure they are maintained in proper working order.

(5) All tools, toxic, corrosive, and flammable substances, and other potentially dangerous supplies and equipment shall be stored in a locked area which is secure and located outside the security perimeter of the confinement area.

(6) Tools, supplies, and equipment which are hazardous shall be used by inmates only under the direct supervision of jail personnel.

(7) At no time shall any inmate be assigned to a position of authority over any other inmate or given the responsibility of providing inmate services such as commissary, telephone calls, or delivery of meals.

(8) Inmates shall never be permitted to perform or assist in any security duties.

(9) Jails with work release or community service programs shall establish special control procedures to minimize contact between inmates with work release privileges and other inmates.

(10) Inmates shall be thoroughly searched whenever entering or leaving the security perimeter.

(11) Written procedures shall be developed for transporting outside the jail.

(12) Each jailer shall develop written policies and procedures governing the use of physical restraints.

(13) No inmate placed in physical restraints shall be left unattended.

(14) All jails shall have key-control procedures which shall include but not be limited to:

(a) A key control center which is secure and inaccessible to unauthorized persons at all times.

(b) An accounting procedure for issuing and returning keys.

(c) A procedure for immediate reporting and repairing of any broken or malfunctioning key or lock.

(d) A set of duplicate keys to be maintained in a separate, secure place.

(e) No inmate shall be permitted to handle keys used to operate jail security locks.

(f) Keys operating locks to outside doors or gates shall

not be permitted in the confinement area.
(g) Emergency keys and keys to critical security areas shall only be issued in accordance with written procedures established by the jailer.
(h) Precautions similar to those outlined above shall be taken to insure the security of all non-key operated locking devices such as electrical switches or levers.
(i) Locks to outside exits shall be keyed differently from interior locks.
(15) Trusties.
(a) At no time shall a trusty have access to or control of weapons.
(b) At no time shall an unsupervised trusty be permitted in either a program, support, or housing area with inmates of the opposite sex.
(c) At no time shall an inmate trusty be permitted in either a program, support, or housing area with juvenile inmates.
(16) The provisions of this section shall be effective as of July 1, 1983.

Section 4. Daily Jail Log; Special Reports. (1) A detailed written record shall be made of all significant activities occurring within the jail including but not limited to:
(a) Security and safety inspections.
(b) Inmate counts.
(c) Use of force.
(d) Disciplinary actions.
(e) Movement inside and outside the jail.
(f) Medical treatment.
(g) Feeding schedule and menus.
(h) Extraordinary occurrences.
1. Fires.
2. Assaults.
3. Suicide or attempted suicide.
4. Escape or attempted suicide.
(i) Inmate vandalism.
1. Destruction of jail property.
2. Flooding of plumbing fixtures.
(j) Staff roster for each shift.
(k) Telephone log.
(l) Visitors log.
(m) Fire drills.
(2) The provisions of this section shall be effective as of July 1, 1983.

GEORGE W. WILSON, Secretary
ADOPTED: October 1, 1982
RECEIVED BY LRC: October 14, 1982 at 11:45 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Doug Sapp/Alex Brodrick, Corrections Cabinet, Room 514, State Office Building, Frankfort, Kentucky 40601.

CORRECTIONS CABINET
Office of Community Services

501 KAR 3:070. Safety; emergency procedures.

RELATES TO: KRS 441.011
PURSUANT TO: KRS 13.082, 441.011
NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth safety and emergency procedures to be followed in jails.

Section 1. Policy and Procedure. (1) Each jail shall have a written policy and procedure which specify fire prevention regulations and practices to ensure the safety of inmates, visitors, and staff. These shall include but not be limited to:
(a) Provision for fire emergency drills for staff and inmates at least quarterly.
(b) Written documentation of fire drills.
(c) A fire safety inspection by the Corrections Cabinet at least semi-annually.
(d) Inspection and testing of fire protection equipment by qualified persons at least annually with visual inspections by staff monthly.
(e) Smoking restrictions and regulations.
(f) Written evacuation plan coordinated with local fire officials.
(2) Each jail shall have written policies and procedures for emergency situations including but not limited to:
(a) Escapes.
(b) Taking of hostages.
(c) Riots.
(d) Food poisoning.
(e) Civil disturbances in the community.
(f) Natural disasters.
(g) Suicides.
(h) Other deaths and disorder.

Section 2. Physical Plant. (1) Each jail shall have exits which are distinctly and permanently marked, visable at all times, kept clear, and maintained in usable condition.
(2) Each jail shall have equipment necessary to maintain essential lights, power, and communications in an emergency situation.
(3) In all areas where an inmate may be confined, each jail shall be provided with an emergency smoke evacuation system activated by smoke detectors and operated by emergency power, if necessary.
(4) Each jail shall have an approved fire alarm and smoke detection system which meets the National Fire Safety Code (1981 edition, Chapters 14 and 15).

Section 3. The provisions of this regulation shall be effective as of January 1, 1983.

GEORGE W. WILSON, Secretary
ADOPTED: October 1, 1982
RECEIVED BY LRC: October 14, 1982 at 11:45 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Doug Sapp/Alex Brodrick, Corrections Cabinet, Room 514, State Office Building, Frankfort, Kentucky 40601, (502) 564-4221.

CORRECTIONS CABINET
Office of Community Services

501 KAR 3:080. Sanitation; hygiene.

RELATES TO: KRS 441.011
PURSUANT TO: KRS 13.082, 441.011
NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth procedures to provide proper sanitation and hygiene in jails.

Section 1. Procedures. (1) The jailer shall provide for the control of vermin and pests.
(2) The jail shall provide for both solid and liquid waste disposal.
(3) The jailer shall have a written preventative maintenance plan which includes but is not limited to:
(a) A cleaning schedule for various locations and items in the jail.
(b) A schedule for inspections by the jailer.
(c) A schedule for trash and garbage removal.
(d) A schedule for periodic inspection and maintenance of specific mechanical equipment.
(4) The jail shall have fresh and purified air circulating within inmate living and activity areas at least equivalent to ten (10) cubic feet per inmate per minute.
(5) Except in detox cells, the jail shall furnish clean sanitized bedding to each inmate including but not limited to:
(a) One (1) mattress.
(b) One (1) mattress cover.
(c) One (1) blanket and sheet.
(d) One (1) pillow.
(e) One (1) pillowcase.
(6) Inmate bedding shall be cleaned on a regular basis according to the following schedule:
(a) Sheets, pillowcases, and mattress cover shall be cleaned at least once per week.
(b) Blankets shall be cleaned upon reissue or quarterly, whichever is sooner.
(c) Mattresses and pillows shall be cleaned quarterly.
(7) Each inmate shall be issued a clean towel upon admission to an inmate living areas. Towels shall be laundered every fourth day.
(8) All floors, toilets, bath tubs, and sinks in the jail shall be washed daily or more often as necessary.
(9) All showers shall be cleaned on at least a weekly basis.
(10) All inmates assigned to inmate living areas shall be issued or permitted to obtain the following hygienic items:
(a) Soap.
(b) Toothbrush.
(c) Toothpaste.
(d) Toilet paper.
(e) Female sanitary supplies (where applicable).
Indigent inmates shall be furnished these items by the jail.
(11) All inmates shall be permitted to shave daily. If a communal razor is used, it shall be sanitized before each use. No inmate shall be forced to shave except for medical purposes and under the specific orders of the medical authority.
(12) Hair cutting services or sanitized hair cutting equipment shall be available to all inmates. Inmates shall not be forced to cut their hair except for medical purposes and under the specific orders of the medical authority.
(13) All inmates shall be provided shower and bathing facilities within twenty-four (24) hours of admission. Inmates shall be permitted to bathe or shower daily.
(14) All inmates in the jail shall be provided with hot and cold running water for bathing.
(15) As required in KRS 441.012, the jail shall be inspected by the Corrections Cabinet bi-annually.

Section 2. The provisions of this regulation shall be effective as of January 1, 1983.

GEORGE W. WILSON, Secretary
ADOPTED: October 1, 1982
RECEIVED BY LRC: October 14, 1982 at 11:45 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Doug Sapp/Alex Brodrick, Corrections Cabinet, Room 514, State Office Building, Frankfort, Kentucky 40601.

CORRECTIONS CABINET
Office of Community Services

501 KAR 3:090. Medical services.

RELATES TO: KRS 441.011
PURSUANT TO: KRS 13.082, 441.011
NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth procedures for the proper delivery of medical services in jails.

Section 1. Procedure Services. (1) The jail's medical services shall be provided by contracting with a Kentucky licensed physician or the county public health organization.
(2) The medical staff shall not be restricted by the jailer in the performance of their duties except to adhere to the jail's security requirements.
(3) The jailer shall prepare a quarterly report and an annual summary report addressing the jail's medical services.
(4) All health care staff working in the jail shall comply with state licensure and certificate requirements commensurate with health care personnel working elsewhere in the community. Copies of such licenses and certificates shall be maintained on file within the jail.
(5) A daily medical log shall be maintained documenting specific medical treatment rendered in the jail. This log shall be kept current to the preceding hour.
(6) Inmates shall not perform any medical functions within the jail.
(7) Inmates shall be informed verbally and in writing at the time of admission the methods of gaining access to medical care within the jail.
(8) All medical procedures shall be performed according to written and standing orders issued by the responsible medical authority.
(9) Medical screening shall be performed by the receiving officer on all inmates upon their admission to the jail and before their placement in inmate living areas. The findings of this medical screening shall be recorded on a printed screening form approved by the medical authority. The medical screening inquiry shall include but not be limited to:

(a) Current illnesses and health problems.
(b) Medications taken and special health requirements.
(c) Screening of other health problems designated by the medical authority.
(d) Behaviorial observation, state of consciousness and mental status.
(e) Notation of body deformaties, markings, bruises, lesions, jaundice, ease of movement, and other distinguishing characteristics.
(f) Condition of skin and body orifices, including rashes and infestations.
(g) Disposition and referral of inmates to qualified medical personnel on an emergency basis.
(10) Sick call conducted by the medical authority shall be available to each inmate as follows:
(a) Once per week, in jails with an average daily population for the preceding month of less than fifty (50) inmates.
(b) Three (3) times per week, in jails with an average daily population for the preceding month from fifty-one (51) to 200 inmates.
(c) Five (5) times per week, in jails with an average daily population for the preceding month of more than 200 inmates.
(11) All jail security personnel shall have current training in basic first-aid equivalent to that defined by the American Red Cross.
(12) The jailer shall be trained and certified in CPR (Cardiopulmonary Resuscitation). (January 1, 1984)
(13) Emergency medical, dental, and psychiatric care shall be available to all inmates commensurate with the level of such care available to the community.
(14) Medical research shall not be permitted on any inmate in the jail.
(15) Access to the inmate's medical file shall be controlled by the medical authority and the jailer. The physician-patient privilege shall apply to the medical record. The medical record is separate from custody and other administrative records of the jail.
(16) All examinations, treatments, and procedures affected by informed consent standards in the community shall be observed for inmate care. In the case of minors, the informed consent of the parent, guardian, or legal custodian shall apply when required by law.
(17) In accordance with KRS 72.025, a post-mortem examination shall be conducted on all inmates who die while in the custody of the jailer.
(18) The jailer shall have written delousing procedures.
(19) All jail staff who administer medications to inmates shall be trained by the medical authority.
(20) The jail shall have first-aid kits available at all times.
(21) An inmate who has been prescribed treatment by a recognized medical authority and cannot receive that treatment in the jail shall be moved to another confinement facility which can provide the treatment or may be moved to a hospital.

Section 2. The provisions of this regulation shall be effective as of January 1, 1983.

GEORGE W. WILSON, Secretary
APPROVED: October 1, 1982
RECEIVED BY LRC: October 14, 1982 at 11:45 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Doug Sapp/Alex Brodrick, Corrections Cabinet, Room 514, State Office Building, Frankfort, Kentucky 40601.

CORRECTIONS CABINET
Office of Community Services

501 KAR 3:100. Food services.

RELATES TO: KRS 441.011
PURSUANT TO: KRS 13.082, 441.011
NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth procedures for proper food services in local jails.

Section 1. Procedures. (1) The jail shall comply with the Kentucky Food Service Establishment Act and State Food Service Code (KRS 219.011 through 219.081) and the Kentucky Occupational Safety and Health Standards for General Industrsy (803 KAR 2:020 and 29 CFR Part 1910).
(2) The jailer shall provide adult inmates with a nutritionally adequate diet containing at least 2,400 calories per day. Juvenile inmates shall be provided a nutritionally adequate diet containing at least 3,800 calories per day.
(3) Inmates shall receive three (3) meals per day, two (2) of which shall be hot. Not more than fourteen (14) hours shall elapse between any two (2) meals.
(4) The jailer shall provide for religious diets.
(5) The jailer shall provide for medical diets where prescribed by a medical authority.
(6) The jailer shall maintain accurate records of all meals served.
(7) Food shall not be used for disciplinary or reward purposes.
(8) The jailer shall seek the assistance of a local diet specialist in preparing menus or utilize sample menus prepared by the Corrections Cabinet.
(9) A staff member shall directly supervise all food prepared within the jail.
(10) All food shall be served under the direct supervision of a staff member.
(11) All employees and inmates assigned to food service shall receive a V.D.R.L. and TB skin test prior to assignment.
(12) The jail shall have sufficient cold and dry food storage facilities.
(13) The jailer or his designee shall inspect the food service area daily.
(14) Food shall not be prepared or stored in inmate living areas.

Section 2. The provisions of this regulation shall be effective as of January 1, 1983.

GEORGE W. WILSON, Secretary
ADOPTED: October 1, 1982
RECEIVED BY LRC: October 14, 1982 at 11:45 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Doug Sapp/Alex Brodrick, Corrections Cabinet, Room 514, State Office Building, Frankfort, Kentucky 40601.

CORRECTIONS CABINET
Office of Community Services

501 KAR 3:110. Classification.

RELATES TO: KRS 441.011
PURSUANT TO: KRS 13.082, 441.011
NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth procedures for the classification of inmates.

Section 1. Procedure. (1) Each jail shall develop an appropriate inmate classification system, which shall be included in the facility's written policy and procedure manual. The provisions of this subsection shall be effective as of July 1, 1983.

(2) The inmate classification system shall provide for the separation of the following categories of inmates:

(a) Male and female inmates;

(b) Juvenile and adult inmates. If a juvenile is housed in the jail, he shall be housed as a juvenile regardless of his criminal status. Such offenders, as those confined for traffic offenses and those whose rights as a juvenile have been waived, will be housed as juveniles.

(c) The provisions of this subsection shall be effective as of January 1, 1983.

(3) The criteria to be used in the classification of other inmate categories shall be as follows:

(a) Inmates with a tendency to harm others, be harmed by others, or requiring administrative segregation such as:

1. Those requiring protective custody;
2. Those with a history of disciplinary problems; and
3. Those charged with or convicted of a violent offense.

(b) Inmates with special problems or needs including but not limited to public intoxicants, physically handicapped, emotionally disturbed, mentally disordered, inmates with communicable diseases, suicide prone inmates, and known homosexuals.

(c) Sentenced or unsentenced status.

(d) Felons and misdemeanants.

(e) Non-criminal and criminal status such as traffic violators, non-support cases or civil contempt.

(f) Community custody inmates such as work-release, education-release, weekenders.

(g) Trusties. All inmates receiving trusty status shall be selected by the jailer or his designee based upon criteria including but not limited to:

1. The nature of the inmate's offense and sentence;
2. Previous escape attempts; and
3. The inmate's "day-to-day" behavior.

The provisions of this subsection shall be effective as of January 1, 1983.

(4) An inmate's classification system shall be changed to reflect changes in the inmate's status including but not limtied to the following:

1. Court appearance by the inmate;
2. Disciplinary hearing and action; and
3. Re-evaluation of the inmate's physical or emotional condition.

The provisions of this subsection shall be effective as of January 1, 1983.

(5) The inmate classification system shall prohibit discrimination or segregation based upon race, color, creed, or national origin. The provisions of this subsection shall be effective as of January 1, 1983.

GEORGE W. WILSON, Secretary
ADOPTED: October 1, 1982
RECEIVED BY LRC: October 14, 1982 at 11:45 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Doug Sapp/Alex Brodrick, Corrections Cabinet, Room 514, State Office Building, Frankfort, Kentucky 40601.

CORRECTIONS CABINET
Office of Community Services

501 KAR 3:120. Admission; release.

RELATES TO: KRS 441.011
PURSUANT TO: KRS 13.082, 441.011
NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth admission and release procedures.

Section 1. Policy and Procedure. (1) Each jail shall develop written admission, orientation, and release procedures to be included in the jail's policy and procedure manual.

(2) The provisions of this section shall be effective as of July 1, 1983.

Section 2. Admission. (1) Any seriously injured, seriously ill, or unconscious persons (as determined by the jailer or his designee) shall not be admitted to the jail until a medical examination has been conducted by a licensed physician. A denial of admission form shall form shall be completed which lists the reasons for the denial and shall be signed by the arresting officer and the jail staff member on duty. The provisions of this subsection shall be effective as of January 1, 1983.

(2) The jail staff shall assure that each inmate is committed under proper legal authority by a duly authorized officer. The provisions of this subsection shall be effective as of January 1, 1983.

(3) An intake form shall be completed on every new inmate admission and shall include but not be limited to the following:

(a) Time and date of commitment;
(b) Name, alias, nickname;
(c) Official charge—cite eight (8) digit KRS number;
(d) Authority ordering commitment;
(e) Unit of government to be billed;
(f) Signature and title of arresting or committing officer;
(g) Date of birth;
(h) Race;
(i) Sex;
(j) Height and weight;
(k) Current or last known address;
(l) Telephone number;
(m) Marital status;
(n) Spouse or next of kin;

(o) Emergency contact (name, relation, address, telephone number);
(p) Employer, place of employment, telephone number;
(q) Social Security number;
(r) Health status (including current medications, known allergies, diet or other special medical needs);
(s) Blood type, if known; and
(t) The name of any known person in the jail who might be a threat to the arrestee.
The provisions of this subsection shall be effective as of July 1, 1983.

(4) The jail staff shall conduct a search of inmates and their possessions.

(a) Each inmate shall be searched for contraband in such a manner as responsible staff reasonably determine is necessary to protect the safety of fellow inmates, staff, and institutional security. Such search shall be conducted in a private area and in a manner which protects the inmate's dignity to such extent as possible in that particular jail.

(b) When a strip search is conducted, it shall be performed by a staff person of the same sex as the inmate.

(c) When a strip search of an inmate is conducted, it shall include a thorough visual check for birthmarks, wounds, sores, cuts, bruises, scars, and injuries, "health tags," and body vermin. A less complete search shall include the same checks to the extent determined reasonably necessary.

(d) The probing of body cavities shall not be done except where there is reasonable suspicion to believe that the inmate is carrying contraband there and such search shall only be conducted by medically trained persons (physician, emergency medical technician, registered nurse, licensed practical nurse) in a private location and under sanitary conditions.

(e) The provisions of this subsection shall be effective as of January 1, 1983.

(5) Each jail shall develop written policies and procedures, specifying the personal property that inmates may retain in their possession.

(a) Any cash or personal property shall be taken from the inmate upon admission, listed by complete description on a receipt form in duplicate, and securely stored pending the inmate's release. The receipt shall be signed by the receiving officer and the inmate, the duplicate shall be stored with the inmate's personal property and the original kept for the jail record.

(b) If the inmate is inebriated or otherwise unable to account for his actions, there shall be at least one (1) witness to verify this transaction. As soon as the inmate is able to understand and account for his actions, he shall sign the receipt and his copy stored with his personal property.

(c) Personal property released to a third party must have the inmate's signature of approval and the signature receipt of the third party.

(d) The provisions of this subsection shall be effective as of July 1, 1983.

Section 3. Orientation. (1) As soon after assignment as possible, each inmate shall receive an oral and written orientation.

(2) The orientation shall provide the inmate with information regarding his confinement including but not limited to the following:

(a) Information pertaining to rising and retiring, meals, mail procedures, work assignments, telephone privileges, visitation, correspondence, commissary, medical care, and other matters related to the conditions of the inmate's confinement;

(b) Rules of inmate conduct;

(c) Disciplinary procedures;

(d) Information regarding programs (work, educational and vocational training, counseling, and other social services); and

(e) Procedures for making requests or registering complaints with the jail staff, judiciary, or Corrections Cabinet personnel.

(3) Special assistance shall be given to illiterate and non-English speaking inmates.

(4) The provisions of this section shall be effective as of July 1, 1983.

Section 4. Release. (1) Written legal authorization shall be required prior to the release or removal of any inmate from confinement.

(2) When an inmate is released or removed for any legal purpose to the custody of another, the identity of receiving authority shall be verified.

(3) A written record shall be kept of the time, purpose, date, and authority for release or removal from confinement, and into whose custody the inmate is released or removed.

(4) Prior to the release or removal of an inmate, the receiving authority shall sign an authorized release form.

(5) Before the jailer releases an inmate to an out-of-state jurisdiction, he shall consult with the appropriate prosecutorial office in the county.

(6) Any property, not legally confiscated or retained, receipted from the inmate upon admission shall be returned to the inmate at the time of release.

(7) Each inmate shall sign a receipt for property returned at the time of release.

(8) Any complaint regarding property returned must be submitted in writing with specific details within twenty-four (24) hours.

(9) The provisions of this section shall be effective as of January 1, 1983.

GEORGE W. WILSON, Secretary
ADOPTED: October 1, 1982
RECEIVED BY LRC: October 14, 1982 at 11:45 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Doug Sapp/Alex Brodrick, Corrections Cabinet, Room 514, State Office Building, Frankfort, Kentucky 40601.

CORRECTIONS CABINET
Office of Community Services

501 KAR 3:130. Inmate programs; services.

RELATES TO: KRS 441.011
PURSUANT TO: KRS 13.082, 441.011
NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth procedures for inmate programs and services.

Section 1. Work Programs. (1) Written policy and procedure shall provide that inmate programs and services are

available and include but are not limited to social services, religious services, recreation and leisure time activities and library services.

(2) Sentenced inmates who perform work as authorized by KRS 441.068 may receive rewards in the form of sentence reductions or other privileges, if granted by proper authority.

(3) Written policy and procedure shall provide that unsentenced inmates are not required to work except to do personal housekeeping.

(4) The provisions of this section shall be effective as of July 1, 1983.

Section 2. Education Programs. (1) The jailer shall encourage the implementation of education programs in the jail. The utilization of community resources in these efforts shall also be encouraged to offset the costs of such programs.

(2) Education programs may be made available in accordance with KRS 439.179.

(3) The provisions of this section shall be effective as of January 1, 1983.

Section 3. Library Services. (1) Where resources are available in the community, library services may be made available to all inmates.

(2) Inmates shall be encouraged to use reading materials.

(3) The provisions of this section shall be effective as of January 1, 1983.

Section 4. Religious Programs. (1) Written policy and procedure shall ensure that the constitutional rights of inmates to voluntarily practice their own religious activities, subject only to those limitations necessary to maintain the order and security of the jail.

(2) The provisions of this section shall be effective as of January 1, 1983.

Section 5. Recreation Programs. (1) Written policy and procedure shall provide all inmates with the opportunity to participate in an average of one (1) hour of physical exercise per day with at least three (3) exercise periods per week outside the cell. Where the security and safety of the jail and the weather permits, there shall be outdoor exercise.

(2) Leisure time and recreation programs shall be scheduled to permit inmates to participate in but not be limited to such activities as board games, arts and crafts, radio and television to relieve idleness and boredom.

(3) The provisions of this section shall be effective as of July 1, 1983.

GEORGE W. WILSON, Secretary

ADOPTED: October 1, 1982

RECEIVED BY LRC: October 14, 1982 at 11:45 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Doug Sapp/Alex Brodrick, Corrections Cabinet, Room 514, State Office Building, Frankfort, Kentucky 40601.

CORRECTIONS CABINET
Office of Community Services

501 KAR 3:140. Inmate rights.

RELATES TO: KRS 441.011

PURSUANT TO: KRS 13.082, 441.011

NECESSITY AND FUNCTION: KRS 441.011 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for jails. This regulation sets forth procedures to ensure the protection of inmate rights.

Section 1. Policy and Procedure. (1) Each jail shall a written statement of inmate rigths which shall include but not be limited to:

(a) Access to courts.
(b) Access to attorney.
(c) Mail.
(d) Telephone.
(e) Grievances.
(f) Search and seizure.
(g) Disciplinary procedure.
(h) Racial segregation.
(i) Medical care.
(j) Religion.

The statement of inmate rights shall be posted in a conspicious place in the booking areas of the jail and a copy shall be handed to the inmate upon admission.

(2) The jailer shall not prohibit an inmate's right of access to the judicial process. The provisions of this subsection shall be effective as of July 1, 1983.

(3) The jailer shall ensure the right of inmates to have confidential access to their attorney and their authorized representative. The provisions of this subsection shall be effective as of January 1, 1983.

(4) The jailer shall have a written policy which defines the jail's visitation rules and regulations, which shall include but not be limited to:

(a) A schedule identifying no fewer than two (2) visiting days each week, one (1) of which must be during the weekend.

(b) At least one (1) visit per week per inmate shall be allowed except when an inmate has been assessed a disciplinary penalty for an infraction of rules governing visitation.

(c) Visits shall not be less than fifteen (15) minutes.

(d) Two (2) or more persons permitted to visit at the same time shall count as a single visit.

(e) Children, when accompanied by an adult, shall be permitted to visit inmates.

The provisions of this subsection shall be effective as of July 1, 1983.

(5) Attorneys, clergy, and medical personnel shall be permitted to visit inmates at reasonable hours other than during regularly scheduled visiting hours and shall not count as an allotted visit. The provisions of this subsection shall be effective as of January 1, 1983.

(6) Visitors shall register before admission and may be denied admission for refusal to register, for refusal to consent to search or for any violation. The provisions of this subsection shall be effective as of January 1, 1983.

(7) Inmates shall not be restriced in regard to whom they may have as a visitor unless the jailer determines that a visitor should be excluded due to the existence of one (1) or more of the following conditions:

(a) The visitor represents a clear and present danger to security.
(b) The visitor has a past history of disruptive conduct at the jail.
(c) The visitor is under the influence of alcohol or drugs.
(d) The visitor refuses to submit to search or show proper identification.
(e) The inmate refuses the visit.
The provisions of this subsection shall be effective as of January 1, 1983.
(8) The jailer shall not listen to visitors' conversations but may observe the visitation for security reasons. The provisions of this subsection shall be effective as of Janaury 1, 1983.

Section 2. Mail. (1) The jailer shall have written policy and procedure for receiving and sending mail that protects the inmate's personal rights and provides for reasonable security practices consistent with the operation of the jail. The provisions of this subsection shall be effective as of July 1, 1983.
(2) Inmates shall be allowed to correspond with anyone so long as such correspondence does not violate any state or federal law except that caution shall be taken to protect the inmate's rights in accordance with court decisions regarding correspondence. The provisions of this subsection shall be effective as of January 1, 1983.
(3) Incoming mail may be inspected for contraband items, prior to delivery, unless such mail is received from the courts, attorney of record or public officials; then it may be opened and inspected in the presence of the inmate. The provisions of this subsection shall be effective as of January 1, 1983.

Section 3. Telephone. (1) Newly admitted inmates shall be permitted a reasonable number of local or collect long distance telephone calls to an attorney of their choice, or to a family member, as soon as practical, generally within one (1) hour after arrival, until one (1) call has been completed. The provisions of this subsection shall be effective as of January 1, 1983.
(2) The jailer or his designee shall maintain a log of all telephone calls made by an inmate during the admission procedure. The log shall document the date, time and party contacted. The provisions of this subsection shall be effective as of July 1, 1983.
(3) Written policy and procedure shall permit each inmate to complete at least one (1) telephone call each week. Any expense incurred for calls shall be borne by the inmate or the party called. The provisions of this subsection shall be effective as of July 1, 1983.
(4) A minimum of five (5) minutes shall be allotted for each phone call. The provisions of this subsection shall be effective as of January 1, 1983.
(5) Telephone calls shall not be routinely monitored. If calls are monitored, the inmate shall be monitored.
(6) Telephone privileges may be suspended for a designated period of time if telephone rules are violated.
(7) The provisions of subsections (5) and (6) of this section shall be effective as of January 1, 1983.

Section 4. Religion. (1) Inmates shall be granted the right to practice their religion within limites necessary to maintain institution order and security.
(2) Inmates shall be afforded an opportunity to participate in religious services and receiving religious counseling within the jail.
(3) Inmates shall not be required to attend or participate in religious services or discussions.
(4) The provisions of this section shall be effective as of January 1, 1983.

Section 5. Access to Programs. (1) The jailer shall ensure equal access to programs and services for all inmates provided the security and order of the jail is not jeopardized.
(2) The provisions of this section shall be effective as of January 1, 1983.

Section 6. Grievance Procedure. (1) The jailer shall have a written inmate grievance procedure which shall be available to all inmates. These procedures shall include provisions for:
(a) Responses, within a reasonable time limit, to all grievance complaints.
(b) Equal access to all inmates.
(c) Guarantees against reprisal.
(d) Resolving legitimate complaints.
(2) The provisions of this section shall be effective as of July 1, 1983.

Section 7. Searches. (1) Each search of an inmate for contraband shall be done in such a manner as the jailer determines is necessary to protect the safety of inmates, staff, and jail security.
(2) Each search shall be conducted in a private area and in a professional manner which protects the inmate's dignity to the extent possible.
(3) All strip searches shall be performed by a staff person of the same sex as the inmate.
(4) The provisions of this section shall be effective as of January 1, 1983.

Section 8. Disciplinary Rights. (1) Each jail shall have a written policy and procedure for maintaining discipline which is consistent with constitutional requirements for due process.
(2) The provisions of this section shall be effective as of July 1, 1983.

Section 9. Medical. (1) Each inmate shall be afforded access to necessary medical care.
(2) The provisions of this section shall be effective as of January 1, 1983.

GEORGE W. WILSON, Secretary
ADOPTED: October 1, 1982
RECEIVED BY LRC: October 14, 1982 at 11:45 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Doug Sapp/Alex Brodrick, Corrections Cabinet, Room 514, State Office Building, Frankfort, Kentucky 40601.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Motor Vehicle Commission

601 KAR 21:010. Meetings.

RELATES TO: KRS 190.058
PURSUANT TO: KRS 13.082, 190.058
NECESSITY AND FUNCTION: KRS 190.058 provides for the Motor Vehicle Commission to hold annual meetings and regular meetings. The purpose of this regulation is to establish those meetings, the method for calling the meetings, and the place of the meetings.

Section 1. The Commission shall hold a regular annual meeting in September of each year for the purpose of electing a chairman and vice-chairman to serve for the ensuing year.

Section 2. The regular meetings of the Commission shall be held at least once a month or as often as may be necessary. Meetings shall be called by the chairman or the vice-chairman upon not less than three (3) days' notice which shall be given to each member of the Commission. Members of the Commission may waive the notice requirement. All meetings of the Commission shall be in the Office of the Commission in Frankfort, Kentucky, or such other place as the chairman may designate, and all meetings shall start at 10:00 a.m. prevailing time at the place of meeting.

PHIL THOMAS, Executive Director
ADOPTED: August 9, 1982
RECEIVED BY LRC: September 21, 1982 at 12:45 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Steve Reeder, Deputy Secretary for Legal Affairs, Transportation Cabinet, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Motor Vehicle Commission

601 KAR 21:030. Applications.

RELATES TO: KRS 190.030
PURSUANT TO: KRS 13.082, 190.010, 190.015, 190.030, 190.035
NECESSITY AND FUNCTION: KRS 190.030 provides for the issuance of various licenses to engage in the activity of a motor vehicle dealer. This regulation allows the Motor Vehicle Commission to provide for an orderly procedure for the submission of applications and the content thereof to facilitate processing of applications and the issuance of the license.

Section 1. Upon receipt of a completed application other than an application for a license as a motor vehicle salesperson, manufacturer, factory branch or factory representative, a review of the application will be made, including an appropriate investigation as to the applicant's compliance with the appropriate statutory and regulatory provisions governing the issuance of a license.

Section 2. Applicant will be notified of the acceptance or rejection of his application, and if the application is rejected, the grounds therefor must be specifically stated, and the applicant shall further be notified, in that event, of his right to a hearing before the Commission in accordance with the rules and regulations of the Commission.

Section 3. No application may be accepted or license granted unless the applicant has an established place of business as defined in KRS 190.010.

Section 4. A licensee may conduct more than one (1) business in a building otherwise meeting the requirements of this regulation provided he has suitable space and adequate facilities therein to conduct the business of a motor vehicle dealer.

Section 5. (Applies to retail only.) A motor vehicle dealer shall display on his premises a sign not less than nine (9) inches in height, which is clearly visible from the nearest roadway, and which specifically identifies his business.

Section 6. An applicant for any license conducting more than one (1) business at the proposed location shall be capable as to fitness and ability to properly conduct the business activity authorized by the license. If an applicant for a license will be conducting more than one (1) business at the proposed location, and if the primary business of the applicant is not one to be licensed under KRS 190.010, et seq., then the applicant must comply with the following:

(1) Submit a financial statement. The Commission may require the applicant to furnish a bond as authorized by statute.

(2) Submit at least six (6) photographs of the premises to be occupied by the applicant.

(3) Submit a detailed drawing of his premises in relation to the nearest roadway. This drawing is to include location and size of office, display area and location of dealership sign.

(4) Furnish a personal data sheet on each individual owning a portion of the business and/or officers of a corporation.

(5) Applicant, partner or corporate officer must sign a statement authorizing the Motor Vehicle Commission to make inquiries or investigations concerning the applicant's employment, credit, or criminal records.

(6) Applicant must obtain garage liability insurance and file with the Commission a certificate of insurance (form TD 95-99) in the exact name in which it applies for a license.

(7) Applicant will be required to verify that it is familiar with the laws concerning the purchase and sale of motor vehicles. Failure to demonstrate such proof may be grounds for denial of license.

(a) Applicant must have a sign, if applicable, in compliance with Section 1 of this regulation, clearly indicating that applicant is a motor vehicle dealer in addition to any other signs he may have.

(b) Applicant must have a hard surface lot (gravel, asphalt, concrete or other suitable covering) of sufficient size to support its business for parking and storage area. This lot shall be used exclusively for the display and showing of vehicles for sale and customer parking, and shall be constructed in such a manner that it will not allow the flow of public traffic through it.

(c) Applicant must demonstrate that it has sufficient office space to carry on the activity authorized under the license for which the application is submitted. Sufficient

office space need not be a separate walled enclosure, but must be an area which will be used to conduct the activity authorized under the license in addition to the area necessary to conduct the applicant's primary business.

1. An applicant who conducts an automobile salvage or junk business on the same premises must be in compliance with all state regulations regarding junkyard operations. Applicant must have an area for the display of vehicles for sale and an office separate and apart from the area where junk cars or parts are stored or situated.

2. If an applicant operates a garage for the repair or rebuilding of wrecked or disabled vehicles, an office and area for the display of vehicles separate and apart from the area where such repairs are made must be allocated for the licensed activity.

Section 5. Not more than one (1) licensee for the same licensed activity shall be licensed from a single place of business.

Section 6. A licensee shall have a sales tax permit number from the Revenue Cabinet.

PHIL THOMAS, Executive Director
ADOPTED: August 9, 1982
RECEIVED BY LRC: September 21, 1982 at 12:45 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Steve Reeder, Deputy Secretary for Legal Affairs, Transportation Cabinet, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Motor Vehicle Commission

601 KAR 21:050. Dealer/salesperson.

RELATES TO: KRS 190.010, 190.030, 190.035
PURSUANT TO: KRS 13.082, 190.010, 190.030, 190.035
NECESSITY AND FUNCTION: KRS 190.010, 190.030, and 190.035 define what a motor vehicle salesman is and his relationship to his dealer/employer. KRS 190.030 also provides for salesmen's licenses to indicate for whom they work and to be displayed upon request. This regulation interprets the dealer/salesman relationship and implements statutory requirements to facilitate accurate recordkeeping by the Motor Vehicle Commission, and to put the public on notice of with whom they are dealing.

Section 1. A properly licensed motor vehicle salesperson employed by a proper licensee may, in that capacity, sell or exchange a motor vehicle anywhere in Kentucky, subject to the following limitations:

(1) Such activity must be pursuant to the salesperson's employment by the licensee whose name appears on his/her license.

(2) Once a sale or exchange is negotiated by a salesperson, he/she may not offer, transfer or assign it to any other licensee or salesperson.

(3) A salesperson may not establish a place of business separate from the location for which his/her employer holds a license.

(4) A salesperson may not hold himself/herself out to be a licensed dealer or conduct himself/herself in any manner which might lead a prospective purchaser to believe he/she is a licensed dealer.

(5) A salesperson may not advertise his/her sales activity at any specific location other than that for which his/her employer holds a license.

Section 2. In case of a change of employment, a salesperson shall return his/her license to the Commission with a notification from the licensee by whom he/she will be employed, and his/her license will be amended and returned to him/her showing the name and address of the new employer, and a copy thereof will be sent to the new employer. Before any copy of the license may be secured by any new employer, the salesperson's license must be amended to show the name and address of the new employer.

Section 3. A licensee shall display in a conspicuous place in his/her office a copy of the license of each salesperson employed by him/her. Upon the termination of employment of a salesperson, the licensee shall, within ten (10) days, notify the Commission of such termination and return to the Commission the dealer's copy of the salesperson's license.

PHIL THOMAS, Executive Director
ADOPTED: August 9, 1982
RECEIVED BY LRC: September 21, 1982 at 12:45 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Steve Reeder, Deputy Secretary for Legal Affairs, Transportation Cabinet, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Motor Vehicle Commission

601 KAR 21:070. Change of ownership.

RELATES TO: KRS 190.030
PURSUANT TO: KRS 13.082, 190.030
NECESSITY AND FUNCTION: KRS 190.030 requires each separate entity acting as a dealer to have a license and to make needed reports to the Motor Vehicle Commission. This regulation implements those requirements, particularly when a sale or transfer occurs, so that the Commission can be on notice of who actually holds licenses.

Section 1. Any change of ownership of a licensee shall require a new application from the new owner(s) or corporation.

Section 2. Upon the sale or transfer of a licensee's business, the new owner shall secure a new license. If the licensee is a corporation, the sale of the controlling stock in

the corporation must be reported to the Commission, and the Commission may require a new license application.

PHIL THOMAS, Executive Director
ADOPTED: August 9, 1982
RECEIVED BY LRC: September 21, 1982 at 12:45 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Steve Reeder, Deputy Secretary for Legal Affairs, Transportation Cabinet, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Motor Vehicle Commission

601 KAR 21:090. Trade names.

RELATES TO: KRS 190.040
PURSUANT TO: KRS 13.082, 190.040
NECESSITY AND FUNCTION: KRS 190.040(1)(i) provides that a license can be denied, suspended, or revoked for false or misleading advertising. This regulation interprets that proscription against false or misleading advertising to include the use of the name of a make of automobile in the trade name of a used car dealer, a practice which would very likely mislead a consumer into thinking that he can buy a new car from that dealer.

Section 1. The trade name of a licensee shall incorporate the words used cars, auto sales, auto mart, or other similar wording clearly identifiable as a motor vehicle licensee. No licensee other than a franchised new car dealer may use the name of any make of motor vehicle as a part of his/her trade name. The adoption of such a trade name or advertising in this manner shall be deemed to constitute false or misleading advertising within the meaning of KRS 190.040 and shall be considered grounds for the denial, suspension or revocation of a license.

PHIL THOMAS, Executive Director
ADOPTED: August 9, 1982
RECEIVED BY LRC: September 21, 1982 at 12:45 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Steve Reeder, Deputy Secretary for Legal Affairs, Transportation Cabinet, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Motor Vehicle Commission

601 KAR 21:110. Motor vehicle auction dealer.

RELATES TO: KRS 190.010
PURSUANT TO: KRS 13.082, 186.076, 190.010, 190.015, 190.030, 190.035
NECESSITY AND FUNCTION: KRS 190.015, 190.030 and 190.035 govern activities of a new classification of licensee under KRS 190.030, that of motor vehicle auction dealer.

Section 1. Retail Auction Sales. KRS 186.076 states in part, "A dealer's license may be revoked if he acquires a used motor vehicle for cash, trade-in, or in any other manner and fails to have the registration transferred to him at the time the vehicle is sold or otherwise transferred to another person, or within ten (10) days after acquired whichever may be sooner." This regulation interprets the word "person" to mean an individual other than a licensed dealer. Therefore, any auction dealer shall have the registration on all vehicles offered for sale to the general public transferred into the auction dealer's name prior to offering the vehicle for sale.

Section 2. At wholesale auction sale, all dealers offering vehicles for sale through an auction dealer to other licensed dealers shall have the registration transferred into their name prior to listing the vehicle for auction.

PHIL THOMAS, Executive Director
ADOPTED: August 9, 1982
RECEIVED BY LRC: September 21, 1982 at 12:45 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Steve Reeder, Deputy Secretary for Legal Affairs, Transportation Cabinet, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Motor Vehicle Commission

601 KAR 21:130. Procedures.

RELATES TO: KRS 190.058, 190.062
PURSUANT TO: KRS 13.082, 190.058, 190.062
NECESSITY AND FUNCTION: An absolute necessity for any administrative board is a written code of practice and procedure. The enabling legislation for the adoption of such procedures by the Motor Vehicle Commission is found in KRS 190.058. This regulation establishes the proper form of procedure and practice before the Motor Vehicle Commission and adopts the general practice procedures found in the Kentucky Rules of Civil Procedure.

Section 1. Definitions. All words are used as defined in applicable sections of KRS 190.010.

Section 2. Appearances. Any licensee may appear and be heard in person, or by duly appointed attorney, and may produce under oath evidence relative and material to matters before the Commission. Any attorney, in a representative capacity, appearing before the Commission may be required to show his authority to act in such capacity.

Section 3. Argument. Due to press of other matters, the Motor Vehicle Commission asks all oral arguments be succinct and concise. The hearing officer may curtail or set time limits for oral arguments.

Section 4. Additional Hearings. The Commission may, on its own motion, prior to its determination, require an

additional hearing. Notice to all interested parties setting forth the date of such hearing must be given in writing by the Executive Director to the Commission.

Section 5. Briefs. Briefs may be filed upon permission if a member of the Motor Vehicle Commission is conducting the hearing, and may be filed as a matter of right if hearing is conducted by a referee other than a member of the Commission. The Commission asks that briefs be concise, summarizing first the evidence presented at the hearing. Copies of briefs must be typewritten or printed and filed in quadruplicate. Time allowed for filing briefs may be designated by the hearing officer, in no event less than five (5) days after the hearing. Respondent briefs may be filed by the Commission, or filed by any person whose interests are affected. Reply briefs may be filed only when limited strictly to answering the brief of respondent. Briefs containing more than ten (10) pages shall contain on the top fly leaves a subject index with page references.

Section 6. Continuances. Continuances may be granted in the discretion of the Commission or hearing officer if good cause therefor be shown and if requested forty-eight (48) hours in advance of hearing date.

Section 7. Depositions. The hearing officer of the Commission may order testimony to be taken by deposition at any state of hearing. Depositions may be taken before any person having power to administer oaths and designated by the Commission or written by the person taking the deposition or under his direction and shall then be subscribed by the deponent and certified in the usual manner by the person taking the deposition. The provisions of the Civil Rules governing the taking of depositions shall be applicable.

Section 8. (1) Evidence. When called to the attention of the hearing officer, "judicial notice" will be taken of any matter situated in the files of the Motor Vehicle Commission, the Department of Revenue, or the Transportation Cabinet; any action pending which involves the Motor Vehicle Commission; and all other matters of which a court of Kentucky may take such notice. A brief statement recognizing the matter should be made in the transcript by the hearing officer.

(2) Rules of evidence. Except as otherwise provided herein, the rules of evidence governing civil proceedings in courts in the Commonwealth of Kentucky shall govern hearings before the Motor Vehicle Commission; provided, however, that the hearing officer may relax such rules in any case where, in his judgment, the ends of justice will be better served by so doing.

(3) Cumulative evidence. The introduction of cumulative evidence shall be avoided and the hearing officer may curtail the testimony of any witness which he judges to be merely cumulative; however, the party offering witness may make a short avowal of the testimony the witness would give and if witness asserts such avowal is true, this avowal shall be made a part of the stenographic record.

(4) Decisions. All decisions shall be based upon the evidence developed at the hearing.

(5) Additional evidence. Upon due application to the Commission, prior to the decision of the Commission thereon, the hearing may, in the discretion of the Commission, be reopened for the presentation of additional evidence. Application for additional hearings must set forth concisely the nature of this additional evidence. The Commission may, on its own motion, require an additional hearing.

Section 9. Ex Parte Contacts. No person shall have ex parte contact with any member of the Commission regarding any matter pending before the Commission for review prior to final decision. In the event an ex parte contact occurs, the name of the person making the contact shall be revealed on the record. In no event shall the information conveyed in an ex parte contact be relied upon or considered in reaching a decision.

Section 10. (1) Hearings shall be conducted by a Commission member or person designated by the Commission as a referee, hereinafter referred to as hearing officer.

(2) The hearing officer shall conduct said hearing, ruling upon matters of procedure and introduction of evidence. The hearing shall be conducted in such manner as the hearing officer determines will best serve the purpose of attainment of justice and dispatch. Objections may be taken to rulings of hearing officer and a rehearing or additional hearing may be ordered by the Commission. Reason for objection must be stated and made a part of the stenographic record. All testimony shall be taken down but shall not be transcribed unless requested by a party to the proceedings.

(3) Witnesses will be examined orally unless testimony is taken by depositions, as provided for herein, or the facts are stipulated.

Section 11. The Report and Recommended Order. Upon the conclusion of such a hearing, the hearing officer shall make a report and recommended order which shall contain finding of facts and conclusions of law. Copies of the report and recommended order shall be served upon each of the parties to the matter heard.

Section 12. Exceptions and Replies Thereto. Any party to a hearing may, within twenty (20) days after the date of the report and recommended order, file and serve exceptions thereto. Exceptions shall consist of as many objections to the whole or any part of the report as the party filing the exceptions desires to make with each objection numbered. Each objection shall fully state the nature thereof and the grounds therefor. Parties filing exceptions shall serve a copy thereof upon every other party participating in the hearing and shall certify to the Commission that such service has been accomplished. Replies to exceptions shall be filed and served within twenty (20) days after the filing of exceptions, if any party desires to make a reply. The reply shall consist of a separate reply to each objection set out in the exceptions. Any party filing a reply shall serve a copy thereof on every other party participating in the hearing and shall certify to the Commission that such service has been accomplished.

Section 13. Final Order. Upon the filing of the exceptions and replies thereto relative to a report and recommended order and/or expiration of the time for filing of same, the hearing officer shall render the complete record to the Commission which shall consider and pass upon the case. The Commission may, after a study of the case, refer it back to the hearing examiner and request the taking of more proof on any point in issue. The Commission may require oral argument of the case. When the Commission has rendered its decision in the case, its decision shall be served

by mail upon all parties and shall be the final order of the Commission. The final order shall contain the date of its rendition.

Section 14. Motions, Pleadings, Etc. Copies of all motions, pleadings, etc., must be served upon all interested parties, in addition to filing the required copies before the Commission. There shall be no demurrers; but motions to dismiss, setting forth the reasons therefor, may be entertained by the Commission.

Section 15. Reconsideration Hearings. (1) Any party to the proceeding may, for good cause shown, request in writing a hearing for purposes of reconsideration of a Commission decision of any matter formally heard by the Commission.

(2) The request should be filed with the Executive Director within fifteen (15) days from the date of the notice of the Commission's decision is mailed.

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

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

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

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

(4) The Commission shall consider requests for reconsideration in a summary manner.

(5) If a hearing for reconsideration is granted by the Commission, it shall be conducted in accordance with the requirements of this regulation. The reconsideration hearing shall be held within thirty (30) days of the decision to grant the request for reconsideration.

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

Section 16. Notices. Upon the filing of an appeal from the order or decision, the Executive Director of the Commission shall notify in writing all interested parties of the fact and of the time set for hearing. All other hearings shall be held only after notice at least ten (10) days before hearing. A notice of a revocation hearing by registered mail to the licensee or owner of the licensed premises, if locking and barring the premises is involved, sent to the known address of the licensee or owner of the licensed premises at the address shown on the last application for a license shall be deemed sufficient compliance.

Section 17. Record. (1) The stenographic record of any hearing before the Motor Vehicle Commission shall not be transcribed unless such transcription is directed by the appropriate Commission officer or employee or is requested in writing by any interested party to the hearing who shall make arrangements for such transcript of record with the Executive Director of the Commission. The original record shall be filed directly with the Clerk of the Franklin Circuit Court, and copy furnished to the interested party requesting the record.

(2) The charge for transcript of records of hearing shall be one dollar ($1) per page for the original copy, and fifty (50) cents per page for each carbon copy, not to exceed four (4), furnished with an original. The fee shall be paid before the record is filed or the copies delivered to interested parties.

(3) If for its own use, the Commission has any record of hearing transcribed, any person requiring the same may have a carbon copy, if one is available, at the rate of fifty (50) cents per page.

Section 18. Specifications as to Pleadings, Complaints, Briefs, Motions, Etc. Except when permission is granted by the hearing officer, all papers filed under these rules must be typewritten or printed (mimeographed, multigraphed or planographed copies will be accepted as typewritten). All copies must be clearly legible and double spaced, except for quotations. It is requested that all motions, complaints, briefs, etc., be made on unglazed paper eight and one-half (8½) inches wide and eleven (11) inches long.

Section 19. Stipulations. Parties may, by agreement, stipulate as to any facts involved in the proceedings. Such stipulation must be made part of the stenographic records of the hearing.

Section 20. Subpoenas and Subpoena Duces Tecum. (1) The party desiring a subpoena must make application at least five (5) days before the hearing date with the Executive Director of the Commission. The application shall be in writing, and shall state the name and address of each witness required. Provisions of the Civil Rules shall be applicable.

(2) If evidence other than oral testimony is required, such as documents or written data, the application shall set forth the specific matter to be produced and sufficient facts to indicate that such matter is reasonably necessary to establish the cause of action or defense of the applicant. Provisions of the Civil Rules shall be applicable.

Section 21. Witnesses. Separation of witnesses may be had upon request of either party to the hearing.

PHIL THOMAS, Executive Director

ADOPTED: August 9, 1982

RECEIVED BY LRC: September 21, 1982 at 12:45 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Steve Reeder, Deputy Secretary for Legal Affairs, Transportation Cabinet, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Motor Vehicle Commission

601 KAR 21:140. Repeal.

RELATES TO: KRS 190.058

PURSUANT TO: KRS 13.082, 190.058

NECESSITY AND FUNCTION: KRS 190.058 creates an agency of the Commonwealth to carry out the duties and functions conferred upon it; it repeals the Motor Vehicle Dealer Board and new regulations are necessary for the new Motor Vehicle Commission, and the old regulations hereinafter set forth governing the Motor Vehicle Dealer Board are of no further force and effect, and must be repealed.

Section 1. Title 601, Chapter 20, is hereby repealed, specifically:

601 KAR 20:010. Board meetings.
601 KAR 20:030. Application; disposition.
601 KAR 20:040. Licenses; issuance or denial.
601 KAR 20:050. Supplemental license.
601 KAR 20:070. Suitable premises; signs, multi-businesses.
601 KAR 20:080. Change of business location.
601 KAR 20:090. Change of ownership.
601 KAR 20:110. Dealer-salesman.
601 KAR 20:130. Used car dealers; trade names.

PHIL THOMAS, Executive Director
ADOPTED: August 9, 1982
RECEIVED BY LRC: September 21, 1982 at 12:45 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Steve Reeder, Deputy Secretary of Legal Affairs, Transportation Cabinet, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 12:080. Life insurance; replacement of.

RELATES TO: KRS 304.12-030
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. KRS 304.12-030 establishes minimum standards of conduct to be observed in replacement or proposed replacement of life insurance policies. This regulation sets forth the procedures to be followed in the replacement or proposed replacement of life insurance policies.

Section 1. Purpose. The purpose of this regulation is:
(1) To regulate the activities of insurers and agents with respect to the replacement of existing life insurance; and
(2) To protect the interests of life insurance policy owners by establishing procedures to be employed in the replacement or proposed replacement of existing life insurance.

Section 2. Definitions. For the purposes of this regulation, the following terms shall have the meaning herein provided:
(1) "Replacement," "existing insurer," "existing life insurance," and "replacing insurer," are defined as in KRS 304.12-030.
(2) "Conservation" means any attempt by the existing insurer or its agent to continue existing life insurance in force after the existing insurer has received a copy of the "Notice Regarding Replacement of Life Insurance" as required by Section 4(2)(a) of this regulation from a replacing insurer. A conservation effort does not include such routine administrative procedures as late payment reminders, late payment offers or reinstatement offers.
(3) "Direct-response sales" means any sale of life insurance where the insurer does not utilize an agent in the sale or delivery of the policy.
(4) "Soliciting material" means written sales aids of all kinds, including policy summaries and comparison statements, which are used by an insurer, agent or broker in comparing existing life insurance to proposed life insurance in order to recommend the replacement or conservation of existing life insurance. Sales aids of a generally descriptive nature, which are maintained in the insurer's advertising compliance file, shall not be considered soliciting material.

Section 3. Exemptions. This regulation shall not be applicable as set forth in KRS 304.12-030(4).

Section 4. Duties of Agents. (1) Each replacing agent shall submit to the replacing insurer with or as part of each application for life insurance a statement signed by the applicant as to whether or not he has existing life insurance.
(2) Where existing insurance is involved, the replacing agent shall:
(a) Present to the applicant, not later than at the time of taking the application a "Notice Regarding Replacement of Life Insurance," Form A, or a substantially similar form with prior approval of the commissioner. The notice must be signed by and left with the applicant.
(b) Submit to the replacing insurer, with the application, a copy of the "Notice Regarding Replacement of Life Insurance" signed by the agent and the applicant, and a copy of all soliciting material used for presentation to the applicant.
(c) Leave with the applicant the original or a copy of all solicitation material used for presentation to the applicant.
(3) When conserving existing life insurance each agent who uses soliciting material shall leave with the applicant the original or a copy of all soliciting material used in the conservation effort.

Section 5. Duties of Replacing Insurers Except for Direct Response Insurers. Each replacing insurer except direct response insurers shall:
(1) Inform its field representatives of the requirements of this regulation and KRS 304.21-030;
(2) Require with or as part of each completed application for life insurance a statement signed by the applicant as to whether or not he has existing life insurance; and
(3) Where existing insurance is involved:
(a) Require from the agent with the application for life insurance a copy of the "Notice Regarding Replacement of Life Insurance" signed by the agent and the applicant, and a copy of all soliciting material shown or delivered to the applicant.
(b) Verify the substantial accuracy of information concerning the proposed policy furnished to the applicant in the soliciting material.
(c) Send the existing insurer notice of the proposed replacement within five (5) working days of the date the application is received at its home or regional office.
(d) Provide the existing insurer, upon request, copies of all soliciting materials used within twenty (20) days of receipt of said request.
(e) Delay the issuance of its policy for thirty (30) days after the notice of the proposed replacement required by paragraph (c) of this subsection is delivered to the existing insurer.
(f) Maintain copies of the "Notice Regarding Replacement of Life Insurance," and all soliciting material used, and a replacement register, cross indexed, by replacing agent and existing insurer, for at least three (3) years or un-

til the conclusion of the next succeeding regular examination by the insurance department of its state of domicle, whichever is later.

Section 6. Duties of Insurer With Respect to Direct-Response Sales. Each insurer shall:

(1) Inform its responsible personnel of the requirements of this regulation.

(2) Require with or as part of each completed application for life insurance a statement signed by the applicant as to whether such applicant has existing life insurance.

(3) Request from the applicant, where existing insurance exists, with or as part of the application a list of all existing life insurance identified by name of insurer.

(4) Include at the time the policy is mailed to the applicant, a "Notice Regarding Replacement of Life Insurance," Form A, or a substantially similar form with prior approval of the commissioner.

(5) Provide the existing insurer, upon request, copies of all soliciting materials used within twenty (20) days of receipt of said request.

Section 7. Duties of Existing Insurer and its Agents. (1) Each existing insurer shall inform its responsible personnel of the requirements of this regulation and KRS 304.12-030.

(2) Each existing insurer, or such insurer's agent, that undertakes a conservation effort shall:

(a) Request copies of all soliciting materials used by the replacing insurer or agent if such information is desired.

(b) Maintain a file containing all soliciting material used by it to conserve business.

Section 8. Departmental Form A, entitled "Notice Regarding Replacement of Life Insurance," is filed herein by reference. Copies may be obtained from the Department of Insurance, 151 Elkhorn Court, P.O. Box 517, Frankfort, Kentucky 40602.

Section 9. 806 KAR 2:031, Life insurance replacement, is hereby repealed.

DANIEL D. BRISCOE, Commissioner
ADOPTED: October 13, 1982
APPROVED: NEIL J. WELCH, Secretary
RECEIVED BY LRC: October 15, 1982 at 12:45 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

806 KAR 13:011. Repeal of 806 KAR 13:010.

RELATES TO: KRS 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 304.13-050 (repealed effective July 15, 1982) established the effective date of a rate filing under KRS Chapter 304.13. 806 KAR 13:010 clarified the provisions of KRS 304.13-050. Because KRS 304.13-050 has been repealed, 806 KAR 13:010 is no longer necessary.

Section 1. 806 KAR 13:010, New rate filings; renewals, hearings, is hereby repealed.

DANIEL D. BRISCOE, Commissioner
ADOPTED: October 13, 1982
APPROVED: NEIL J. WELCH, Secretary
RECEIVED BY LRC: October 15, 1982 at 12:45 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

806 KAR 30:080. Financial requirements for insurance premium finance companies.

RELATES TO: KRS 304.30-040
PURSUANT TO: KRS 13.082, 304.30-070
NECESSITY AND FUNCTION: KRS 304.30-070 provides that the Commissioner of Insurance may make reasonable rules and regulations necessary for or as an aid to the effectuation of the provisions of KRS 304.30. This regulation establishes minimum financial requirements that an applicant for an insurance premium finance company license must meet to show that it is competent, trustworthy, and intends to act in good faith in the capacity involved in the license applied for.

Section 1. Definitions. The term "insurance premium finance company" has the meaning set forth by KRS 304.30-020(1).

Section 2. (1) In order to be considered trustworthy, competent, and to intend to act in good faith as an insurance premium finance company, an applicant for an insurance premium finance company license must show, through certification by an independent certified public accountant, that the prospective insurance premium finance company has a net worth of $50,000 and has established a line of credit of at least $100,000 with a bank which is a member of the Federal Reserve System.

(2) Notwithstanding the provisions of Section 2(1) of this regulation, an applicant may be considered to be trust worthy, competent, and to intend to act in good faith as an insurance premium finance company if he shows, by certification by an independent certified public accountant, that the prospective insurance premium finance company has a net worth of $150,000.

Section 3. Insurance premium finance companies currently licensed to do business in Kentucky shall meet the financial requirements established by this regulation as soon as practicable, but no later than December 31, 1984.

Section 4. Upon meeting the financial requirements established by the regulation, insurance premium finance companies shall maintain at least the financial requirements established by this regulation.

Section 5. This regulation shall become effective upon its approval pursuant to KRS Chapter 13.

DANIEL D. BRISCOE, Commissioner
ADOPTED: September 14, 1982
APPROVED: NEIL J. WELCH, Secretary
RECEIVED BY LRC: September 20, 1982 at 10 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction

815 KAR 20:072. Installation standards for cast iron soil pipe and fittings.

RELATES TO: KRS Chapter 318
PURSUANT TO: KRS 13.082, 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation relates to the proper installation of cast iron soil pipe and fittings.

Section 1. The installation of cast iron soil pipe and fittings should be made according to recommended procedures, since care taken in installing will assure the satisfactory performance of the plumbing drainage system.

Section 2. Instructions for Cutting Cast Iron Soil Pipe. (1) During installation assembly, pipe and fittings must be inserted into the hub or into the gasket and firmly seated against the bottom of the hub or against the center rib or shoulder of the gasket. In order to provide sound joint with field cut lengths of pipe, it is necessary to have the ends cut square and as smooth as possible with metal cutting saw or snap type cutters.

(2) Cast iron soil pipe, which may vary somewhat in toughness and resiliency, may be cut with a twin-lever snap cutter or a ratchet type cutter equipped with a chain which contains equally spaced beveled cutting wheels. The following cutting procedure has been found to produce consistently good cuts:

(a) Position chain around pipe so that a maximum number of wheels are in contact with the pipe. Excessive space between the first and last wheel in contact with the pipe is almost certain to produce a poor quality cut.

(b) Score the pipe before final pressure is applied to complete the cut. Apply only enough pressure to the lever or ratchet handle to make the cutter wheels indent the pipe.

(c) Release the pressure and rotate tool a few degrees; then apply a quick final pressure to complete the cut. If a piece of pipe is unusually tough, score the pipe several times and a good cut can be made.

If the cutter wheels become flattened or dull, it will be very difficult (if not impossible) to obtain a satisfactory cut. The life of the chain can be extended by reversing the chain to obtain equal use of all the wheels. The mechanical features of a cutter must be kept in good working order.

Section 3. General Installation Instructions. (1) Vertical piping.

(a) Secure vertical piping at sufficiently close intervals to keep the pipe in alignment and to support the weight of the pipe and its contents. Support stacks at their bases and at sufficient floor intervals to meet the requirements of local codes. Approved metal clamps or hangers should be used for this purpose.

(b) If vertical piping is to stand free of any support or if no structural element is available for support and stability during construction, secure the piping in its proper position by means of adequate stakes or braces fastened to the pipe.

(2) Horizontal piping, suspended.

(a) Support ordinary horizontal piping and fittings at sufficiently close intervals to maintain alignment and prevent sagging or grade reversal. Support each length of pipe by an approved hanger located not more than eighteen (18) inches from the joint.

(b) Support terminal ends of all horizontal runs or branches and each change of direction or alignment by an approved hanger.

(c) Closet bends installed above ground should be firmly secured.

(3) Horizontal piping, underground.

(a) When trenches are dug too deep, support the piping with approved grillage laid on firm ground as denoted in 815 KAR 20:130, Section 13. To maintain proper alignment during backfilling, stabilize the pipe in proper position by partial backfilling and cradling.

(b) Piping laid on grade should be adequately secured to prevent misalignment when the slab is poured.

(c) Closet bends installed under slabs should be adequately secured.

Section 4. Lead and Oakum Joint Installation. (1) Insert the spigot into the hub which has been properly cleaned.

(2) An oakum strand should be inserted into the joint which is of a diameter that can be pressed into the joint by hand and sufficiently long to make three (3) turns around the pipe. Drive the strand of oakum to the bottom of the joint using a yarning iron. Then pack the oakum solidly and evenly using a packing iron and hammer.

(3) Place additional strands of oakum into the joint until it fills the hub to within one-half (½) inch of the top, and then using a packing iron and hammer pack this oakum until it forms a uniform surface one (1) inch from the top of the hub.

(4) Pour molten lead into the joint at one (1) spot between the hub and spigot until it arches up slightly above the top of the hub.

(5) When the lead has cooled, drive it down at four (4) points around the hub using a caulking iron in order to insure uniform caulking.

(6) Caulk the joint on the inside and outside edges using a sixteen (16) ounce ball peen hammer and appropriate caulking irons.

Section 5. Compression Joint Installation. (1) Fold and insert the one (1) piece rubber gasket into the hub which has been properly cleaned.

(2) Apply special gasket lubricant to the spigot and inside of the neoprene gasket.

(3) Push, draw or drive the spigot into the gasketed hub with a pulling tool or suitable device.

Section 6. No-Hub Joint Installation. (1) Clamp and gasket installation. The following must be taken to insure a proper joint:

(a) Place the gasket on the end of one (1) pipe and the

stainless steel or cast iron clamp assembly on the end of the other pipe.

(b) Firmly seat the pipe ends against the integrally molded shoulder inside the neoprene gasket.

(c) Slide the clamp assembly into position over the gasket and tighten the bands or clamps as described below.

(2) Torquing bands. A properly calibrated torque wrench, set at sixty (60) inch pounds must be used. The following procedure for applying torque to the band assembly must be used: The stainless steel bands must be tightened alternately and firmly to sixty (60) inch pounds of torque.

(a) Step 1. The inner bands are to be tightened alternately and firmly to sixty (60) inch pounds of torque.

(b) Step 2. The outer bands are to be tightened alternately and firmly to sixty (60) inch pounds of torque.

(3) Torquing clamps. A properly calibrated torque wrench, set at 175 inch foot pounds must be used. The following procedure for applying torque to the clamp assembly must be used: The stainless steel bolts must be tightened alternately, gradually and firmly to 175 inch pounds torque.

CHARLES A. COTTON, Commissioner
ADOPTED: October 8, 1982
APPROVED: NEIL J. WELCH, Secretary
RECEIVED BY LRC: October 14, 1982 at 10:45 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Carl VanCleve, Director, Division of Plumbing, Department of Housing, Buildings and Construction, The 127 Building, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction

815 KAR 20:073. Installation standards for water and waste piping material of types K, L, M and DWV copper; types R-K, R-L, R-DWV brass tubing and seamless stainless steel tubing, G or H.

RELATES TO: KRS Chapter 318
PURSUANT TO: KRS 13.082, 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation relates to the proper installation of copper pipe and fittings.

Section 1. The installation of copper, brass and seamless stainless steel tubing water and waste piping should be made according to recommended procedures, since care taken in installing will assure the satisfactory performance of the plumbing water distribution and drainage systems.

Section 2. Cutting, Reaming and Sizing. (1) Tube should be cut to exact length with a square cut using tube cutters, hacksaw blade or abrasive saw.

(2) Tube shall have burrs and slivers removed by using a reamer or other appropriate tool.

(3) Tube shall be brought to true dimensions and roundness by using a sizing tool which consists of a plug and ring.

Section 3. Cleaning. Surfaces to be joined must be clean and free from oil, grease and heavy oxides. Clean the end of the tube a distance slightly more than is required to enter the socket of the fitting with fine sand cloth or special wire brushes.

Section 4. Jointing Techniques. (1) Soldered joints. After cleaning, cover the surfaces with a thin film of mildly corrosive liquid or petroleum based pastes that contain chlorides of zinc and ammonium. No "so-called" self-cleaning flux is to be used in lieu of cleaning pipe as outlined in Section 3 of this regulation. Wipe off excess flux in fitting socket. Insert tube end into socket, making sure the tube is firmly seated against the end of the socket. Remove excess flux with a rag. Apply heat to the fitting and then move in order to heat as large an area as possible. Do not overheat. When the joint is hot enough the solder will melt on contact with the pipe and will flow by capillary attraction into joint. Remove heat and allow to cool before moving.

(2) Brazed joints. After cleaning, cover the surface of the tube end and the fitting socket with a thin film of flux in accordance with the recommendations of the manufacturer of the brazing filler metal being used. Avoid getting flux inside the tube itself. Flux may be omitted when joining copper tube to wrought copper fittings with copper-phosphorus alloys (BCuP Series) which are self fluxing on copper. Insert tube end into socket hard against the stop and turn if possible. Apply heat to parts to be joined, heating the tube first, then the fitting at the base of the cup. Apply brazing wire, rod or strip where tube enters the socket of the fitting. Remove heat and allow to cool.

(3) Flared joints; impact tools.

(a) See Sections 2 and 3 of this regulation.

(b) Slip the coupling nut over the end of the tube.

(c) Insert flaring tool into the tube end and drive the flaring tool by hammer strokes expanding the end of the tube to the desired flare.

(d) Place the fitting squarely against the flare. Engage the coupling nut with the fitting threads. Tighten with two (2) wrenches, one (1) on the nut and one (1) on the fitting.

(4) Screw type flaring block.

(a) Follow subsection 3(a) and (b) of this section for impact flaring.

(b) Clamp the tube in the flaring block so that the tube is slightly above the block. Place the yoke of the flaring tool on the block so that the beveled end of the compression cone is over the tube end. Turn the compressor screw down firmly, forming the flare between the chamber in the flaring block and the beveled compressor cone. Remove the flaring tool and assemble as in subsection (3)(d) of this section.

(5) Mechanically formed tee connection.

(a) For use in domestic hot and cold water distribution systems above ground only.

(b) Mechanically extracted collars shall be formed in a continuous operation consisting of drilling a pilot hole and drawing out the tube surface to form a collar having a height of not less than three (3) times the thickness of the tube wall. The collaring device shall be fully adjustable so to insure proper tolerance and complete uniformity of the joint.

(c) The joining branch tube shall be no less than one (1) pipe size smaller than the main and shall be notched and dimpled in a single process so as to set the proper penetration of the branch tube into the fitting to assure a free flow joint.

(d) All joints shall be brazed in accordance with Section 4(2) of this regulation and the Copper Development Association Copper Tube Handbook using B-cup filler metal. NOTE: Soldered joints willl not be permitted.

Section 5. Hangers and Supports. Hangers, anchors and supports shall be of material of sufficient strength to support the piping and its contents. Hangers, anchors and supports shall be securely attached to the building construction at sufficiently close intervals to support the piping and its contents. Provisions shall be made to allow for expansion, contraction, structural settlement and vibrations.

(1) Vertical piping. Copper tubing shall be supported at each story for piping one and one-half (1½) inches and larger in diameter. For piping one and one-quarter (1¼) inches and smaller in diameter, it shall be supported at each story and not more than ten (10) foot intervals. Supports shall be of copper material of sufficient strength which will not adversely react with the piping material.

(2) Horizontal piping. Copper tubing shall be supported at six (6) foot intervals for one (1) inch and smaller in diameter and ten (10) foot intervals for one and one-quarter (1¼) inch and larger. Supports shall be of copper material of sufficient strength which will not adversely react with the piping material.

CHARLES A. COTTON, Commissioner
ADOPTED: October 8, 1982
APPROVED: NEIL J. WELCH, Secretary
RECEIVED BY LRC: October 14, 1982 at 10:45 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Carl VanCleve, Director, Division of Plumbing, Department of Housing, Buildings and Construction, The 127 Building, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction

815 KAR 20:074. Installation standards for steel and wrought iron pipe.

RELATES TO: KRS Chapter 318
PURSUANT TO: KRS 13.082, 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation relates to the proper installation of steel and wrought iron pipe and fittings.

Section 1. Materials. All steel pipe shall conform to the latest ASTM standard specifications for welded wrought iron pipe or ASTM standard specifications for welded and seamless steel pipe. Schedule 40 shall be the minimum weight. For water distribution or soil, waste and vent, only galvanized shall be used.

Section 2. Cutting and Reaming. (1) Pipe shall be cut to length with a square cut using pipe cutters, hacksaw or abrasive saw.

(2) All cut-to-length pipe which is to be threaded or prepared for a mechanical connection must be reamed to the full inner diameter of the pipe.

Section 3. Jointing Techniques. (1) Screw joints. All screw joints shall be made by the use of a properly cut thread inserted into the female part of the fitting after applying the recommended pipe joint compound sparingly to the male threads. Tighten hand-tight to check for alignment and then tighten enough to insure a tight leakproof joint. Do not over-tighten.

(2) Mechanical joints. Mechanical joints for hot and cold water may be used above ground provided the couplings are galvanized and the gaskets conform to ASTM D-735-61, Grade N-R-615 BZ and are limited to Z in size and above. Lubricate the pipe ends with approved lubricant and slip the gasket completely over one (1) pipe end. Bring pipe ends together and slide the gasket back into central spanning position. Put housing clamps over gasket, insert bolts and nuts with a socket wrench, draw nuts down equally and tightly.

Section 4. Hangers and Supports. (1) Hangers, anchors and supports shall be of material of sufficient strength to support the piping and its contents. Hangers, anchors and supports shall be securely attached to the building construction at sufficiently close intervals to support the piping and its contents. Provisions shall be made to allow for expansion, contraction, structural settlement and vibration.

(2) Vertical piping.

(a) Screwed piping shall be supported at every other story height with supports of ferrous metal.

(b) Mechanical joint piping shall be supported at every story height with supports of ferrous metal.

(3) Horizontal piping. Horizontal piping shall be supported at sufficiently close intervals to keep the piping in alignment and prevent sagging. Screwed and mechanical joint pipe one and one-half (1½) inches and over shall be supported at each twelve (12) foot interval; one and one-quarter (1¼) inch and smaller shall be supported at each eight (8) foot interval. Support shall be of ferrous metal.

CHARLES A. COTTON, Commissioner
ADOPTED: October 8, 1982
APPROVED: NEIL J. WELCH, Secretary
RECEIVED BY LRC: October 14, 1982 at 10:45 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Carl VanCleve, Director, Division of Plumbing, Department of Housing, Buildings and Construction, The 127 Building, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction

815 KAR 45:015. Aid to fire departments.

RELATES TO: KRS 17.210, 136.392
PURSUANT TO: KRS 13.082, 17.250
NECESSITY AND FUNCTION: KRS 17.250 requires the State Fire Marshal to allot funds to local volunteer fire departments in order to promote better fire protection through better facilities and equipment. This proposed regulation sets out standards and procedures for determining the amount or use of volunteer fire department aid.

Section 1. Definitions. (1) Certified firefighter. For the purpose of these regulations shall be one who has received at least 150 hours of certified fire training as recognized by the Commission on Fire Protection Personnel Standards and Education and receives at least twenty (20) hours certified training annually thereafter.

(2) Certified training. For the purpose of these regulations means firefighter training given or verified by a certified instructor and approved and recorded by the commission.

(3) Commission. For the purpose of these regulations means the Commission on Fire Protection Personnel Standards and Education established pursuant to KRS 95A.020.

(4) Fire apparatus. For the purpose of these regulations means an operational truck type vehicle, equipped with a pump of sufficient capacity to fight fires and with sufficient space to carry hose and other firefighting equipment.

(5) Full-time paid firefighter. For the purpose of these regulations means individuals who work for a salary a minimum of 2,080 hours per year as an employee of a fire department or fire protection district.

(6) Volunteer fire department. For the purpose of these regulations means a fire department which has a membership consisting of less than fifty percent (50%) of its members being full-time paid firefighters and the remaining number being volunteer firefighters.

(7) Newly formed department. For the purpose of these regulations means a department which has organized to the point of having at least twelve (12) members and a chief, having either in their possession or on order an operational fire apparatus. They shall also have funds, equipment, land and buildings of such sufficient value made available to the newly formed fire unit from any source whatever for the year in which the allotment is to be made to match or exceed the amount of the aid allotment.

Section 2. Eligibility. (1) The State Fire Marshal shall allot on an annual basis (April 1 through March 31) an equal share of the funds accruing to and appropriated for volunteer fire department aid to all eligible departments.

(2) To qualify to receive aid under the Volunteer Fire Department Aid Law, volunteer fire departments in cities of all classes, fire prevention districts organized pursuant to KRS Chapter 75, county districts established under authority of KRS 67.083 and all other organized volunteer fire departments operated and maintained on a non-profit basis in the interest of the health, safety, prosperity and security of the inhabitants of the Commonwealth must maintain at least twelve (12) firefighters, a chief and at least one (1) operational fire apparatus.

(3) Any fire department or entity eligible for and receiving funding pursuant to these regulations shall have a minimum of seventy-five percent (75%) of its personnel certified as recognized by the Commission on Fire Protection Personnel Standards and Education.

(4) Each fire department shall furnish the Office of State Fire Marshal an update list of active firefighting members of the fire department by the 31st of March each year so that the seventy-five percent (75%) certification requirement can be checked.

(5) To be eligible to receive funds, a newly formed fire department must have at least twelve (12) firefighters, a chief and at least one (1) operational fire apparatus or one (1) on order. They must have seventy-five percent (75%) of their membership with at least one-half (½) of their training hours toward certification by March 31 within their first year of existence and plans to receive the balance of the required hours for certification within the second year of their existence. Each year thereafter, they shall meet the requirements of the commission to retain certification.

Section 3. Participation Requirement. (1) It shall be the responsibility of the Chief Officer or his appointed representative of each department of furnish any information required by the Fire Department Aid Coordinator for determination of eligibility.

(2) Any volunteer fire department seeking aid pursuant to the authority of KRS 17.250 shall file an application on blanks which may be obtained from the Office of the State Fire Marshal.

(3) Such applications shall be executed in duplicate, one (1) copy to be retained by the applicant and the original to be forwarded to the State Fire Marshal.

Section 4. Verification and Inspection. (1) The application for aid shall contain or have attached thereto a detailed statement of the equipment to be purchased, repairs to be made, or other purposes for which the allotment is to be expended and such other information as the State Fire Marshal may require to give proper consideration to the request.

(2) Where a new department is being established, there shall be furnished with the application additional information as to the territory to be served and plans and specifications for the establishment of the department.

(3) The Fire Department Aid Coordinator shall, upon receipt of the application, advise the State Fire Marshal as to the validity of the qualifications and approval for grant-in-aid.

(4) The State Fire Marshal or the Fire Department Aid Coordinator or their representative may make an inspection of the applicant's department to determine its comparative needs before allotment is made.

Section 5. Processing Applications for and Expenditure of Aid. (1) Applications for aid for current fiscal year, July 1 to June 30 received on or before September 30, will be disbursed during the last quarter of the fiscal year.

(2) Applications for allotment for any fiscal year, submitted during the first quarter, July 1 through September 30 of such year, will be processed during the second quarter of the year October 1 through December 31. Allotments made will be disbursed during the last quarter of the fiscal year, April 1 through June 30 for all funds available for the year involved. Applications received after September 30 of any fiscal year will be held for approval or disapproval, for participation in funds during the next fiscal year.

(3) No allotment may be expended for any purpose other than that for which it is approved without the approval of the Fire Department Aid Coordinator.

(4) If approved allotment is insufficient to cover cost of equipment or other approved purpose, funds granted for any fiscal year may be deposited in any bank legally authorized by applicant, to be held for a period not to exceed five (5) years from the initial request. If additional time beyond the five (5) years is needed, a written request shall be made to the Fire Department Aid Coordinator giving reasons why additional time is needed. This shall be held in a special and separate bank account marked Fire Department Aid.

(5) If an allotment is granted to a department and is not to be used for purchase of equipment for which is was

granted, the chief of the department shall:
(a) Contact the Fire Department Coordinator directly giving reason why he wishes to make a change in the original equipment list;
(b) Resubmit a new equipment list which is to be approved by the State Fire Marshal; or
(c) Refund the grant-in-aid allotment.
(6) Amounts expended for expenses of firemen in attending fire related school or classes shall not exceed $200 for any one (1) department. This shall be an item entered on your regular equipment list.
(7) When expenditure is made of any allotted funds, copies of receipted bills shall be forwarded (by the 31st of December of the current fiscal year) to the Fire Department Aid Coordinator and after his approval shall be forwarded to the State Fire Marshal. If grant is to be used toward the retirement of a pre-existing debt for purchase of land, buildings or equipment, proof of such expenditure in the form of affidavit or cancelled note shall be furnished the State Fire Marshal. Any false statements made knowingly by an applicant shall call for refund of grant monies and prosecution under existing statutes.

Section 6. 815 KAR 45:010, Fire department aid, is hereby repealed.

CHARLES A. COTTON, Commissioner
ADOPTED: October 8, 1982
APPROVED: NEIL J. WELCH, Secretary
RECEIVED BY LRC: October 14, 1982 at 10:45 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601.

CABINET FOR HUMAN RESOURCES

900 KAR 2:030. Quality of care rating system for long term care facilities.

RELATES TO: KRS 216.550
PURSUANT TO: KRS 13.082, 194.050, 216.550
NECESSITY AND FUNCTION: The Cabinet for Human Resources is directed to establish a system for the purpose of evaluating long term care facilities in the Commonwealth as to quality of care. The purpose of this regulation is to set forth the uniform criteria upon which such evaluation is to be made.

Section 1. Definitions. (1) "Biologicals" means medicinal preparations made from living organisms and their products, including but not limited to serums, vaccines, antigens and antitoxins.
(2) "Cabinet" means Cabinet for Human Resources or any subdivision thereof.
(3) "Level I areas" means those areas which are essential to maintaining the health, safety or security of patients.
(4) "Level II areas" means those areas which are less directly related to the health, safety or security of residents, but which are important to the overall quality of care and services provided by long term care facilities.
(5) "Licensee" in the case of a licensee who is an individual means the individual, and in the case of a licensee who is a corporation, partnership or association means the corporation, partnership or association.
(6) "Long term care facility" means those health care facilities in the Commonwealth which are defined by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board to be family care homes, personal care homes, intermediate care facilities, skilled nursing facilities, nursing homes, and intermediate care facilities for the mentally retarded and developmentally disabled.
(7) "Plan of correction" means a written proposal by the licensee to remedy the regulatory violations cited by the cabinet; the proposal includes dates by which the remedies will have been made. The plan must be found acceptable by the cabinet to correct the deficiencies involved.
(8) "Statement of deficiencies" means a written list of findings where the licensee, at the time inspected, did not meet the requirements of applicable statutes and/or regulations. Such a list specifies what was found and gives the statute or regulation involved.
(9) "Representative sampling" means information obtained from at least ten percent (10%) of the residents and families or legal guardians of the residents at the facility in question, together with that obtained from ombudsman committees in the district wherein the facility is located, and the staff of the long term care facility in question.

Section 2. (1) For the purposes of the determination of quality of care of long term care facilities in the Commonwealth of Kentucky, the following are declared to be Level I areas of concern:
(a) Medical services;
(b) Nursing service;
(c) Drugs and biologicals;
(d) Dietary and nutritional service;
(e) Life safety code or other applicable building code;
(f) Physical and restorative therapy; and
(g) Physical environment.
(2) The following are declared to be Level II areas of concern:
(a) Social services and activities;
(b) Patient rights;
(c) Recordkeeping; and
(d) Administration.

Section 3. Pursuant to the provisions of KRS 216.550(1) and in accordance with KRS 216.550(3), applicable minimum state licensure requirements shall serve as the uniform criteria for the evaluation of long term care facilities as to quality of care. Appendices I through VI are the applicable minimum licensure requirements arranged according to quality of care area of concern.

Section 4. (1) The cabinet shall, at the time of its annual licensure inspection, conduct an evaluation of long term care facilities as to quality of care. Each long term care facility shall, upon inspection and evaluation, be assigned either a superior rating, an unrated license, or a conditional rating.
(a) To receive an unrated license as to quality of care, each long term care facility must meet the applicable minimum state requirements for licensure.
(b) To achieve a "superior" rating as to quality of care, each long term care facility must demonstrate to the cabinet that the facility exceeds minimum standards for licensure in six (6) of the eleven (11) areas of concern identified in KRS 216.550(1)(a) through (k) and as set forth in Section 2 of this regulation, and meets at least the

minimum requirements of all other applicable state licensure regulations pertaining to long term care facilities. In addition to meeting the minimum licensure requirements, achievement of at least one (1) of the goals set forth in six (6) of the eleven (11) areas of concern listed in Appendices A through F shall result in a superior rating.

(c) Failure to comply with the requirements set forth in subsection (1)(a) of this section and Section 3 of this regulation, or to implement an acceptable plan of correction leading to licensure shall result in a "conditional" rating. Notice of a conditional rating shall be sent by certified mail to the licensee within five (5) working days of inspection. Upon receipt of a "conditional" rating, the licensee shall prepare, within ten (10) working days of assignment, a plan of correction for all cited deficiencies and shall submit said plan for the cabinet's approval. A "conditional" rating shall be effective from the time of the rating inspection until either:

1. Upon approval of an acceptable plan of correction;
2. Such time as the cabinet finds the facility in compliance with minimum licensure standards; or
3. The determination of the cabinet is reversed upon appeal pursuant to KRS 216.553.

(2) For the purpose of assignment of a rating, the evaluation shall take into consideration findings from other official reports, surveys, interviews, investigations, and inspections.

(3) In making its determination as to the degree of compliance with the requirements of this regulation and as to the overall quality of care and services in a long term care facility, the cabinet shall consider interviews and surveys of a representative sample of residents, families and legal guardians of residents, ombudsman committees in the district wherein the facility is located, and the staff of the long term care facility in question.

(4) Any licensee aggreived by an assignment of rating pursuant to KRS 216.550 may appeal said assignment to the cabinet within twenty (20) days after notice of assignment in accordance with the requirements of KRS 216.567. For the purposes of appeal of a particular rating pursuant to KRS 216.553, a determination of the cabinet shall be deemed final upon receipt of written notice of rating indicated by the date of the return receipt or upon disapproval of a plan of correction. In no event shall any rating assigned by the cabinet be posted until the final decision of the cabinet pursuant to KRS 216.567.

Section 5. If, at any time during the rating year, the cabinet finds a long term care facility out of compliance with minimum licensure requirements or exceeds the minimum licensure requirements within six (6) of the eleven (11) areas as set forth in KRS 216.550(1)(a) through (k) and Section 2 of this regulation, the cabinet may alter the facility's quality of care rating accordingly.

Section 6. In the event of a change of ownership, the rating obtained by the prior owner shall continue in effect until the next regularly scheduled licensure inspection unless modified after inspection by the cabinet upon its own initiative or undertaken upon request.

Section 7. The following Appendices A through F set forth guidelines for use by licensees of long term care facilities in their efforts to obtain a "superior" rating for the facility in question. A "superior" rating shall be issued to any long term care facility accomplishing at least one (1) of the goals set forth in six (6) of the eleven (11) areas listed in KRS 216.550(1)(a) through (k) and Section 2 of this regulation.

APPENDIX I
FAMILY CARE HOMES

All references are to sections of 902 KAR 20:041, unless otherwise indicated.

A. Level I
- (1) Medical Services
  - Section 4(1)(a) through (d)
- (2) Nursing Services
  - Section 4(1)(i)
  - Section 4(2)(a)1 through 4
- (3) Drugs and Biologicals
  - Section 4(1)(e) through (h)
- (4) Dietary and Nutritional Service
  - Section 4(3)(a) through (i)
- (5) Life Safety Code or Other Applicable Building Code
  - Section 6(3) through (6)
- (6) Physical and Restorative Therapy
  - No requirements for licensure
- (7) Physical Environment
  - Section 4(2)(b), (c)
  - Section 4(4)(a) through (g)
  - Section 5
  - Section 6(1),(2)

B. Level II
- (1) Social Services and Activities
  - Section 3(7)
- (2) Patient Rights
  - Section 3(13)
  - Section 4(2)(d)
- (3) Recordkeeping
  - Section 3(8)
  - Section 3(12)
- (4) Administration
  - Section 1
  - Section 3(1) through (6), (9) through (11), (14)

APPENDIX II
PERSONAL CARE HOME

All references are to sections of 902 KAR 20:036, unless otherwise indicated.

A. Level I
- (1) Medical Services
  - Section 4(1)(a), (g)
  - Section 4(1)(j)
- (2) Nursing Services
  - Section 4(1)(b); (h)1, 2, 3; (k)1, 2
  - Section 4(3)(a) through (e)
- (3) Drugs and Biologicals
  - Section 4(1)(e), (f)
- (4) Dietary and Nutritional Service
  - Section 4(2)(c)
- (5) Life Safety Code or Other Applicable Building Code
  - 902 KAR 20:031
- (6) Physical and Restorative Therapy
  - No requirements
- (7) Physical Environment
  - Section 4(1)(i)
  - Section 4(2)(a), (b)

B. Level II
(1) Social Services and Activities
Section 4(4)(a), (b)
(2) Patient Rights
Section 3(4), (5)
Section 3(7)(e)4, 5
(3) Recordkeeping
Section 3(8), (9)
Section 4(1)(d)
(4) Administration
Section 2(3)(a), (b)
Section 3(1)(a), (b)
Section 3(2)
Section 3(3)(a) through (d)
Section 3(6)(a) through (c)
Section 3(7)(f)
Section 3(7)(a) through (e)3
Section 3(7)(e)6 through 12

APPENDIX III
NURSING HOMES

All references are to sections of 902 KAR 20:048, unless otherwise indicated.

A. Level I
(1) Medical Services
Section 4(1)(a) through (d)
Section 4(6), (7)
Section 4(5)(f)5a, b, c
(2) Nursing Services
Section 3(9)(c)5 through 7
Section 4(2), (4)
(3) Drugs and Biologicals
Section 3(9)(c)8
Section 4(5)
(4) Dietary and Nutritional
Section 3(9)(c)10
Section 4(11)(a)
(5) Life Safety Code or Other Applicable Building Code
902 KAR 20:046
(6) Physical and Restorative Therapy
Section 3(9)(c)9a, b, c
Section 4(3)
(7) Physical Environment
Section 4(1)(b), (c)

B. Level II
(1) Social Services and Activities
Section 4(8), (9), (10)
(2) Patient Rights
Section 3(5)
(3) Recordkeeping
Section 3(3)(a), (b), (c); (10)
(4) Administration
Section 3(1)
Section 3(2)(a), (b)
Section 3(4)(a) through (d)
Section 3(6)(a) through (d)
Section 3(7)
Section 3(8)(a) through (f)
Section 3(9)(a), (b)
Section 3(9)(c)1, 2, 3, 4, 11, 12
Section 3(9)(d)
Section 3(9)(e)
Section 3(9)(f)1, 2

APPENDIX IV
INTERMEDIATE CARE FACILITY

All references are to sections of 902 KAR 20:051, unless otherwise indicated.

A. Level I
(1) Medical Services
Section 4(2)
Section 4(6)
(2) Nursing Services
Section 3(9)(c)5a through k
Section 4(1), (3), (5)
(3) Drugs and Biologicals
Section 3(9)(c)6
Section 4(4)
(4) Dietary and Nutritional Services
Section 4(10)(c)
Section 3(9)(c)7
(5) Life Safety Code or Other Applicable Building Code
902 KAR 20:056
(6) Physical and Restorative Therapy
No requirements
(7) Physical Environment
Section 4(10)(a), (b)

B. Level II
(1) Social Services and Activities
Section 4(7), (8), (9)
(2) Patient Rights
Section 3(4)(b), (5)
(3) Recordkeeping
Section 3(10)
(4) Administration
Section 3(1) through (3); (4)(a), (c), (d); (6) through (8)
Section 3(9)(c)1 through 4, 8, 9
Section 3(9)(a), (b), (d) through (f)

APPENDIX V
INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED AND DEVELOPMENTALLY DISABLED

All references are to sections of 902 KAR 20:086, unless otherwise indicated.

A. Level I
(1) Medical Services
Section 3(7)(a), (b)
Section 4(1), (4), (8), (14)
(2) Nursing Services
Section 3(11)(i)
Section 4(5), (7)
(3) Drugs and Biologicals
Section 3(11)(j)
Section 4(6)
(4) Dietary and Nutritional Services
Section 3(11)(k)
Section 4(16)(c)
(5) Life Safety Code or other applicable Building Code
902 KAR 20:056
(6) Physical and Restorative Therapy
Section 4(11), (12), (13)
(7) Physical Environment
Section 4(16)(a), (b)

B. Level II
(1) Social Services and Activities
Section 4(9), (10), (15)
(2) Patient Rights
Section 3(5)(b), (6)
(3) Recordkeeping
Section 3(4), (10)
(4) Administration
Section 3(1) through (3)
Section 3(5)(a), (c), (d)
Section 3(7)(c), (d), (e)
Section 3(8), (9)
Section 3(11)(a) through (h), (l) through (n)
Section 4(2), (3)

APPENDIX VI
SKILLED NURSING FACILITIES

All references are to sections of 902 KAR 20:026, unless otherwise indicated.

A. Level I
(1) Medical Services
Section 4(1), (6), (7)
(2) Nursing Services
Section 3(8)(d)3, 4, 5
Section 4(2), (5)(f)4
(3) Drugs and Biologicals
Section 3(8)(d)6
Section 4(5)(f)1 through 3
(4) Dietary and Nutritional Services
Section 3(8)(d)8
Section 4(10)(a)
(5) Life Safety Code or Other Applicable Building Code
902 KAR 20:021
(6) Physical and Restorative Therapy
Section 3(8)(d)7
Section 4(3)
(7) Physical Environment
Section 4(10)(b), (c)

B. Level II
(1) Social Services and Activities
Section 4(8), (9)
(2) Patient Rights
Section 3(2)(d), (4)
(3) Recordkeeping
Section 3(9)
(4) Administration
Section 3(1), (2), (3)(a), (b), (c), (e)
Section 3(5) through (7)
Section 3(6)
Section 3(8)(a), (b), (c), (d)1, 2
Section 3(8)(d)9, (e)
Section 4(5)(f)5

APPENDIX A
FAMILY CARE HOMES
(Area of Concern, Goals)

Medical Services
(1) All residents receive annual physicals by a physician.
(2) Other, if submitted to and approved by the Cabinet for Human Resources.

Nursing Service
(1) Residents are up and dressed during the day except during short illnesses or naps.
(2) Residents have annual evaluation by dentist and opthalmologist.
(3) If operator is not a licensed nurse, residents are evaluated by licensed nurse semi-annually and evidence is shown of recommendations being acted upon.
(4) Other, if submitted to and approved by the Cabinet for Human Resources.

Drugs and Biologicals
(1) Residents may select their own pharmacy/pharmacist.
(2) Drugs and biologicals not covered under the facility's basic rate.
(3) Other, if submitted to and approved by the Cabinet for Human Resources.

Dietary and Nutritional Services
(1) Each resident selects at least one meal per week.
(2) Menus are prepared with assistance of qualified nutritionist.
(3) Other, if submitted to and approved by the Cabinet for Human Resources.

Life Safety Code
(1) Facility has smoke alarms of sufficient quantity to cover the entire dwelling.
(2) Facility interior and exterior are modified so that each resident may exit unassisted.
(3) Other, if submitted to and approved by the Cabinet for Human Resources.

Physical and Restorative Therapy
(1) Transporting of resident to and assistance in arranging needed therapy; e.g., physical, speech.
(2) Availability of special devices required by resident for maximum functioning; e.g., eating, reading, hearing devices.
(3) Other, if submitted to and approved by the Cabinet for Human Resources.

Physical Environment
(1) Resident's personal belongings are displayed in facility.
(2) Dwelling is air conditioned in all spaces occupied by residents.
(3) Residents have safe and pleasant outside area for their use.
(4) Dwelling has common area for unrestricted use by residents and the families or friends that is separate from their bedroom.
(5) Other, if submitted to and approved by the Cabinet for Human Resources.

Social Services and Activities
(1) Weekly planned and supervised tours, visits, shopping or attendance out in community.
(2) At least one hour daily planned and supervised in-house social or recreational activities, using appropriate supplies and equipment; exclusive of television and radio.
(3) If desired by resident, the newspaper of the resident's choice is available to the resident.
(4) Facility has daily reality orientation program for each confused resident.
(5) Other, if submitted to and approved by the Cabinet for Human Resources.

Patient Rights
(1) Resident's personal funds and benefits are controlled

by an individual or entity having no financial interest in the funds or the resident is able to and does control his own finances.
(2) If operator is payee for any resident entitlement, use of resident's funds is reviewed, at least annually.
(3) Other, if submitted to and approved by the Cabinet for Human Resources.

Recordkeeping
(1) Records of all fees and charges to resident.
(2) Other, if submitted to and approved by the Cabinet for Human Resources.

Administration
(1) Operator is professionally qualified in a health services field.
(2) Operator shows evidence of having attended 10 hours of training in long term care services in a 12-month period in programs approved by the Cabinet for Human Resources, Division of Licensing and Regulation; this is in addition to 902 KAR 20:041, Section 1(5).
(3) Other, if submitted to and approved by the Cabinet for Human Resources.

APPENDIX B
PERSONAL CARE HOMES
(Area of Concern, Goals)

Medical Services
(1) Physician spends at least one hour per week interacting with residents at facility for each 25 residents.
(2) Dental services provided at the facility.
(3) Opthalmologist examinations for residents annually.
(4) Other, if submitted to and approved by the Cabinet for Human Resources.

Nursing Services
(1) If operator is not a licensed nurse, residents are evaluated by a licensed nurse at least semi-annually and evidence is shown of recommendations being acted upon.
(2) Nursing service has an organized call-in program to effectively deal with employee absences.
(3) Other, if submitted to and approved by the Cabinet for Human Resources.

Drugs and Biologicals
(1) Residents may select their own pharmacy/pharmacist.
(2) Facility uses unit dose system.
(3) Other, if submitted to and approved by the Cabinet for Human Resources.

Dietary and Nutritional Services
(1) Residents select at least one meal per week.
(2) Available self-help devices or adaptive devices and program for use.
(3) Other, if submitted to and approved by the Cabinet for Human Resources.

Life Safety Code
(1) Organized safety committee and evidence of its effectiveness.
(2) Other, if submitted to and approved by the Cabinet for Human Resources.

Physical and Restorative Therapy
(1) An exercise program designed by a licensed physical therapist is provided for those residents who have an adequate level of functioning and are physically able to participate.
(2) Physical therapy needs are part of initial evaluation of residents in facility.
(3) Other, if submitted to and approved by the Cabinet for Human Resources.

Physical Environment
(1) Facility is air conditioned in all spaces occupied by residents.
(2) Residents have safe and pleasant outside area for their use.
(3) Other, if submitted to and approved by the Cabinet for Human Resources.

Social Services and Activities
(1) An organized resident council selects at least 25 percent of the activities.
(2) Separate staff for social services and activities for facilities with at least 50 residents.
(3) Activities out of facility at least once a week.
(4) Other, if submitted to and approved by the Cabinet for Human Resources.

Patient Rights
(1) Resident's personal funds and benefits are controlled by an individual having no financial interest in the resident's funds or the resident is able to control his own finances.
(2) If operator is payee for any resident entitlement, use of resident's funds is reviewed, at least annually.
(3) Organized resident council functions and facility responds to their requests and inquiries and evidence is available to demonstrate such.
(4) Other, if submitted to and approved by the Cabinet for Human Resources.

Recordkeeping
(1) Medical records are designed and maintained by an accredited records technician, registered records administrator, or medical records designee has consultation from accredited records technician or registered records administrator.
(2) Someone other than charge nurse or administrator is designated in charge of records.
(3) Other, if submitted to and approved by the Cabinet for Human Resources.

Administration
(1) Tuition assistance program for employees.
(2) Administrators who are not licensed nursing home administrators show evidence of having attended 10 hours per year of continuing education class that has been approved by the Kentucky Board of Nursing Home Administrators.
(3) Other, if submitted to and approved by the Cabinet for Human Resources.

APPENDIX C
INTERMEDIATE CARE FACILITIES

(See Appendix E)

APPENDIX D
SKILLED NURSING FACILITIES

(See Appendix E)

APPENDIX E
NURSING HOMES
(Area of Concern, Goals)

Medical Services
(1) Physician participates on voluntary basis in in-service education program and inpatient care planning other than diagnosis and treatment.
(2) Other, if submitted to and approved by the Cabinet for Human Resources.

Nursing Services
(1) Organized call-in program to deal with the problems of employee absences.
(2) A comprehensive nursing audit program for all residents.
(3) Other, if submitted to and approved by the Cabinet for Human Resources.

Drugs and Biologicals
(1) Residents may select their own pharmacy/pharmacist.
(2) 24-hour per day unit dose system for drug administration.
(3) Other, if submitted to and approved by the Cabinet for Human Resources.

Dietary and Nutritional Services
(1) A volunteer program with training and return demonstrations in assisting with serving and feeding so that all residents may eat at the same time.
(2) Participation of relatives and friends in social occasions, including but not limited to birthday parties and cook-outs.
(3) Dietary supplements that are made at the facility from approved recipes; e.g., supplemental milkshakes.
(4) Other, if submitted to and approved by the Cabinet for Human Resources.

Life Safety Code
(1) An organized safety committee and evidence of their effectiveness and impact on the facility.
(2) Other, if submitted to and approved by the Cabinet for Human Resources.

Physical and Restorative Therapy
(1) Component flexible; must be submitted to the Cabinet for review and approval.

Physical Environment
(1) Facility is air conditioned in all spaces occupied by residents.
(2) Residents are provided a safe and pleasant outside area.
(3) Other, if submitted to and approved by the Cabinet for Human Resources.

Social Services and Activities
(1) An organized resident council selects at least 25 percent of activities.
(2) A guardian/relative/friend counseling program to deal with the problems and maintain continual communication.
(3) Other, if submitted to and approved by the Cabinet for Human Resources.

Patient Rights
(1) Organized resident council functions and facility responds to their requests and inquiries; evidence is available to demonstrate facility's response.
(2) Other, if submitted to and approved by the Cabinet for Human Resources.

Recordkeeping
(1) Decubitus documentation is regularly (at least weekly) updated; includes at least a monthly photograph of the decubitus.
(2) Other, if submitted to and approved by the Cabinet for Human Resources.

Administration
(1) Organization and utilization of a welcoming committee composed of residents, staff of the facility and at least one member of the administration to provide assistance to new residents in transition to life in the long term care facility.
(2) Other, if submitted to and approved by the Cabinet for Human Resources.

APPENDIX F
INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED
(Area of Concern, Goals

With the exception of those areas of concern dealing with patient rights and social services and activities, intermediate care facilities for the mentally retarded share the goals as set forth in Appendix E. As for patient rights and social services and activities, the following goals apply:

Patient Rights
(1) Facility has voluntary family/guardian council that meets at least monthly and makes inquiries and recommendations to the facility; evidence is available that the facility has acted upon the inquiries and recommendations and the council has received a response.

Social Services and Activities
(1) Facility has organized occupational therapy program with private industry so that residents may learn and benefit from their work in a practical setting.

BUDDY H. ADAMS, Secretary
ADOPTED: October 15, 1982
RECEIVED BY LRC: October 15, 1982 at 2:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance

904 KAR 1:095. Payments for nurse-midwife services.

RELATES TO: KRS 205.520, 205.560
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Cabinet 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, 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 for nurse-midwife services.

Section 1. General Requirements Relating to Payments. Participating nurse-midwife providers shall be paid only for covered services rendered to eligible recipients, and services provided must be within the scope of practice of the nurse-midwife.

Section 2. Outpatient Reimbursement. (1) Payments to nurse-midwives shall be at actual billed charges on a procedure-by-procedure basis, with reimbursement for a procedure not to exceed seventy-five (75) percent of the amount reimbursable to general practice physicians (non-specialists) at the seventy-fifth (75th) percentile for the procedure.

(2) All procedures shall have the upper limits recomputed at the same time the seventy-fifth (75th) percentile is recomputed for physicians.

Section 3. Inpatient Reimbursement. Reimbursement for nurse-midwife services provided to inpatients of hospitals is made on the basis of 100 percent reimbursement per procedure for the first fifty dollars ($50) of allowable reimbursement and on the basis of a percentage of the nurse-midwife's usual, customary and reasonable charge in excess of fifty dollars ($50) per procedure, after the appropriate prevailing fee screen is applied. The "prevailing fee screen" means, in this instance, application of the limitation shown in Section 2(1) of this regulation. The percentage rate applied to otherwise allowable reimbursement in excess of fifty dollars ($50) per procedure is established at sixty (60) percent. The percentage rate will be reviewed periodically and adjusted according to the availability of funds.

Section 4. Implementation Date. Covered services provided by participating providers may be paid for on the basis of this payment system for services rendered on or after July 16, 1982.

JOHN CUBINE, Commissioner
ADOPTED: October 15, 1982
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: October 15, 1982 at 2:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance

904 KAR 1:100. Nurse-midwife services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Cabinet 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, 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 provisions relating to nurse-midwife services for which payment shall be made by the Medical Assistance Program in behalf of both the categorically needy and the medically needy.

Section 1. Nurse-midwives' Services. Covered services shall include those furnished by nurse-midwives to eligible recipients through direct nurse-midwife-patient contact. Such services must be within the scope of practice of nurse-midwife practices, and any participating nurse-midwife must meet all applicable requirements of state laws and/or conditions for practice including any requirements for certification and/or licensure.

Section 2. Participation Requirements. Any nurse-midwife desiring to provide nurse-midwife services must enter into a participation agreement with the cabinet, and services must be provided and billed for in accordance with the terms and conditions of the provider participation agreement.

Section 3. Implementation. Nurse-midwife services shall be covered effective July 16, 1982, provided, however, that this provision shall not be construed in such a manner as to negate the requirement that covered services may be provided only by a nurse-midwife with a valid provider agreement in effect.

JOHN CUBINE, Commissioner
ADOPTED: October 15, 1982
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: October 15, 1982 at 2:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 1:140. Foster care, adoption assistance.

RELATES TO: KRS 199.467
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: This regulation is required by P.L. 96-272, Adoption Assistance and Child Welfare Act of 1980. It serves to set forth the maximum number of children in foster care who can remain in care for more than twenty-four (24) months and the steps which will be taken to achieve such goal.

Section 1. Definitions. (1) "Child-care institution" means an institution caring for no more than twenty-five (25) children that is licensed by the Cabinet for Human Resources.

(2) "Foster care" means care of a child in a foster family home or child-care institution.

(3) "Foster family home" means a home which is approved by the Cabinet for Human Resources.

Section 2. Children in Care. During the federal fiscal year beginning October 1, 1983, the maximum number of children who will receive foster care in excess of twenty-four (24) months is 1,250.

Section 3. Goal Achievement. Activities directed at the achievement of this goal may include but not be limited to supportive services to the child and his family to prevent or eliminate the need for removal of the child, attempting to

place the child in close proximity to the family and in the least restrictive setting, implementing case plan and a case review procedure that periodically assess the appropriateness of the child's placement and re-evaluate the services provided to assist the child and his family, providing supportive services to the family to make it possible for the child to return home, and at the end of six (6) months in foster care to formulate a permanent plan for the child.

SUZANNE TURNER, Commissioner
ADOPTED: September 30, 1982
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: October 1, 1982 at 3:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Buddy H. Adams, Secretary, Cabinet for Human Resources, Human Resources Building 4-W, 275 E. Main Street, Frankfort, Kentucky 40621.

Reprint

COMPILER'S NOTE: Due to a typographical error in this regulation as originally submitted, it is being reprinted to show bracketed material.

COMMERCE CABINET
Department of Agriculture
Milk Marketing and Antimonopoly Commission
(Proposed Amendment)

302 KAR 25:045. Stamps, coupons and redemption certificates.

RELATES TO: KRS 260.675 to 260.760
PURSUANT TO: KRS 13.082, 260.715
NECESSITY AND FUNCTION: This regulation is designed to set forth with clarity prohibited practices relative to bonus stamps, coupons, redeemable certificates and any other thing of value with the sale of milk, cottage cheese or frozen dairy products.

Section 1. No processor, distributor, dealer, handler, producer-handler or store, either directly or indirectly, or through a subsidiary or affiliate corporation, or by any officer, director, stockholder, employee, partner, agent or representative thereof shall:

(1) Attach to or print on any bottle, jug, carton or package of fluid milk, [cottage cheese or frozen dairy products,] a stamp, coupon or label of any redeemable value.

(2) Give or advertise to give any stamps, bonus stamps, coupons, or redeemable certificates with the sale of fluid milk, [cottage cheese or frozen dairy products] where such stamps, bonus stamps, coupons, or redeemable certificates are given or advertised to be given away with specific relation to said sale or connected therewith specifically. The giving of trading stamps, based on total over-the-counter dollar or portion of dollar sales, is not prohibited even in such instances where the trading stamps are given as the result of the accumulated value of the sale including fluid milk[, cottage cheese and frozen dairy products].

Section 2. Any person mentioned in Section 1 found violating this regulation shall be subject to the penalty provided for in KRS 260.991.

Section 3. The face value of a cents-off coupon shall be considered a direct cost to the particular dairy product unit to which the coupon is applied for the purpose of determining compliance with the below cost standards set forth in Chapter 260 of the Kentucky Revised Statutes.

NIELS O. EWING, Vice Chairman
ADOPTED: September 14, 1982
RECEIVED BY LRC: September 15, 1982 at 2:10 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: James E. Claycomb, Executive Secretary, Milk Marketing and Antimonopoly Commission, 106 West Second Street, Frankfort, Kentucky 40601.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the September 22, 1982 Meeting

(Subject to subcommittee approval at the October 27 meeting.)

The Administrative Regulation Review Subcommittee held its monthly meeting on Wednesday, September 22, 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 James Bruce.

Guests: Donna K. Smith, Larry McCarthy, Ryan M. Halloran, Herbert Lax, Joe Miller and Peggy Kidd, Cabinet for Human Resources; R. Hughes Walker, J. Michael Noyes, Bill Criscillis and Tom Dowler, Department of Agriculture; Catherine Staib and Edward Farris, Department of Alcoholic Beverage Control; Rick Jones, Department of Banking; Don McCormick, Department of Fish and Wildlife Resources; Patrick Watts, Department of Insurance; Mark Spellman and Wilbur R. Buntin, Department of Military Affairs; Susan Leavenworth, B. G. Powell and Daniel C. Wilson, Department of Revenue; Robert Massey and John Stephen Kirby, Kentucky Real Estate Commission; Jim Ahler, Kentucky State Board of Accountancy; Etta Ruth Kepp, James Dills, Norman Schell, Larry Wilson, Hisham Saaid and Martha Hall, Natural Resources and Environmental Protection Cabinet; Eugene Harrell and Mary Lee Birdwhistell, Secretary of State; Thomas R. Seigle and H. Alexander Campbell, Commonwealth Life Insurance Company; Bernard Maloney, Crane Distributing Company; Tony Sholar, Kentucky Chamber of Commerce; Bill Caylor, Kentucky Coal Association; Gregory Guess, Kentucky Petroleum Council; J. W. Knippenberg and Philip T. Weissinger, Kentucky Beer Wholesalers Association; Farnham Dudgeon, Kentucky Beverage Journal; Frank Dailey, Kentucky Distillers' Association; Fred Tuggle, Kentucky Wholesale Liquor Dealers' Association.

Press: Herb Sparrow, Associated Press; Tom Loftus, Kentucky Post.

Staff: Susan Harding, Joe Hood, Dan Risch, June Mabry, Carla Arnold, Shirley Hart, Mary Helen Miller, Mike Greenwell, Julie Haviland, Joyce Morse, Gilmore Dutton, Paula Payne, Jim Peyton, Gay Trevino and Dan Meyer.

Chairman Brinkley announced that a quorum was present and called the meeting to order. On motion of Representative Brinkley, the minutes of the August 24-25 meeting were approved.

The following regulations were deferred by the subcommittee until the October 27 meeting.

DEPARTMENT OF REVENUE

Selective Excise Tax; Alcoholic Beverages

103 KAR 40:035. Alcoholic beverages; tax exemptions. (Senator Bunning and Representative Robinson voted no.)

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

Motor Vehicle Reparations (No-Fault)

806 KAR 39:030. Kentucky no-fault rejection form.

SECRETARY OF STATE

Corporations

30 KAR 1:030. Business address. (Senator Bunning moved not to recommend passage of regulation and withdrew his motion. Representative Bruce moved to defer the regulation for further study.)

The subcommittee recommended that no action be taken on the following emergency regulations:

DEPARTMENT OF REVENUE

Selective Excise Tax; Alcoholic Beverages

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

ENERGY AND AGRICULTURE CABINET
Department of Agriculture

Grain Storage

302 KAR 35:060E. Contracts.

302 KAR 35:070E. Bookkeeping.

The following regulations were approved by the subcommittee and ordered filed:

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution

General Administrative Procedures

401 KAR 50:015. Documents incorporated by reference.

401 KAR 50:035. Permits and compliance schedules.

401 KAR 50:055. General compliance requirements.

New Source Requirements; Non-Attainment Areas

401 KAR 51:010. Attainment status designations. (Filed as amended with technical corrections.)

401 KAR 51:017. Prevention of significant deterioration of air quality. (Filed as amended with technical corrections.)

401 KAR 51:052. Review of new sources in or impacting upon non-attainment areas. (Filed as amended with technical corrections.)

401 KAR 51:055. Emissions trading. (Filed as amended with technical corrections.)

New Source Standards

401 KAR 59:018. New stationary gas turbines.

401 KAR 59:210. New fabric, vinyl and paper surface coating operations.

401 KAR 59:212. New graphic arts facilities using rotogravure and flexography.

Existing Source Standards

401 KAR 61:120. Existing fabric, vinyl and paper surface coating operations.

401 KAR 61:122. Existing graphic arts facilities using rotogravure and flexography.

The subcommittee recommended that the following regulations be approved for filing:

LEGISLATIVE RESEARCH COMMISSION
Capital Construction and Equipment Purchase
1 KAR 3:005. Capital Construction and Equipment Purchase Oversight Committee; procedure; records.

DEPARTMENT OF MILITARY AFFAIRS
Division of Disaster and Emergency Services
National Guard
106 KAR 1:030. Rescue organizations. (As amended.)

FINANCE AND ADMINISTRATION CABINET
Division of Occupations and Professions
Board of Accountancy
201 KAR 1:095. Code of ethics.
Real Estate Commission
201 KAR 11:070. Branch offices.

COMMERCE CABINET
Department of Fish and Wildlife Resources
Game
301 KAR 2:044. Taking of migratory wildlife.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control
Malt Beverage Equipment, Supplies and Services
804 KAR 11:010. Equipment and supplies.
Department of Insurance
Administration
806 KAR 2:080. Public hearings.
806 KAR 2:090. Fee for collecting city or urban county government insurance tax.
806 KAR 2:095. Accounting and reporting requirements for collecting insurance tax.
Investments
806 KAR 7:090. Custodial accounts for investment securities of insurance companies.
Rates and Rating Organizations
806 KAR 13:006. Repeal of 806 KAR 13:005.
Insurance Contract
806 KAR 14:080. Premium must show municipal taxes.
Department of Banking and Securities
Administration
808 KAR 1:090. Stay of notice of intention to remove from office.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Maternal and Child Health
902 KAR 4:030. Tests for inborn errors of metabolism. (As amended.)
District Boards of Health
902 KAR 8:011. Repeal of 902 KAR 8:010.
Department for Social Insurance
Unemployment Insurance
904 KAR 5:250. Recoupment and recovery. (As amended.)

STATE BOARD OF ELECTIONS
Absentee Voting
31 KAR 1:030. Medical emergency special ballot. (As amended.)

Upon motion of Chairman Brinkley, the meeting was adjourned at 12:30 p.m. until October 27, 1982.

Administrative Register of kentucky

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