STATEMENT OF CONSIDERATION
RELATING TO:

401 KAR 5:010 (Not Amended After Comments)
401 KAR 8:030 (Amended After Comments)
401 KAR 8:050 (Amended After Comments)
401 KAR 11:001 (Amended After Comments)
401 KAR 11:030 (Amended After Comments)
401 KAR 11:040 (Amended After Comments)
401 KAR 11:050 (Amended After Comments)
401 KAR 11:060 (Amended After Comments)

Energy and Environment Cabinet
Department for Environmental Protection
Division of Water

I. The public hearing for proposed amendments to 401 KAR Chapter 5:010, 8:030, 8:050,
11:001, 11:030, 11:040, 11:050, and 11:060 was held on June 27, 2019 at 6:00 p.m. at 300 Sower
Boulevard, Training Room B, Frankfort, Kentucky. The Division of Water also received written
comments regarding the proposed changes to these administrative regulations.

II. The following people submitted comments:

<table>
<thead>
<tr>
<th>Name and title</th>
<th>Agency/Organization/Entity/Other</th>
<th>Comments</th>
</tr>
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<tbody>
<tr>
<td>Joe Burns</td>
<td>On behalf of Kentucky Rural Water Association Board of Directors; Water and Wastewater Utilities, member (KRWA)</td>
<td>Verbal</td>
</tr>
<tr>
<td>Donald R. Compton</td>
<td>Chair, KY Water &amp; Wastewater Operators Association (KWWOA)</td>
<td>Written and verbal</td>
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<tr>
<td>Lloyd Cress Jr.</td>
<td>Dinsmore &amp; Shohl LLP on behalf of Kentucky League of Cities (KLC)</td>
<td>Written</td>
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<tr>
<td>Mike Gardner</td>
<td>Water/Sewer Systems Manager, Bowling Green Municipal Utilities (BGMU)</td>
<td>Written</td>
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<tr>
<td>Greg Heitzman, P.E.</td>
<td>Chair, American Water Works Association Kentucky/Tennessee Section (AWWA)</td>
<td>Written</td>
</tr>
</tbody>
</table>
Amy Kramer, P.E.  
Chair, Kentucky Water Utility Council  
American Water Works Association,  
Kentucky/Tennessee Section (AWWA)  
Written

Ruth Lancaster  
Certified Operator  
Written

Gary Larimore  
Executive Director, Kentucky Rural Water  
Association (KRWA)  
Written

Matthew Lipps  
Certified Operator  
Written

Dustin Miller  
Government Strategies LLC on behalf of  
East Kentucky Power Corporation (EKPC)  
Written

Kay Sanborn, P.E.  
Executive Director, American Water  
Works Association, Kentucky/Tennessee  
Section (AWWA)  
Written

Christopher Spriggs  
Superintendent/Water Treatment Operator  
City of Madisonville  
Written

Robin Strader  
Certified Operator  
Written and Verbal

Jeremy Woosley  
KY Water and Wastewater Operators  
Association (KWWOA)  
Verbal

III. The following people from the promulgating administrative body responded to the comments:

Peter T. Goodmann, Director, Division of Water  
Amanda Lefevre, Director, Division of Compliance Assistance  
Jessica Wilhoite, Branch Manager, Certification & Licensing, Division of Compliance Assistance  
Carole Catalfo, Agency Representative

IV. Summary of Comments and Responses for 401 KAR 5:010, 8:030, 8:050, 11:001, 11:030,  
11:040, 11:050, and 11:060. Comments and responses are grouped by general comments,  
followed by comments regarding specific administrative regulations listed in numerical order.

(1) Subject Matter: General comment regarding regulatory effectiveness. (401 KAR Chapter 11)  
(a) Commenter: Donald R. Compton (KWWOA)  
Comment: The commenter does not believe that the regulations will make true  
improvements to the program, increase the number of certified operators, and will have a  
negative impact on public health and the operator profession.
(b) Response: The cabinet acknowledges the comment. KRS 224.10-100(4) requires the cabinet to “[D]evelop and conduct a comprehensive program for the management of water, land, and air resources to assure their protection and balance utilization consistent with the environmental policy of the Commonwealth.” The proposed amendments to the administrative regulations assure protection of water resources.

(2) Subject Matter: General comment regarding regulations. (401 KAR Chapter 11)
   (a) Commenter: Gary Larimore (KRW)
   Comment: The commenter commends the Division of Water and Division of Compliance Assistance in proposing needed amendments. The proposed regulations recognize that the availability of qualified operators is one of the biggest industry concerns and this approach, combined with developing targeted educational programs, seems to be the best way to address staffing issues while maintaining high standards for certified operators.
   (b) Response: The cabinet acknowledges the comment.

(3) Subject Matter: General comment regarding regulations. (401 KAR Chapter 11)
   (a) Commenter: Lloyd Cress Jr. (KLC)
   Comment: Clean drinking water and properly treated wastewater are obviously critical components for the health and safety of our citizens. It is essential that appropriately trained and certified employees be available to perform operator functions. Many systems have seen a steady decline in the availability of qualified operators. KLC understands that employment market conditions contribute to this phenomenon, but the KLC also believes that unnecessary burdens in seeking or upgrading certification play a significant role. KLC appreciates the Department of Environmental Protection’s diligent and methodical approach in addressing those burdens in this regulatory action, and supports the proposed regulatory imposition of realistic experience requirements, enhanced education equivalency, and inclusion of apprenticeship experience for credit. These provisions will likely assist in stemming the trend of a lack of certified operators.
   (b) Response: The cabinet acknowledges the comment.

(4) Subject Matter: General comment regarding operator qualifications. (401 KAR Chapter 11)
   (a) Commenter: Matthew Lipps (Certified Operator)
   Comment: The commenter is concerned that time and money invested by operators and utilities in obtaining operator certification, as well as experience, will be devalued. The commenter, who has a Bachelor’s degree, waited one year before taking the Class IV Operator test because the experience was so important. The commenter is concerned that a company could hire an Operator In Training (OIT) to which they will not have to pay a fair wage, and will be able to oversee a water treatment plant on their own. This sends the message that anyone can do this job; public safety is of no concern, and candidates will be driven away due to devalued education and lack of fair wages. The only reasons for these changes is to save money and make it easier to fill vacancies.
   (b) Response: The cabinet does not concur. The cabinet finds the proposed amendments reflect the value of formal education. The proposed amendments allow credit not only for college degrees in science-related areas, but also (though to a lesser extent) for college degrees in unrelated areas. A Class IV Operator candidate still requires substantial experience prior to being eligible for testing. An OIT cannot operate a water treatment plant of a classification for which the operator does not hold certification without being under the direct supervision of a duly-
certified operator.

(5) Subject Matter: General comment regarding Boards of Certification involvement. (401 KAR Chapter 11)

(a) Commenter: Donald R. Compton (KWWOA), Jeremy Woosley (KWWOA)
Comment: The KWWOA generally opposes the proposed regulations. The Division of Water (DOW) and Division of Compliance Assistance (DCA) did not share draft regulations before filing them with the Legislative Research Commission. KWWOA suggests that the cabinet withdraw the regulations, return to the Certification Boards to solicit their input on every proposed regulatory change, and make changes the Boards recommend for the program. Neither DOW nor DCA followed the intent of KRS 223.170 nor 224.73-110 regarding certification board involvement, and that initial discussions with the Water and Wastewater Advisory Boards occurred 18 months prior to the proposed regulations being discussed with the Certification Boards.

(b) Response: The cabinet acknowledges the comment. It is important to note that the comment was not submitted by the certification boards, nor any of the individual board members. In fact, the only comment submitted by a board member related to a form incorporated by reference into 401 KAR 11:050. KRS 223.170 requires the cabinet to consider the recommendations of the Board of Certification. KRS 224.73-110 states that “the cabinet, with the advice of the board of certification, may classify…”

For the record, proposed changes to the regulations were discussed in varying detail with the Drinking Water and Wastewater Operator Boards in 2018 on August 28, and December 18, and in 2019 on February 19, March 19, and May 21. The cabinet emailed Board members copies of proposed regulations on December 12, 2018 and requested feedback by December 20, and again on January 4, 2019, and May 21, 2019. Additionally, the cabinet addressed the Drinking Water and Wastewater Advisory Councils regarding the proposed amendments on December 11, 2018, and March 12 and June 11, 2019. While the statutes require that the cabinet consider the recommendations and advice of the boards, the statutes do not require that the cabinet adopt all advice or recommendations of the boards. The cabinet appreciates the work and recommendations that the boards contributed during the development of the proposed amendments to the regulations.

(6) Subject Matter: General comment regarding the Regulatory Impact Analyses and Fiscal Notes. (401 KAR Chapter 11)

(a) Commenter: Donald R. Compton (KWWOA), Jeremy Woosley (KWWOA)
Comment: The Regulatory Impact Analysis and Fiscal Notes for the proposed regulations lack data to support an operator shortage as justification for reducing the operator qualifications for testing and broader authority for Operators in Training (OIT) because the databases are not currently linked.

(b) Response: The cabinet does not concur. The cabinet is able to record the number of licenses issued, the number of operator-trainees, as well as Alternative Staffing Plans. The cabinet finds the proposed regulations recognize the value of education and experience, and do not broaden the authority of OITs.

(7) Subject Matter: General comment regarding operator qualifications. (401 KAR Chapter 11)

(a) Commenter: Donald R. Compton (KWWOA), Matthew Lipps (Certified Operator),
Jeremy Woosley (KWWOA)

Comment: The commenters suggest that if staffing requirements had always been enforced, systems would have been more proactive about hiring and training staff, but are concerned that systems want a break in qualifications because they failed to be proactive in staff development. This is of special concern due to the Flint, MI crisis. The commenters are concerned that underqualified operators would be allowed to operate a system, or that fast tracking existing operators could be dangerous.

(b) Response: The cabinet finds the proposed regulations recognize the value of education and experience and do not reduce the qualifications required to train and become certified for these important jobs.

(8) Subject Matter: General comment regarding staffing requirements and alternative staffing plans. (401 KAR Chapter 11, 5:010, and 8:030)

(a) Commenter: Donald R. Compton (KWWOA), Jeremy Woosley (KWWOA)

Comment: The commenters are concerned that instead of using the current mechanism to approve Alternate Staffing Plans and hold systems accountable, the cabinet is advocating reducing the standards. The proposed wastewater qualification changes have no basis other than to match the requirements of the same level in the drinking water regulation. The Certification Boards told the Division of Water and Division of Compliance Assistance in a joint meeting that qualifications for wastewater operators are more extensive because wastewater plants are more difficult to operate. A workgroup in May 2018 reached consensus on the information to be requested for Alternate Staffing Plans, and that they should be incorporated into an agreed order if out of compliance. To date, the group has not heard from the DOW on how the process has changed, and the language in 401 KAR 8:030 has not been changed, but is the same problematic language in 401 KAR 5:010.

(b) Response: The cabinet finds the proposed regulations recognize the value of education and experience and do not reduce the qualifications required to train and become certified for these important jobs. The purpose of the alternate staffing workgroup was to provide feedback regarding non-regulatory internal processes and considerations in reviewing alternate staffing plans, not for the purpose of regulatory changes.

(9) Subject Matter: General comment regarding staffing requirements. (401 KAR Chapter 11, 5:010, 8:030)

(a) Commenter: Donald R. Compton (KWWOA), Jeremy Woosley (KWWOA)

Comment: The different staffing requirements for water and wastewater facilities would impact a system’s ability to use an Operator In Training (OIT) because of the number of required operators. An operator could be forced by a system to take on and be personally liable for multiple trainees. Mentors need some protection since the system should bear the responsibility of operating with OITs. The regulations have redundancy in treatment processes and there should be redundancy in staffing.

(b) Response: The cabinet finds that staffing requirements must be flexible to accommodate the differences in location, size, and type of systems across the Commonwealth while protecting human health and the environment. The Division of Water reviews all Alternate Staffing Plans and will not approve a plan that could compromise operator safety, human health, or the environment.
(10) Subject Matter: General comment regarding staffing requirements. (401 KAR Chapter 11, 5:010, 8:030)
   a) Commenter: Robin Strader (Certified Operator)
   Comment: Improve questions on drinking and wastewater plant inspection forms to help regional inspectors identify operator shortages and insufficient staffing. Clarify “system related duties” for regional inspectors as well.
   b) Response: To clarify, plant inspection forms are not within the subject matter of 401 KAR Chapter 11. This issue may be evaluated when the cabinet proposes changes to regulations that govern inspections.

(11) Subject Matter: General comment regarding alternative staffing. (401 KAR Chapter 11, 5:010, 8:030)
   a) Commenter: Robin Strader (Certified Operator)
   Comment: Alternate staffing subcommittee conclusions should be incorporated into the proposed regulations. Some suggestions were not clearly stated and some suggestions were left out of the regulations.
   b) Response: The cabinet does not concur. The purpose of the alternate staffing workgroup was to provide feedback regarding non-regulatory internal processes and considerations in reviewing alternate staffing plans, not for the purpose of regulatory changes.

(12) Subject Matter: General comment regarding operator base experience and qualifications. (401 KAR Chapter 11)
   a) Commenter: Donald R. Compton (KWWOA), Jeremy Woosley (KWWOA)
   Comment: The requirement for a base year of experience after all substitutions should be reinstated. All of the substitutions for education and experience creates a maze that will add work to Division of Compliance Assistance (DCA) staff and make consistency difficult for DCA trainers.
   b) Response: To clarify, the proposed amendments already limit substitutions. Education in a related scientific field cannot substitute for more than 50% of the required experience, and education in unrelated fields cannot substitute for more than 25% of the required experience. The cabinet is confident that DCA trainers and staff will properly address and handle the limits on education and experience substitutions.

(13) Subject Matter: General comment regarding operator education and experience substitutions. (401 KAR Chapter 11)
   a) Commenter: Robin Strader (Certified Operator)
   Comment: Clarify substitutions to have uniform application reviews.
   b) Response: Education and experience substitutions have been clarified within the drafting requirements of KRS Chapter 13A.

(14) Subject Matter: General comment regarding operator experience. (401 KAR Chapter 11)
   a) Commenter: Robin Strader (Certified Operator)
   Comment: Require six (6) months experience for Class I, and one (1) year experience for Class II-IV, which may not be substituted out with education or “other” experience.
   b) Response: The proposed amendments already limit substitutions. Education in a related scientific field cannot substitute for more than 50% of the required experience, and
education in unrelated fields cannot substitute for more than 25% of the required experience.

(15) Subject Matter: General comment regarding Operator In Training (OIT) language. (401 KAR Chapter 11)
   (a) Commenter: Robin Strader (Certified Operator)
       Comment: OIT language has not evolved into a “useable tool”.
   (b) Response: The cabinet does not concur. The cabinet finds the proposed language clarifies the qualifications and responsibilities of an OIT within the drafting requirements of KRS Chapter 13A.

(16) Subject Matter: General comment regarding certification fees and training. (401 KAR Chapter 11)
   (a) Commenter: Greg Heitzman (AWWA), Amy Kramer (AWWA), Kay Sanborn (AWWA)
       Comment: The proposed regulatory changes include certification application and renewal fee increases, and new fees for certified and non-certified training providers, plus penalties for non-electronic submittal. These changes may be a detriment both to individuals considering water operations as a career and to utilities attempting to hire. There is an absence or ambiguity regarding online training and utility in-house training.
   (b) Response: The cabinet does not concur. The training class review and approval fee for non-certified training providers is $50 per class for 2-year approval, or only $25 per class per year. The cabinet finds utilities realize cost savings with the ability to provide training in-house, rather than having to expend the costs of sending operators to outside locations for training.

(17) Subject Matter: Electric generating unit exemption. (401 KAR 5:010 Operation of wastewater systems by certified operators)
   (a) Commenter: Dustin Miller (EKPC)
       Comment: The commenter requests that electric generating units be exempt from the definition of domestic sewer and wastewater treatment programs in 401 KAR 5:010.
   (b) Response: The cabinet does not concur. The controlling statutes do not distinguish between discharges, nor is the cabinet aware of any provision in statute or regulation for the requested exemption.

(18) Subject Matter: Staffing requirements. (401 KAR 5:010 Operation of wastewater systems by certified operators)
   (a) Commenter: Donald R. Compton (KWWOA)
       Comment: Wastewater facilities require only one certified operator. There are numerous Class I systems that this designation would not help because a Class I Operator In Training (OIT) could not have primary responsibility.
   (b) Response: The cabinet finds certification requirements are appropriate. While a Class I OIT cannot have primary responsibility over any system, the regulations create avenues by which the Class I OIT can receive the education and experience required to advance in operator certification.

(19) Subject Matter: Alternative staffing. (401 KAR 5:010 Operation of wastewater systems by certified operators)
(a) Commenter: Donald R. Compton (KWWOA), Jeremy Woosley (KWWOA)
Comment: A workgroup convened in May 2018 reached consensus on the information to be requested for Alternative Staffing Plans and that they should be incorporated into an agreed order if out of compliance. However, the same problematic language contained in 401 KAR 8:030 is duplicated verbatim in 401 KAR 5:010.
(b) Response: The cabinet does not concur. The purpose of the alternate staffing workgroup was to provide feedback regarding non-regulatory internal processes and considerations in reviewing alternate staffing plans, not for the purpose of regulatory changes.

(20) Subject Matter: Level of Operator In Training (OIT) required to be in direct responsible charge of a wastewater system. (401 KAR 5:010 Operation of wastewater systems by certified operators)
(a) Commenter: Ruth Lancaster (Certified operator)
Comment: The regulation appears to require that an OIT must have an existing license at a Level I, II, or III before becoming an OIT, but that an OIT cannot be in direct responsible charge of a plant at the level of the OIT license.
(b) Response: To clarify, a duly certified operator must be in direct responsible charge of a wastewater collection system or treatment plant in accordance with KRS 224.73-110 and 401 KAR 11:030. An OIT at any level cannot be in direct responsible charge of a plant for which the OIT does not hold certification.

(21) Subject Matter: Regulatory Impact Analysis regarding individuals affected and fees. (401 KAR 5:010 Operation of wastewater systems by certified operators)
(a) Commenter: Donald R. Compton (KWWOA)
Comment: The Regulatory Impact Analysis (RIA) does not contain the type and number of individuals affected by this regulation, and it is misleading to say that this regulation, which deals with staffing and qualifications, will not result in additional costs to wastewater systems. The information in the Regulatory Impact Analysis for 401 KAR 11:060 should be repeated here.
(b) Response: As noted in the comment, the RIA and Fiscal Note for 401 KAR 11:060 specifically address fees that are included in the regulation. 401 KAR 5:010 does not address fees and therefore the RIA does not include that information.

(22) Subject Matter: Classification of wastewater collection systems. (401 KAR 8:030 Water treatment plant and water distribution system classification and staffing)
(a) Commenter: Joe Burns (KRWA), Gary Larimore (KRWA)
Comment: The requirement that a wastewater collection system operator obtain the same class license as that of the wastewater plant treating the wastewater places an unnecessary and undue burden on smaller communities being served by a larger utility. The KRWA supports the cabinet in balancing the drinking water and wastewater operator certification programs, and recommends that the same criteria for drinking water distribution system population criteria be adopted for wastewater collection systems.
Charts and graphics provided by the commenter purport to show: public water systems (PWS) have decreased from 2,188 in 1974 to fewer than 400 today. Kentucky leads the nation in serving the largest population with the east number of water systems (data from US Census Bureau, 2011). Ninety-three percent (93%) of Kentucky’s water treatment plants require the
highest two levels of licensing. As consolidation continues, Class I-A and II-A facilities will
further be reduced. By applying wastewater design capacity criteria to drinking water plants, a
more even distribution should result. KRWA recommends that Class I plants have a design
capacity of 75,000 gallons per day (GPD), Class II of 75,000 but less than 750,000 GPD, Class
III of 750,000 to less than 7.5 million GPD, and Class IV of 7.5 million or more GPD.

(b) Response: The cabinet acknowledges the comment and may further evaluate this
proposal and determine potential impacts related to the recommendation.

(23) Subject Matter: Level of Operator In Training (OIT) required to be in direct responsible
charge of a water system. (401 KAR 8:030 Water treatment plant and water distribution system
classification and staffing)

(a) Commenter: Donald R. Compton (KWWOA)
Comment: OIT designation is proposed to be allowed in direct responsible charge if
he/she has an active, appropriate size classification. If the operator is properly certified there is
no need for OIT designation. Additionally, this would have operators paying two renewals: one
for certification and one for OIT designation.

(b) Response: The cabinet acknowledges the comment. To clarify, a certified operator
may hold an OIT designation for a higher level of certification until the operator achieves all
requirements necessary to hold the higher level certification.

(24) Subject Matter: Operator In Training (OIT). (401 KAR 8:030 Water treatment plant and
water distribution system classification and staffing)

(a) Commenter: Mike Gardner (BGMU)
Comment: BGMU recommends eliminating OIT and Certified OIT and replace them
with Provisional Operator.

(b) Response: The cabinet does not concur. The OIT designation provides a mechanism
by which an operator’s progression of testing and experience can be tracked. Changing the title
to “Provisional Operator” would not change restrictions on OIT responsibilities, nor would it
change the testing, education, or experience requirements to become a certified operator.

(25) Subject Matter: Operator in direct responsible charge. (401 KAR 8:030 Water treatment
plant and water distribution system classification and staffing)

(a) Commenter: Joe Burns (KRWA), Mike Gardner (BGMU), Gary Larimore (KRWA)
Comment: The cabinet should recognize modern communication capabilities that enable
the operator in direct responsible charge to be contacted for consultation and advice at any time
and in any location, and is responsible whether onsite or not. BGMU and KRWA recommend
allowing greater flexibility with staffing by recognizing the responsibility placed on the operator
in direct responsible charge by changing the language to read “Certified operators licensed at one
class below the classification of any water treatment plant may work any shift at the discretion of
the operator in direct responsible charge of the water treatment plant provided that the operator
in direct responsible charge shall be able to respond within thirty (30) minutes by any means
necessary.”

(b) Response: The cabinet acknowledges the comment. The cabinet will further evaluate
this proposal and determine potential impacts related to the recommendation.

(26) Subject Matter: Operator in direct responsible charge. (401 KAR 8:030 Water treatment
plant and water distribution system classification and staffing)
   (a) Commenter: Ruth Lancaster (Certified operator)
   Comment: The regulation does not address how close the supervisory or location relationship must be for a supervising operator to be in direct responsible charge.
   (b) Response: The cabinet acknowledges the comment. The cabinet will further evaluate this proposal and determine potential impacts related to the recommendation.

(27) Subject Matter: Regulatory Impact Analysis regarding level of Operator In Training (OIT) required to be in direct responsible charge of a water system (401 KAR 8:030 Water treatment plant and water distribution system classification and staff)
   (a) Commenter: Donald R. Compton (KWWOA), Jeremy Woosley (KWWOA)
   Comment: The RIA states that the proposed regulatory changes clarify the role and responsibilities of an OIT, however, the language here as well as in all the regulations is still very confusing. The RIA states the changes were necessary to accommodate alternate staffing but the only correction was a spelling error. The Division of Water was struggling to review and approve Alternate Staffing Plans, but input from the May 2018 workgroup was not included in the changes.
   (b) Response: The cabinet does not concur. The regulatory language was drafted within the requirements of KRS Chapter 13A. The purpose of the alternate staffing workgroup was to provide feedback regarding non-regulatory internal processes and considerations in reviewing alternate staffing plans, not for the purpose of regulatory changes.

(28) Subject Matter: Regulatory Impact Analysis regarding staffing requirements. (401 KAR 8:030 Water treatment plant and water distribution system classification and staff)
   (a) Commenter: Donald R. Compton (KWWOA)
   Comment: The section asks for the type and number of individuals affected by this regulation but no numbers were provided.
   (b) Response: The cabinet does not concur. The cabinet provided appropriate answers in the Regulatory Impact Analysis and Fiscal Notes.

(29) Subject Matter: Regulatory Impact Analysis regarding impact to each entity. (401 KAR 8:030 Water treatment plant and water distribution system classification and staff)
   (a) Commenter: Donald R. Compton (KWWOA)
   Comment: The section requests the number and cost to each entity impacted by this regulation. While it will be easier for systems to meet staffing requirements, the Division of Water should have to identify how many systems are currently out of compliance and in need of additional shift operators while the system is treating drinking water.
   (b) Response: The cabinet does not concur. The identification of systems out of compliance or in need of additional operators while the system is treating drinking water would not be responsive to this section of the Regulatory Impact Analysis.

(30) Subject Matter: Drinking water fee due dates. (401 KAR 8:050 Drinking water program fees)
   (a) Commenter: Donald R. Compton (KWWOA)
   Comment: The commenter suggests changing the due date on water lab certification fees for consistency with wastewater lab certification fees and making the dates postmarked by using
traceable delivery rather than received by.

(b) Response: The cabinet does not concur. Due to federal requirements, the due date for drinking water laboratory certification fees was changed to coincide with reports that can be issued only by a certified drinking water laboratory. A laboratory may use traceable delivery for its own records if it chooses to do so.

(31) Subject Matter: Drinking water fee description. (401 KAR 8:050 Drinking water program fees)

(a) Commenter: Donald R. Compton (KWWOA)
   Comment: The commenter suggests adopting the full fee description from 401 KAR 5:320, Section 8.
   (b) Response: The cabinet does not concur. 401 KAR 5:320, Section 8, concerns audits. The cabinet assumes the commenter is referring to Section 6, however, the description of fees for wastewater does not apply to drinking water.

(32) Subject Matter: Agency responsible for regulations. (401 KAR 11:001 Definitions for 401 KAR Chapter 11)

(a) Commenter: Donald R. Compton (KWWOA)
   Comment: Page 1, Line 3 should read “DCA” (Division of Compliance Assistance) and not “DOW” (Division of Water) because the DCA implements and enforces 401 KAR Chapter 11.
   (b) Response: The cabinet does not concur. Division of Water is responsible for the regulations located in 401 KAR Chapters 5, 8, and 11 which apply to drinking water, wastewater, and drinking water and wastewater operators.

(33) Subject Matter: Definition of “Certified Training Provider” (401 KAR 11:001 Definitions for 401 KAR Chapter 11)

(a) Commenter: Ruth Lancaster (Certified operator)
   Comment: The regulation does not use the previously defined term “core content” and instead uses new language to define acceptable content of continuing education.
   (b) Response: The cabinet acknowledges the comment. The definition of “core content” has not been changed from its previous version. The cabinet finds that the language preserves flexibility for the cabinet, in consultation with the board, when reviewing coursework for core content.

(34) Subject Matter: Definition of “Direct responsible charge”. (401 KAR 11:001 Definitions for 401 KAR Chapter 11)

(a) Commenter: Donald R. Compton (KWWOA)
   Comment: The definition of “direct responsible charge” should encompass “primary responsibility”, and “primary responsibility” should be deleted. Kentucky belongs to the Association of Boards of Certification, and the standard language used for both water and wastewater is “direct responsible charge”. Primary responsibility should be replaced with “direct responsible charge” for water and wastewater.
   (b) Response: The cabinet does not concur. “Responsible charge” is used in KRS Chapter 223 which governs water plant operators, and “direct responsible charge” is therefore used in the regulations contained in 401 KAR Chapter 8 regarding drinking water facilities. “Primary
responsibility" is used in KRS Chapter 224, Subchapter 73, which governs sewage treatment, and therefore is also used in the regulations in 401 KAR Chapter 5 regarding wastewater facilities.

(35) Subject Matter: Definition of “Direct responsible charge”. (401 KAR 11:001 Definitions for 401 KAR Chapter 11)
   (a) Commenter: Mike Gardner (BGMU), Gary Larimore (KRWA)
       Comment: “Direct responsible charge” and “Primary responsibility” are very similar. The commenter suggests that one term be used for both water and wastewater.
   (b) Response: The cabinet does not concur. “Responsible charge” is used in KRS Chapter 223 which governs water plant operators, and “direct responsible charge” is therefore used in the regulations contained in 401 KAR Chapter 8 regarding drinking water facilities. “Primary responsibility” is used in KRS Chapter 224, Subchapter 73, which governs sewage treatment, and therefore is also used in the regulations in 401 KAR Chapter 5 regarding wastewater facilities.

(36) Subject Matter: Definition of “Inactive certificate”. (401 KAR 11:001 Definitions for 401 KAR Chapter 11)
   (a) Commenter: Donald R. Compton (KWWOA)
       Comment: The definition of “inactive certificate” should include how an inactive certificate can be returned to “active”.
   (b) Response: The cabinet does not concur. Pursuant to KRS 13A.222 which governs administrative drafting rules, definitions shall not establish requirements or standards. Information regarding how to return an inactive certificate to active status is properly contained in 401 KAR 11:050.

(37) Subject Matter: Definition of “Inactive certificate”. (401 KAR 11:001 Definitions for 401 KAR Chapter 11)
   (a) Commenter: Gary Larimore (KRWA)
       Comment: The commenter suggests that the definition of “inactive certificate” should read “means the certified operator’s renewal fee has been paid but continuing education has not been met. No authority to operate until returned to active.”
   (b) Response: The cabinet acknowledges the comment but finds the suggested definition does not include other circumstances that could make a certificate inactive. The cabinet finds the information regarding how to return an inactive certificate to active status is properly contained in 401 KAR 11:050.

(38) Subject Matter: Definition of “Operator In Training”. (401 KAR 11:001 Definitions for 401 KAR Chapter 11)
   (a) Commenter: Donald R. Compton (KWWOA)
       Comment: A definition for “Operator In Training (OIT)” should be included.
   (b) Response: The cabinet does not concur. Due to the range of classes and types of OITs, the cabinet finds that the information is properly contained in 401 KAR 11:030 and 11:040.

(39) Subject Matter: Agency responsible for regulations. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)
(a) Commenter: Donald R. Compton (KWWOA)
Comment: Page 1, Line 3 should read “DCA” (Division of Compliance Assistance) and not “DOW” (Division of Water) because the DCA implements and enforces 401 KAR Chapter 11.

(b) Response: The cabinet does not concur. The Division of Water is responsible for the regulations located in 401 KAR Chapters 5, 8, and 11 which apply to drinking water, wastewater, and drinking water and wastewater operators.

(40) Subject Matter: Typographical error. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)
(a) Commenter: Gary Larimore (KRWA)
Comment: Page 1, Line 10, change “possesses” to “possess”.
(b) Response: The cabinet concurs and has made the suggested change.

(41) Subject Matter: Typographical error. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)
(a) Commenter: Gary Larimore (KRWA)
Comment: Section 2 does not contain a subsection (5).
(b) Response: The cabinet concurs and has corrected the error at Page 12, Line 5, and has renumbered the remainder of the Section.

(42) Subject Matter: Duration of Operator In Training (OIT) designation. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)
(a) Commenter: Donald R. Compton (KWWOA)
Comment: The OIT language needs to include a maximum duration of an OIT designation.
(b) Response: The cabinet does not concur. As the regulatory language reflects, an OIT designation terminates if the operator does not actively pursue the certification, or if the operator completes all requirements for certification.

(43) Subject Matter: Operator In Training (OIT) designation. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)
(a) Commenter: Mike Gardner (BGMU), Gary Larimore (KRWA)
Comment: The commenters recommend that the OIT provision be eliminated because in its present form it does not expedite the certification process for an individual to become licensed, nor does the OIT designation provide any benefit to utilities.
(b) Response: The cabinet does not concur. The cabinet finds the OIT designation is useful and necessary to identify operators who are not fully certified at a particular level.

(44) Subject Matter: Cabinet approval prior to testing. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)
(a) Commenter: Mike Gardner (BGMU), Gary Larimore (KRWA)
Comment: Page 5, Lines 9 and 10, remove “prior to the cabinet approving the individual to”, and replace with “and”.
(b) Response: The cabinet acknowledges the comment, but will retain the authority to approve an individual prior to testing to prevent unnecessary loss of time and investment for both
the candidate and the cabinet.

(45) Subject Matter: Conversion for college credit. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)
   (a) Commenter: Mike Gardner (BGMU)
   Comment: The commenter recommends leaving the .033 provision on Page 9, Line 23.
   (b) Response: The cabinet does not concur. The cabinet finds this conversion appropriate when giving credit for any subject earned during studies that did not result in a science or technology-related degree.

(46) Subject Matter: Limited certification. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)
   (a) Commenter: Donald R. Compton (KWWOA)
   Comment: Limited certification should require a high school diploma or GED as a minimum education requirement.
   (b) Response: The cabinet does not concur. The controlling statute, KRS 223.73-110(5), requires that a person with a limited certification only demonstrate the knowledge and experience required for operation of the system for which the person is responsible.

(47) Subject Matter: Substitutions. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)
   (a) Commenter: Donald R. Compton (KWWOA)
   Comment: Substitutions in this regulation have been broadened to include all degree fields. If this language is required then a comprehensive chart should be included for clarification.
   (b) Response: The cabinet does not concur. Education appropriate for substitution is dependent upon the level and subject matter. The cabinet does not find it necessary to incorporate a chart into the regulation.

(48) Subject Matter: Substitutions. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)
   (a) Commenter: Donald R. Compton (KWWOA)
   Comment: Partial education substitutions based on other experience should be capped at some point as with other substitutions, and the burden should be on the applicant, not the cabinet, to prove applicable skills gained in other fields.
   (b) Response: To clarify, education substitutions are restricted in the proposed regulations. Science-related education cannot substitute for more than fifty percent (50%) of the experience requirement, and education unrelated to science and technology cannot substitute for more than twenty-five percent (25%) of the experience requirement. The burden of providing verification of education and experience remains with applicant.

(49) Subject Matter: Education requirements. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)
   (a) Commenter: Mike Gardner (BGMU), Gary Larimore (KRWA)
   Comment: The commenters state that more credit should be given to degrees from accredited colleges or universities, and recommend that post-secondary degrees be treated
equally. Using any associate or baccalaureate degree as a substitute for experience would be more efficient and eliminate confusion and subjectivity.

(b) Response: The cabinet acknowledges the comment. The cabinet has amended the proposed regulations to recognize degrees only from regionally-accredited colleges and universities. While the cabinet recognizes the value of all college degrees in the proposed regulation, the cabinet finds that science and technology-related education is more closely related to the knowledge required to safely operate water and wastewater facilities to protect public health and the environment.

(50) Subject Matter: Education requirements for wastewater operators. (401 KAR 11:030 Wastewater treatment and collection operators – classification and qualification)
   (a) Commenter: Ruth Lancaster (Certified operator)
   Comment: Some degrees which have applicability to wastewater operations have been omitted, such as health, medical, and math degrees.
   (b) Response: To clarify, the regulation includes “biological science” which encompasses health and medical degrees. Engineering “or equivalent” can encompass degrees in mathematics.

(51) Subject Matter: Education requirements for wastewater operators. (401 KAR 11:030 Wastewater treatment and collection operators – classification and qualification)
   (a) Commenter: Ruth Lancaster (Certified operator)
   Comment: The changes made to the regulation accomplish the goal of making the path to operator certification more streamlined except for the reduction of education/experience substitution from 50% to 25%.
   (b) Response: The cabinet acknowledges the comment. The regulation allows a 50% substitution for degrees in engineering, science, or the equivalent which facilitate the protection of public health. Courses and degrees unrelated to engineering, science or the equivalent should still receive credit towards the education requirement, but the candidate will require additional coursework in the sciences to facilitate the protection of public health.

(52) Subject Matter: Education requirements for wastewater operators. (401 KAR 11:030 Wastewater treatment and collection operators – classification and qualification)
   (a) Commenter: Ruth Lancaster (Certified operator)
   Comment: The cabinet’s investment of time and thoughtful consideration in defining the credit to be earned through ancillary activities such as laboratory or construction trades work will be of great benefit to the operator community and is appreciated.
   (b) Response: The cabinet acknowledges the comment.

(53) Subject Matter: Education requirements for wastewater operators. (401 KAR 11:030 Wastewater treatment and collection operators – classification and qualification and 11:040 Water treatment and distribution system operators; classification and qualifications)
   (a) Commenter: Ruth Lancaster (Certified operator)
   Comment: The commenter states that much of the language from 401 KAR 11:040 and 11:030 are copied from other proposed regulations in 401 KAR Chapter 8. The commenter states that this will require opening two regulatory chapters for future revisions and that combining the language by reference in one chapter may be more efficient.
   (b) Response: The cabinet has followed the administrative regulation drafting rules as
established in KRS Chapter 13A. Additionally, the respective KAR chapters govern different subject matter and therefore must remain in separate chapters.

(54) Subject Matter: Experience substitutions. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)
   (a) Commenter: Donald R. Compton (KWWOA)
   Comment: Experience gained in outside fields seems too generous and lacks a basis for the substitution values. The maximum experience substituted should be no more than 25% since there is no technical basis for the amount of credit given for unrelated fields.
   (b) Response: The cabinet finds that valuable experience can be gained in many fields, such as the construction trades and military training, and wants to maintain flexibility in giving operator candidates credit for experience the cabinet determines is relevant.

(55) Subject Matter: Apprenticeships. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)
   (a) Commenter: Donald R. Compton (KWWOA)
   Comment: Apprenticeships should refer to approval by the Kentucky Department of Labor. Any apprenticeship should work under existing regulations so it is redundant to have a specific section. The RIA states that the regulations establish a route for accepting apprenticeships approved by the Kentucky Labor Cabinet, but the regulation only refers to “state-approved apprenticeship program”.
   (b) Response: The cabinet acknowledges the comment. There are several state agencies that may have the authority to approve apprenticeship programs, though the names of those agencies, cabinets, and departments may change in the future. To avoid having to reopen the regulation due to consolidation or reorganization, the cabinet finds “state-approved” is an appropriate term.

(56) Subject Matter: Apprenticeships. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)
   (a) Commenter: Joe Burns, (KRWA), Gary Larimore (KRWA)
   Comment: The commenters state that successful completion of a certified drinking water apprenticeship program should qualify an apprentice to test for Class III certification for treatment and/or distribution with the equivalent of four (4) years of experience.
   (b) Response: The cabinet does not concur. While the cabinet recognizes the value of targeted apprenticeship programs, the cabinet finds that sufficient experience is required to be protective of human health and the environment.

(57) Subject Matter: Equivalent certification. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)
   (a) Commenter: Donald R. Compton (KWWOA)
   Comment: Equivalency language should be removed. The proposed regulation would grant certification from an out-of-state individual who worked long enough to upgrade their certification but has not done so. The Association of Boards of Certification standard for equivalency is to compare state regulatory requirements and create a crosswalk for equivalent certification. Reciprocity is given to equivalent certification when requested and paid for, and this proposed language could impact our reciprocity with other states.
(b) Response: Reciprocity refers to a formal agreement with another state or territory to give comparable certification to any operator from that state or territory. Equivalent certification refers to granting certification to an operator when there is no reciprocal agreement with the state or territory from which the operator is transferring. The current regulations do not allow the cabinet to consider the years of experience an out-of-state operator has achieved when it grants Kentucky certification. Equivalency gives the cabinet discretion to consider the level of testing that an applicant has achieved, as well as the years of experience the applicant has already completed, when granting an equivalent certification.

(58) Subject Matter: Regulatory Impact Analysis regarding reciprocal certification. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)
   
   (a) Commenter: Donald R. Compton (KWWOA)
   
   Comment: The RIA states that the regulations allow the cabinet to enter reciprocal certification agreements with other states which has been occurring for at least thirty (30) years. The proposal is to lessen certification requirements via the “equivalency” language to go beyond allowing certificate exchanges, but to recognize additional experience gained for a higher certification. This is not “reciprocity” according to the Associations for the Boards of Certification.

   (b) Response: Reciprocity refers to a formal agreement with another state or territory to give comparable certification to any operator from that state or territory. Equivalent certification refers to granting certification to an operator when there is no reciprocal agreement with the state or territory from which the operator is transferring. The cabinet finds that experience as a certified operator is extremely valuable and, along with testing, should be considered in granting appropriate Kentucky certification.

(59) Subject Matter: Regulatory Impact Analysis regarding experience requirements. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)
   
   (a) Commenter: Donald R. Compton (KWWOA)
   
   Comment: The commenter is concerned that reducing the experience requirements for Class III and IV operators and allowing for substitutions is not protective of public health or waters of the Commonwealth and that the proposed changes reduce qualifications rather than clarify qualifications. Contact hours and post-secondary education in any subject can be substituted for up to 50% of the required experience.

   (b) Response: The cabinet finds the proposed regulatory language strikes a balance between the value of education and protection of public health and the environment. Contact hours and education in subject matter unrelated to science or technology cannot substitute for more than twenty-five percent (25%) of the required experience. Education related to science and technology cannot substitute for more than fifty percent (50%) of the required experience.

(60) Subject Matter: Regulatory Impact Analysis regarding operator shortages. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)
   
   (a) Commenter: Donald R. Compton (KWWOA)
   
   Comment: The RIA does not contain data to support the statement that there is an operator shortage because their databases are not integrated to allow for data comparison. Citing facilities for lack of operators has not been a priority unless other violations exist. Wastewater systems need only one operator of record and do not have to staff certain shifts. The cabinet is
simply taking the word of drinking water systems without knowing the true need.
(b) Response: The cabinet does not concur. The cabinet is able to record the number of licenses issued, the number of operator-trainees, as well as Alternate Staffing Plans.

(61) Subject Matter: Regulatory Impact Analysis regarding costs. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)
(a) Commenter: Donald R. Compton (KWWOA)
Comment: The regulation will not result in additional cost unless operators with less experience send improperly treated water out of the plant or fail to properly disinfect lines.
(b) Response: The cabinet finds that the proposed regulations strike an appropriate balance between the need to provide better opportunities for operator candidates, while providing substantial measures to protect human health and the environment.

(62) Subject Matter: Agency responsible for regulations. (401 KAR 11:040 Water treatment and distribution system operators – classification and qualifications)
(a) Commenter: Donald R. Compton (KWWOA)
Comment: Page 1, Line 3 should read “DCA” (Division of Compliance Assistance) and not “DOW” (Division of Water) because the DCA implements and enforces 401 KAR Chapter 11.
(b) Response: The cabinet does not concur. The Division of Water is responsible for the regulations located in 401 KAR Chapters 5, 8, and 11 which apply to drinking water, wastewater, and drinking water and wastewater operators.

(63) Subject Matter: Operator In Training (OIT) classification. (401 KAR 11:040 Water treatment and distribution system operators – classification and qualifications)
(a) Commenter: Donald R. Compton (KWWOA)
Comment: Page 5, Line 5 should read OIT “designation” and not “classification.”
(b) Response: The cabinet concurs and has made the change.

(64) Subject Matter: Operator In Training (OIT) classification. (401 KAR 11:040 Water treatment and distribution system operators – classification and qualifications)
(a) Commenter: Donald R. Compton (KWWOA)
Comment: The OIT language should include the maximum duration of an OIT designation.
(b) Response: The cabinet does not concur. As the regulatory language reflects, an OIT designation terminates if the operator does not actively pursue the certification, or if the operator completes all requirements for certification.

(65) Subject Matter: Operator In Training (OIT) classification. (401 KAR 11:040 Water treatment and distribution system operators – classification and qualifications)
(a) Commenter: Mike Gardner (BGMU), Gary Larimore (KRWA)
Comment: The Operator In Training designation should be eliminated because it does not expedite the certification process for an individual to become licensed, nor does the OIT designation provide any benefit to utilities. BGMU recommends including a “Provisional Operator” certification to replace the OIT designation, and that a Provisional Operator would be a person who works for a public or private utility, who has successfully passed a certification
examination administered by the Division of Water, but who has not yet achieved the required experience to become a certified operator.

(b) Response: The cabinet does not concur. The OIT designation provides a mechanism by which an operator’s progression of testing and experience can be tracked. Changing the title to “Provisional Operator” would not change restrictions on OIT responsibilities, nor would it change the testing, education, or experience requirements to become a certified operator.

(66) Subject Matter: Cabinet approval prior to testing. (401 KAR 11:040 Water treatment and distribution system operators – classification and qualifications)

(a) Commenter: Mike Gardner (BGMU), Gary Larimore (KRWA)

Comment: Page 6, Lines 3 and 4, remove “prior to the cabinet approving the individual to”, and replace with “and”.

(b) Response: The cabinet acknowledges the comment, but will retain the authority to approve an individual prior to testing to prevent unnecessary loss of time and investment for both the candidate and the cabinet.

(67) Subject Matter: Limited certification. (401 KAR 11:040 Water treatment and distribution system operators – classification and qualifications)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: Limited certification should require a high school diploma or GED as a minimum education requirement.

(b) Response: The cabinet does not concur. The controlling statute, KRS 223.160, requires that a person responsible for a school or semipublic water treatment system only demonstrate the knowledge and ability to operate the treatment system for which the person is responsible.

(68) Subject Matter: Education substitutions. (401 KAR 11:040 Water treatment and distribution system operators – classification and qualifications)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: Substitutions have been broadened to include all degree fields. If this language is required, then a comprehensive chart should be included for clarification.

(b) Response: The cabinet does not concur. Education appropriate for substitution is dependent upon the level and subject matter. The cabinet does not find it necessary to incorporate a chart into the regulation.

(69) Subject Matter: Partial education substitutions. (401 KAR 11:040 Water treatment and distribution system operators – classification and qualifications)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: Partial education substitutions based on other experience should be capped at some point as with other substitutions, and the burden should be on the applicant, not the cabinet, to prove applicable skills gained in other fields.

(b) Response: The cabinet acknowledges the comment. Education substitutions are restricted in the proposed regulations. Science-related education cannot substitute for more than fifty percent (50%) of the experience requirement, and education unrelated to science and technology cannot substitute for more than twenty-five percent (25%) of the experience requirement. The burden has always been on the applicant to provide verification of education
and experience.

(70) Subject Matter: Education substitutions. (401 KAR 11:040 Water treatment and distribution system operators – classification and qualifications)
   (a) Commenter: Donald R. Compton (KWWOA)
      Comment: This regulation makes experience substitutions mandatory, whereas they are permissive in 401 KAR 11:030.
   (b) Response: The cabinet concurs. As indicated on the proposed regulation, the mandatory language (the word “shall”) was stricken through which indicates the language is being eliminated, and permissive language (the word “may”) has been underlined, which indicates the language is being added. The proposed amendments to 401 KAR 11:040 will make experience substitutions permissive as they are in 401 KAR 11:030.

(71) Subject Matter: Education requirements for water operators. (401 KAR 11:040 Water treatment and distribution system operators; classification and qualifications)
   (a) Commenter: Ruth Lancaster (Certified operator)
      Comment: The changes made to the regulation accomplish the goal of making the path to operator certification more streamlined except for the reduction of education/experience substitution from 50% to 25%.
   (b) Response: The cabinet does not concur. The proposed amendment gives a 50% substitution for degrees in engineering, science, or the equivalent, which facilitate the protection of public health, and a 25% substitution for degrees unrelated to engineering or science. Courses and degrees unrelated to engineering, science or the equivalent should still receive education credit, but the candidate will require additional coursework in the sciences to facilitate the protection of public health.

(72) Subject Matter: Experience substitutions. (401 KAR 11:040 Water treatment and distribution system operators – classification and qualifications)
   (a) Commenter: Donald R. Compton (KWWOA)
      Comment: Experience gained in outside fields seems too generous and lacks a basis for the substitution values. The maximum for experience in unrelated fields should be no more than 25%
   (b) Response: The cabinet does not concur. The cabinet finds that valuable experience can be gained in many fields, such as the construction trades and military training, and wants to maintain flexibility in giving operator candidates credit for experience the cabinet determines is relevant.

(73) Subject Matter: Substitutions. (401 KAR 11:040 Water treatment and distribution system operators – classification and qualifications)
   (a) Commenter: Mike Gardner (BGMU), Gary Larimore (KRWA)
      Comment: The commenters state that more credit should be given to degrees from accredited colleges or universities and recommend that post-secondary degrees be treated equally. Using any associate or baccalaureate degree as a substitute for experience would be more efficient and eliminate any confusion and subjectivity.
   (b) Response: The cabinet acknowledges the comment. The cabinet has changed the language to recognize degrees only from regionally accredited colleges and universities. While
the cabinet recognizes the value of every degree in the proposed regulation, the cabinet finds that science and technology-related education is more closely related to the knowledge required to safely operate water and wastewater facilities to protect public health and the environment, and therefore should receive more credit towards operator certification.

(74) Subject Matter: Regulatory Impact Analysis regarding experience substitutions. (401 KAR 11:040 Water treatment and distribution system operators – classification and qualifications)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: The commenter is concerned that allowing required experience to be substituted with education that is unrelated to industry is not protective of public health.

(b) Response: The cabinet acknowledges the comment. The cabinet recognizes the value of education, and agrees that science and technology-related education is more closely related to the knowledge required to safely operate water and wastewater facilities to protect public health and the environment. For these reasons, the proposed regulation limits unrelated education to substitute for only twenty-five percent (25%) of the experience requirement, whereas related education may substitute for up to fifty percent (50%) of the experience requirement.

(75) Subject Matter: Regulatory Impact Analysis regarding experience and education requirements. (401 KAR 11:040 Water treatment and distribution system operators – classification and qualifications)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: The commenter is concerned that the proposed changes are meant to reduce qualifications rather than clarify qualifications. Contact hours and post-secondary education in any subject can be substituted for up to 50% of the required experience.

(b) Response: The cabinet acknowledges the comment. The 50% substitution only applies to contact hours and post-secondary education that resulted in a science or technology-related degree, which the cabinet finds is of particular value to safely operate water facilities to protect public health and the environment.

(76) Subject Matter: Apprenticeships. (401 KAR 11:040 Water treatment and distribution system operators – classification and qualifications)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: Apprenticeships should refer to approval by the Kentucky Department of Labor. Any apprenticeship should work under existing regulations so it is redundant to have a specific section.

(b) Response: There cabinet acknowledges the comment. There are several state agencies that may have the authority to approve apprenticeship programs, though the names of those agencies, cabinets, and departments may change in the future. To avoid having to reopen the regulation due to consolidation or reorganization, the cabinet finds “state-approved” is an appropriate term.

(77) Subject Matter: Apprenticeships. (401 KAR 11:040 Water treatment and distribution system operators – classification and qualifications)

(a) Commenter: Joe Burns (KRWA), Gary Larimore (KRWA)

Comment: The commenter states that successful completion of a certified drinking water apprenticeship program should qualify an apprentice to test for Class III certification with the
equivalent of four (4) years of experience.

(b) Response: The cabinet acknowledges the comment. The cabinet finds that sufficient experience is required to be protective of human health and the environment.

(78) Subject Matter: Regulatory Impact Analysis regarding apprenticeships. (401 KAR 11:040 Water treatment and distribution system operators – classification and qualifications)

(a) Commenter: Donald R. Compton (KWWOA)
Comment: The RIA states that the regulations establish a route for accepting apprenticeships approved by the Kentucky Labor Cabinet, but the regulation only refers to "state-approved apprenticeship program".

(b) Response: The cabinet acknowledges the comment. There are several state agencies that may have the authority to approve apprenticeship programs, though the names of those agencies, cabinets, and departments may change in the future. To avoid having to reopen the regulation due to consolidation or reorganization, the cabinet finds "state-approved" is an appropriate term.

(79) Subject Matter: Equivalent certification. (401 KAR 11:040 Water treatment and distribution system operators – classification and qualifications)

(a) Commenter: Donald R. Compton (KWWOA)
Comment: Equivalency language should be removed. The proposed regulation would grant certification from an out-of-state individual who worked long enough to upgrade their certification but has not done so. The Association of Boards of Certification standard for equivalency is to compare state regulatory requirements and create a crosswalk for equivalent certification. Reciprocity is given to equivalent certification when requested and paid for, and this proposed language could impact our reciprocity with other states.

(b) Response: The cabinet acknowledges the comment. Reciprocity refers to a formal agreement with another state or territory to give comparable certification to any operator from that state or territory. Equivalent certification refers to granting certification to an operator when there is no reciprocal agreement with the state or territory from which the operator is transferring. The current regulations to do not allow the cabinet to consider the years of experience an out-of-state operator has achieved in granting Kentucky certification. Equivalency gives the cabinet discretion to consider the level of testing that an applicant has achieved, as well as the years of experience the applicant has already completed, when granting an equivalent Kentucky certification.

(80) Subject Matter: Equivalency. (401 KAR 11:040 Water treatment and distribution system operators – classification and qualifications)

(a) Commenter: Mike Gardner (BGMU)
Comment: The commenter recommends leaving the 0.033 provision.

(b) Response: The cabinet finds this conversion appropriate when giving credit for any subject earned during studies that did not result in a science or technology-related degree.

(81) Subject Matter: Regulatory Impact Analysis regarding reciprocal certification. (401 KAR 11:040 Water treatment and distribution system operators – classification and qualifications)

(a) Commenter: Donald R. Compton (KWWOA)
Comment: The RIA states that the regulations allow the cabinet to enter reciprocal
certification agreements with other states which has been occurring for at least thirty (30) years. The proposal is to lessen certification requirements via the “equivalency” language to go beyond allowing certificate exchanges, but to recognize additional experience gained for a higher certification. This is not “reciprocity” according to the Associations for the Boards of Certification.

(b) Response: The cabinet acknowledges the comment. Reciprocity refers to a formal agreement with another state or territory to give comparable certification to any operator from that state or territory. Equivalent certification refers to granting certification to an operator when there is no reciprocal agreement with the state or territory from which the operator is transferring. The current regulations to do not allow the cabinet to consider the years of experience an out-of-state operator has achieved which the cabinet finds is crucial in granting appropriate Kentucky certification.

(82) Subject Matter: Regulatory Impact Analysis regarding operator shortages. (401 KAR 11:040 Water treatment and distribution system operators – classification and qualifications)
(a) Commenter: Donald R. Compton (KWWOA)
   Comment: The RIA does not contain data to support the statement that there is an operator shortage because their databases are not integrated to allow for data comparison. Citing facilities for lack of operators has not been a priority unless other violations exist. Wastewater systems need only one operator of record and do not have to staff certain shifts. The cabinet is simply taking the word of drinking water systems without knowing the true need.
(b) Response: The cabinet does not concur. The cabinet is able to record the number of licenses issued, the number of operator-trainees, as well as Alternate Staffing Plans.

(83) Subject Matter: Regulatory Impact Analysis regarding costs. (401 KAR 11:040 Water treatment and distribution system operators – classification and qualifications)
(a) Commenter: Donald R. Compton (KWWOA)
   Comment: The regulation will not result in additional cost unless operators with less experience send improperly treated water out of the plant or fail to properly disinfect lines.
(b) Response: The cabinet finds that the proposed regulations strike an appropriate balance between the need to provide better opportunities for operator candidates, while providing substantial measures to protect human health and the environment.

(84) Subject Matter: Certified training provider (CTP) program. (401 KAR 11:050 Operator and training provider certification)
(a) Commenter: Gary Larimore (KRWA)
   Comment: The commenter supports the concept of a training provider certification program which should reduce the cost to approve and deliver training to the water and wastewater industries.
(b) Response: The cabinet acknowledges the comment.

(85) Subject Matter: Apprenticeship programs. (401 KAR 11:050 Operator and training provider certification)
(a) Commenter: Gary Larimore (KRWA)
   Comment: KRWA supports the cabinet’s recognition of apprenticeship education programs which are superior to traditional “on-the-job training” by supplementing experience
with structured educational goals. Students receive additional mentoring throughout the 2-year program in which progress is tracked and benchmarked, and the combination of experience and education accelerates the apprentice to fill operator positions at all levels of system classification.

(b) Response: The cabinet acknowledges the comment.

(86) Subject Matter: Agency responsible for regulations. (401 KAR 11:050 Operator and training provider certification)

(a) Commenter: Donald R. Compton (KWWOA)
Comment: Page 1, Line 3 should read “DCA” (Division of Compliance Assistance) and not “DOW” (Division of Water) because the DCA implements and enforces 401 KAR Chapter 11.

(b) Response: The cabinet does not concur. The Division of Water is responsible for the regulations located in 401 KAR Chapters 5, 8, and 11 which apply to drinking water, wastewater, and drinking water and wastewater operators.

(87) Subject Matter: Operator In Training (OIT) mentors. (401 KAR 11:050 Operator and training provider certification)

(a) Commenter: Donald R. Compton (KWWOA), Jeremy Woosley (KWWOA)
Comment: An OIT mentor has a great deal of responsibility and could possibly risk their own certification. Mentors should be limited to one OIT, and there should be some transfer of risk from the mentor to the system that employs both parties.

(b) Response: The cabinet finds that limiting mentors to one OIT would be too restrictive, especially in rural areas.

(88) Subject Matter: Board review of operator applications. (401 KAR 11:050 Operator and training provider certification)

(a) Commenter: Donald R. Compton (KWWOA)
Comment: The commenter disagrees with restricting board reviews to only Class IV applications because there could be a time when board members are needed as additional reviewers.

(b) Response: If board members are needed as additional reviewers, the cabinet can and will ask for their assistance as it has done in the past.

(89) Subject Matter: Equivalent certification. (401 KAR 11:050 Operator and training provider certification)

(a) Commenter: Donald R. Compton (KWWOA)
Comment: The commenter disagrees with offering “equivalent certification” because it is not a certification level. Additional experience should allow the applicant to take an exam at a higher level, but the proposed language hands out certifications for levels that an applicant has not tested for in either state. This language could also impact Kentucky’s reciprocal agreements with other states.

(b) Response: The cabinet acknowledges the comment. An out-of-state operator would be certified at the appropriate Kentucky level based on testing level and years of experience.

(90) Subject Matter: Cabinet website. (401 KAR 11:050 Operator and training provider certification)
(a) Commenter: Donald R. Compton (KWWOA)
Comment: The cabinet should specify its website as "Kentucky’s One Stop Business Portal" and provide clarification in the regulatory language.
(b) Response: The cabinet concurs. The exact address of the website has been included and is located in Section 7, Materials Incorporated by Reference, as required by KRS Chapter 13A. Since the cabinet website has changed names, formats, and servers in the past, the cabinet finds that specifying the web address, rather than the current name of the website, will remain accurate for a longer period of time.

(91) Subject Matter: Duration of Operator In Training (OIT) designation. (401 KAR 11:050 Operator and training provider certification)
   (a) Commenter: Donald R. Compton (KWWOA)
   Comment: The regulation needs to include a maximum duration of an OIT designation.
   (b) Response: The cabinet does not concur. As the regulatory language reflects, an OIT designation terminates if the operator does not actively pursue the certification, or if the operator completes all requirements for certification.

(92) Subject Matter: Cabinet approval prior to testing. (401 KAR 11:050 Operator and training provider certification)
   (a) Commenter: Mike Gardner (BGMU), Gary Larimore (KRWA)
   Comment: The regulation should allow a candidate to take exams at any time after employment, and submit education and experience documentation after they have been completed.
   (b) Response: The cabinet does not concur. Verifying education and experience prior to testing prevents the candidate and the cabinet from wasting valuable time and investment at the beginning of the certification process.

(93) Subject Matter: Inactive licenses. (401 KAR 11:050 Operator and training provider certification)
   (a) Commenter: Donald R. Compton (KWWOA)
   Comment: The regulation does not mention the duration of inactive status, nor how to return to active status if not in a renewal cycle.
   (b) Response: The cabinet finds that the regulation adequately describes inactive status and the elements that would return a license to active status.

(94) Subject Matter: Initial and renewal credits. (401 KAR 11:050 Operator and training provider certification)
   (a) Commenter: Donald R. Compton (KWWOA)
   Comment: Hours earned during the initial certification period should be allowed to count towards renewal which would benefit every system or operator who personally pays fees. The applicant is entered into the Division of Compliance Assistance database when registering, there should be no problem tracking the hours since the Agency Interest (AI) number assigned during the testing process links the operator and continuing education courses.
   (b) Response: Giving credit for hours earned during the initial certification period would fail to recognize the difference between earning an initial certification, and the requirement for
an operator to continue education throughout the operator’s career.

(95) Subject Matter: Continuing education renewal credits. (401 KAR 11:050 Operator and training provider certification)
   (a) Commenter: Robin Strader (Certified Operator)
      Comment: Limit the number of times the same continuing education class can be used for renewal over a 4-year period.
   (b) Response: The cabinet acknowledges the comment. Regulation already limits renewal credits to the two-year period immediately prior to the certificate expiration date. The cabinet recognizes that while a course title may remain the same, the content may change for new or updated information.

(96) Subject Matter: Continuing education renewal credits. (401 KAR 11:050 Operator and training provider certification)
   (a) Commenter: Robin Strader (Certified Operator)
      Comment: Require some of the continuing education to include actual treatment processes and technologies to deter renewals on safety topics, etc.
   (b) Response: The cabinet acknowledges the comment. The cabinet understands that safety topics may be pertinent to continuing education in certain settings. The cabinet is confident that in reviewing and approving continuing education courses, in consultation with the board, it has balanced the relationship between core content and related topics. The cabinet finds that the proposed language preserves flexibility when reviewing coursework for core content.

(97) Subject Matter: Certified training provider (CTP) program. (401 KAR 11:050 Operator and training provider certification)
   (a) Commenter: Donald R. Compton (KWWOA)
      Comment: It would be beneficial to Division of Compliance Assistance staff to have CTP renewals based on a calendar year, with fees due prior to the annual renewal (similar to laboratory certification fees), and keep CTPs on a different schedule than certification renewals.
   (b) Response: The cabinet acknowledges the comment but declines to change from biannual to annual CTP renewal. Laboratory certification is not handled by Division of Compliance Assistance.

(98) Subject Matter: Regulatory Impact Analysis regarding costs. (401 KAR 11:050 Operator and training provider certification)
   (a) Commenter: Donald R. Compton (KWWOA)
      Comment: The statement that this regulation will not result in additional cost is somewhat misleading. This regulation introduces new applications and updates others that will now have a fee attached, as identified in 401 KAR 11:060. Training providers have never had to pay a fee in the past to have a continuing education program reviewed, nor has the Division of Compliance Assistance charged a fee to approve training hours that are entered into the operator certification database.
   (b) Response: The cabinet acknowledges the comment. Fees are located in 401 KAR 11:060. The cabinet has reviewed and approved training for many years without compensation. The proposed fees attempt to recover some of the costs of providing these programs and services.
(99) Subject Matter: Fiscal Note regarding state or local government. (401 KAR 11:050 Operator and training provider certification)

(a) Commenter: Donald R. Compton (KWWOA)
Comment: Many utilities provide their own operator training and will now incur a cost to have their training programs reviewed and the hours entered.

(b) Response: The cabinet acknowledges the comment and finds that utilities benefit with significant cost savings by not having to send its operators outside of the utility for training.

(100) Subject Matter: In-house training and fees. (401 KAR 11:050 Operator and training provider certification)

(a) Commenter: Greg Heitzman (AWWA), Amy Kramer (AWWA), Kay Sanborn (AWWA)
Comment: The commenters suggest that the cabinet training session be mandatory only for principal officers and core trainers, and that each individual trainer does not need to attend.

(b) Response: The cabinet concurs. The cabinet intended that only principal officers and core trainers attend training sessions, and has added language to clarify the regulation.

(101) Subject Matter: In-house training and fees. (401 KAR 11:050 Operator and training provider certification)

(a) Commenter: Greg Heitzman (AWWA), Amy Kramer (AWWA), Kay Sanborn (AWWA)
Comment: The commenters suggest clarifying that in-house training is allowed and consider eliminating the continuing education credit hour fees for training provided by utility staff.

(b) Response: The cabinet acknowledges the comment. The cabinet finds that $50 for 2-year approval for a training course is a nominal fee, assists in recouping the cost of course review and approval, and that utilities benefit from significant cost savings in not having to send its operators outside for training.

(102) Subject Matter: Certified Training Provider documentation. (401 KAR 11:050 Operator and training provider certification)

(a) Commenter: Donald R. Compton (KWWOA)
Comment: The regulation does not reference a signed roster, stamp sheet, etc. for confirmed operator attendance, yet the list contains a summary of participant evaluations.

(b) Response: The cabinet acknowledges the comment. Training providers have different methods of recording operator attendance on-site, however, operator attendance is recorded on the Continuing Education Activity Report which is training providers are required to retain under the proposed amendments.

(103) Subject Matter: Certified Training Provider documentation. (401 KAR 11:050 Operator and training provider certification)

(a) Commenter: Donald R. Compton (KWWOA)
Comment: The CTP program needs to be addressed more clearly and inclusively, and required forms need to be reviewed.

(b) Response: The cabinet acknowledges the comment. The new forms were filed with the Chapter 11 regulatory package and all forms are described in the “Detailed Summary of
Materials Incorporated By Reference” on pp. 21 – 23, as required by KRS Chapter 13A, with copies available from the Division of Water, Division of Compliance Assistance, or the Legislative Research Commission. The new forms cannot be made available on the Division of Water or Division of Compliance Assistance websites until they have completed the regulatory promulgation process.

(104) Subject Matter: Certified Training Provider documentation. (401 KAR 11:050 Operator and training provider certification)
(a) Commenter: Donald R. Compton (KWWOA)
Comment: Extensions have always been submitted on the same form as an initial Continuing Education request.
(b) Response: The cabinet acknowledges the comment. The cabinet redesigned the form to align with its programming. The new form was filed with the Chapter 11 regulatory package and all forms are described in the “Detailed Summary of Materials Incorporated By Reference” on pp. 21 – 23, as required by KRS Chapter 13A, with copies available from the Division of Water, Division of Compliance Assistance, or the Legislative Research Commission.

(105) Subject Matter: Education and Experience Documentation form. (401 KAR 11:050 Operator and training provider certification)
(a) Commenter: Christopher Spriggs (City of Madisonville)
Comment: The Education and Experience Documentation Form should include the population served or the facility size. This would help the application review process when determining if an operator meets regulations.
(b) Response: The cabinet concurs and has amended the form to include facility size.

(106) Subject Matter: Operator In Training (OIT) disciplinary action. (401 KAR 11:050 Operator and training provider certification)
(a) Commenter: Donald R. Compton (KWWOA)
Comment: Language needs to be included for OIT designation disciplinary action.
(b) Response: The cabinet does not concur. All operators are subject to disciplinary action whether they are in training or certified.

(107) Subject Matter: Operator disciplinary action. (401 KAR 11:050 Operator and training provider certification)
(a) Commenter: Donald R. Compton (KWWOA)
Comment: Multiple regulations need to be listed, including 401 KAR Chapters 5, 6, 8, and 10, as the basis for operator disciplinary action.
(b) Response: The cabinet does not concur. 401 KAR 11:020, which is cited in 401 KAR 11:050 as required by KRS Chapter 13A, establishes the standards of professional conduct for all operators pursuant to all applicable Kentucky administrative regulations.

(108) Subject Matter: Fees. (401 KAR 11:060 Operator and training provider certification fees)
(a) Commenter: Donald R. Compton (KWWOA), Jeremy Woosley (KWWOA)
Comment: The proposal places the burden for supporting a state program on certified operators and their employers who keep drinking water and wastewater systems operating and maintained per a myriad of federal and state regulations. It is an established fact that Kentucky
public water systems and publicly owned treatment works struggle to hire and retain qualified staff and are looking at a significant loss of seasoned employees over the next 5 – 10 years. Increasing or adding fees for initial certification or renewals and in-house training, plus penalties for non-electronic submittal will be a detriment to both individuals considering water operations as a career, and to utilities attempting to retain or hire. As both drinking water and wastewater operations directly impact public health, they do not have the luxury of “shutting down” if staff are not available. Systems that struggle with meeting day-to-day expenses and infrastructure needs will now have to deal with increased costs for certification. From a public water system perspective, Kentucky is a “small system” state, i.e., the majority of its drinking water systems serve less than 10,000 in population. Those systems are primarily located in rural or depressed areas.

(b) Response: The cabinet acknowledges the comment. Fees are charged every two (2) years and have not been increased for ten (10) years, while the costs to implement all components of the operator certification and training programs have steadily increased. The cabinet finds it has fairly balanced the needs of the Division of Water and Division of Compliance Assistance, the needs of operators and their employers, and the needs of the Commonwealth’s citizens.

(109) Subject Matter: Agency responsible for regulations. (401 KAR 11:060 Operator and training provider certification fees)

(a) Commenter: Donald R. Compton (KWWOA)
Comment: Page 1, Line 3 should read “DCA” (Division of Compliance Assistance) and not “DOW” (Division of Water) because the DCA implements and enforces 401 KAR Chapter 11.

(b) Response: The cabinet does not concur. The Division of Water is responsible for the regulations located in 401 KAR Chapters 5, 8, and 11 which apply to drinking water, wastewater, and drinking water and wastewater operators.

(110) Subject matter: Operator certification fees (401 KAR 11:060 Operator and training provider certification fees)

(a) Commenter: Lloyd Cress Jr. (KLC)
Comment: KLC recognizes that the Department of Environmental Protection (DEP) is burdened with increasing personnel costs that are not sufficiently covered by the Commonwealth’s general fund, and the important role DEP personnel play in ensuring the health and welfare of the Commonwealth’s citizens. However, shifting those costs to municipalities and their employees is likely to frustrate the intended purpose of the proposed changes. KLC requests that DEP consider reducing the proposed fee increases in a manner that assists DEP administrative needs without placing undue burden on municipalities.

(b) Response: The cabinet acknowledges the comment. Fees are charged every two (2) years and have not been increased for ten (10) years, while the costs to implement all components of the operator certification and training programs have steadily increased. The cabinet finds it has fairly balanced the needs of the Division of Water and Division of Compliance Assistance, the needs of operators and their employers, and the needs of the Commonwealth’s citizens.

(111) Subject matter: Operator certification fees (401 KAR 11:060 Operator and training
provider certification fees)

(a) Commenter: Donald Compton (KWWOA), Ruth Lancaster (Certified operator), Robin Strader (Certified Operator), Jeremy Woosley (KWWOA)

Comment: The commenters are concerned that the increase in reciprocity and certification fees will cause financial hardship for operators and operator candidates.

(b) Response: The cabinet acknowledges the comment. Fees are charged every two (2) years and have not been increased for ten (10) years, while the costs to implement all components of the operator certification and training programs have steadily increased. The cabinet finds it has fairly balanced the needs of the Division of Water and Division of Compliance Assistance, the needs of operators and their employers, and the needs of the Commonwealth’s citizens. While the cabinet understands the concerns of the commenters, insufficient wages for operators must be addressed by the plants and systems that employ them. Additionally, since licenses are valid for two years, the certification and renewal fees are actually spread over a two-year period.

(112) Subject Matter: Effect of new fees. (401 KAR 11:060 Operator and training provider certification fees)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: The fee increases will be detrimental to the goal of these proposed regulations to attract additional people to the profession and keep current certified operators employed. The commenter seems to suggest that the fees be tiered based on the size of the system, or implemented over a two- to four-year period.

(b) Response: The cabinet acknowledges the comment. Fees are charged every two (2) years and have not been increased for ten (10) years, while the costs to implement all components of the operator certification and training programs have steadily increased. The cabinet finds it has fairly balanced the needs of the Division of Water and Division of Compliance Assistance, the needs of operators and their employers, and the needs of the Commonwealth’s citizens. While the cabinet understands the concerns of the commenter, insufficient wages for operators must be addressed by the plants and systems that employ them.

(113) Subject matter: Operator certification fees (401 KAR 11:060 Operator and training provider certification fees)

(a) Commenter: Lloyd Cress Jr. (KLC)

Comment: With the large number of certifications required, even for smaller systems, the fee increase could result in reduced numbers of certified employees that a system is able to employ due to limited budgets. Given shrinking municipal budgets, significant fee increases are problematic. Reasonable costs are important since the money used to pay fees by municipalities is money that could also be used in other areas, such as infrastructure improvement.

(b) Response: The cabinet acknowledges the comment. Fees are charged every two (2) years and have not been increased for ten (10) years, while the costs to implement all components of the operator certification and training programs have steadily increased. The cabinet finds it has fairly balanced the needs of the Division of Water and Division of Compliance Assistance, the needs of operators and their employers, and the needs of the Commonwealth’s citizens.

(114) Subject Matter: Operator fees (401 KAR 11:060 Operator and training provider
 certification fees)
   (a) Commenter: Lloyd Cress Jr (KLC), Gary Larimore (KRWA)
   Comment: While the KRWA understands that certification fees have not increased for ten (10) years, while operating costs for the certification program have significantly increased, KRWA has reservations regarding the renewal fee increase of 200% and more for those seeking certification. The proposed fees will be burdensome for utilities that provide many services and operators who hold multiple licenses. KRWA recommends that the cabinet seek an alternative fee structure or implementation.
   (b) Response: The cabinet acknowledges the comment. Fees are charged every two (2) years and have not been increased for ten (10) years, while the costs to implement all components of the operator certification and training programs have steadily increased. The cabinet finds it has fairly balanced the needs of the Division of Water and Division of Compliance Assistance, the needs of operators and their employers, and the needs of the Commonwealth’s citizens.

(115) Subject Matter: Equivalent certification. (401 KAR 11:060 Operator and training provider certification fees)
   (a) Commenter: Donald R. Compton (KWWOA)
   Comment: Equivalency should be removed.
   (b) Response: The cabinet does not concur. The cabinet finds that equivalent certification will benefit operator candidates and utilities by opening more opportunities for experienced, certified operators.

(116) Subject Matter: Inactive certification fee. (401 KAR 11:060 Operator and training provider certification fees)
   (a) Commenter: Donald R. Compton (KWWOA)
   Comment: The inactive fee should include a time frame, such as per renewal cycle or a one-time fee.
   (b) Response: The cabinet acknowledges the comment. All certification fees in 401 KAR 11:060 are charged biannually.

(117) Subject Matter: Continuing Education Activity Report entry fee. (401 KAR 11:060 Operator and training provider certification fees)
   (a) Commenter: Donald R. Compton (KWWOA)
   Comment: The commenter is unsure if the fee is charged for Division of Compliance Assistance (DCA) staff to enter a roster, or for DCA accepting hours submitted by a provider through the e-portal, and states that the fee needs clarification.
   (b) Response: The cabinet acknowledges the comment and has amended the regulation to clarify that the fee will be charged when a training provider sends documents to the cabinet for manual entry.

(118) Subject Matter: Continuing Education Activity Report entry fee. (401 KAR 11:060 Operator and training provider certification fees)
   (a) Commenter: Greg Heitzman (AWWA), Amy Kramer (AWWA), Kay Sanborn (AWWA)
   Comment: The commenters suggest clarifying that the $50 Continuing Education
Activity Report entry fee is only for non-certified training providers that submit the report to the cabinet for entry rather than submitting the report online.

(b) Response: The cabinet does not concur. The $50 fee is for any training provider that submits the report to the cabinet for manual entry rather than submitting the report online.

(119) Subject Matter: Continuing Education Activity Report entry fee. (401 KAR 11:060 Operator and training provider certification fees)

(a) Commenter: Robin Strader (Certified Operator)
Comment: The commenter suggested the fee for roster entry but states it is not reflected as suggested in the proposed regulation. The commenter suggested a fee if Division of Compliance Assistance (DCA) staff had to take a hand-written, signed CEU form as attached to the CEU application, and physically enter all of the participants and their Agency Interest and license number. If a roster is entered through the portal directly into the DCA database, there should not be a fee. The interpretation of the proposed regulation is that the $50 entry fee includes DCA accepting information entered by a trainer or facility which was not the intent of the suggestion.

(b) Response: The cabinet adopted the suggestion by proposing the Continuing Education Activity Report entry fee of $50. The cabinet has amended the regulation to clarify that the fee will be charged when a training provider sends documents to the cabinet for manual entry.

(120) Subject Matter: Extension Request for Approved Continuing Education fee. (401 KAR 11:060 Operator and training provider certification fees)

(a) Commenter: Donald R. Compton (KWWOA)
Comment: The commenter expresses concern that an extension request is charged differently than the initial request, given that it requires the same input by the Division of Compliance Assistance to get the application before the Board.

(b) Response: The cabinet acknowledges the comment. To clarify, this fee is charged to training providers that want to extend cabinet approval for a particular training course for an additional two (2) years.

(121) Subject Matter: Forms. (401 KAR 11:060 Operator and training provider certification fees)

(a) Commenter: Donald R. Compton (KWWOA)
Comment: The commenter is concerned regarding the availability of new forms on the ecommerce website for review.

(b) Response: The cabinet acknowledges the comment. The new forms were filed with the Chapter 11 regulatory package and all forms are described in the “Detailed Summary of Materials Incorporated By Reference” on pp. 21 – 23, as required by KRS Chapter 13A, with copies available from the Division of Water, Division of Compliance Assistance, or the Legislative Research Commission. The new forms cannot be made available on the “ecommerce” website until they have completed the regulatory promulgation process.

(122) Subject Matter: Training provider fees (401 KAR 11:060 Operator and training provider certification fees)

(a) Commenter: Lloyd Cress Jr (KLC)
Comment: The proposal imposes a $2000 fee for certified training providers and graduated fees for continuing education credit hour approval. KLC is concerned that the
proposed fees may be excessive.

(b) Response: The cabinet acknowledges the comment. A certified training provider pays a single fee of $2000 to remain certified for two years, but will not be charged additional fees for approval of individual courses. The fee for non-certified training provider course approval will be charged per provider, per hour. The cabinet finds it has reached an equitable balance in fees.

(123) Subject Matter: Training provider fees (401 KAR 11:060 Operator and training provider certification fees)

(a) Commenter: Mike Gardner (BGMU)
Comment: Section 3 should be clarified so that specified fees are for continuing education units up to the specified number of hours, rather than per hour within that unit.
(b) Response: The cabinet acknowledges the comment and finds that the proposed language meets KRS Chapter 13A drafting requirements and accomplishes what the commenter suggests.

(124) Subject Matter: Training provider fees (401 KAR 11:060 Operator and training provider certification fees)

(a) Commenter: Ruth Lancaster (Certified operator)
Comment: The commenter is concerned that training offered by government agencies and nonprofit entities will be subject to the new fees for training providers which will result in a loss of affordable training for operators.
(b) Response: The cabinet acknowledges the comment. The cabinet incurs the same expenses regardless of the classification of training provider. The cabinet finds it has reached a reasonable balance between the need to recoup a portion of the costs to provide its services and the needs of training providers.

(125) Subject Matter: Training provider fees. (401 KAR 11:060 Operator and training provider certification fees)

(a) Commenter: Ruth Lancaster (Certified operator)
Comment: The commenter states that the imposition of an additional $50 fee on individual operators who seek affordable training will result in financial hardship for operators who must also use vacation time to accumulate required renewal training. The cabinet does not have a current searchable database to identify training events that have been approved.
(b) Response: The cabinet acknowledges the comment. To clarify, the $50 fee for non-certified training providers is paid by the training provider, not by the operator. An operator may contact the cabinet to ascertain whether a particular course has been approved.

(126) Subject Matter: Training technology limitations. (401 KAR 11:060 Operator and training provider certification fees)

(a) Commenter: Ruth Lancaster (Certified operator)
Comment: The cabinet should assess a small annual fee for the training and registration of approved designated employees at each training provider (large water systems and for-profit providers) in return for access to the cabinet’s database for the entry of continuing education hours and the resulting convenience of data review and speed of upload. The burden of a fee will fall disproportionally on individuals and systems who can least afford it such as utilities with limited or without internet access, very small utilities with limited office or support staff, and
individuals who have requested credit from nontraditional training providers (nonprofit entities).

(b) Response: The cabinet does not concur. The cabinet has no statutory authority to
govern fees or staff assignments for staff employed by training providers. This would also
require additional, extensive, and expensive software upgrades that are not immediately available
through the Commonwealth Office of Technology. Internet access and computers are publicly
available at public libraries for those with limited internet access.

(127) Subject Matter: Regulatory Impact Analysis regarding projected costs and revenues. (401
KAR 11:060 Operator and training provider certification fees)
   (a) Commenter: Donald R. Compton (KWWOA)
       Comment: The Division of Compliance Assistance projected deficit of $144,566, but the
fees are projected to raise $426,600 to $461,850. The commenter is concerned that the fees are
being raised to facilitate contracting out operator training to a third party.

(b) Response: The cabinet acknowledges the comment. The numbers provided refer only
to staffing but not overhead. The cabinet must recoup a larger portion of the expenses it incurs
in providing certification and training services whether they remain in-house or are contracted
out.

(128) Subject Matter: Regulatory Impact Analysis regarding renewal fees. (401 KAR 11:060
Operator and training provider certification fees)
   (a) Commenter: Donald R. Compton (KWWOA)
       Comment: Renewal fees will increase from $50 to $200. Many utilities pay this fee for
operators and a 300% increase seems unreasonable, especially if they have multiple licenses to
renew. The commenter is uncertain of the basis for the increased fee in relation to the time it
takes to process a license renewal with available automation.

(b) Response: The cabinet acknowledges the comment. The current renewal fee is
actually $25 per year because a renewal is valid for two (2) years. The proposed renewal fee
would rise to $100 per year. Fees have not been raised in ten (10) years, while the costs of
providing certification and training services have steadily increased. The cabinet finds it has
reached a reasonable balance between its costs and the needs of operators, utilities, and the
citizens of the Commonwealth.

(129) Subject Matter: Regulatory Impact Analysis regarding additional costs to the state. (401
KAR 11:060 Operator and training provider certification fees)
   (a) Commenter: Donald R. Compton (KWWOA)
       Comment: The statement that there will not be any additional costs incurred by the state
for this regulation is not accurate because there will be a cost for developing all the new paper
forms proposed, as well as creating them online.

(b) Response: The cabinet does not concur. The forms have already been created to align
with the cabinet programs, and were filed with the 401 KAR Chapter 11 regulatory package as
required by KRS Chapter 13A.

(130) Subject Matter: Regulatory Impact Analysis regarding additional costs for state and local
government. (401 KAR 11:060 Operator and training provider certification fees)
   (a) Commenter: Donald R. Compton (KWWOA)
       Comment: The response does not discuss the impact on local governments that will pay,
in some cases, a 300% increase in fees.

(b) Response: The cabinet acknowledges the comment. The Regulatory Impact Analysis does state that “state or local governments that operate drinking water or wastewater facilities” will be impacted by the administrative regulation. However, the cabinet cannot estimate the actual costs to any particular local government because of the differences in the size of facilities, the number of operators, and whether the facility pays fees for its operators.

(131) Subject Matter: Timing of implementing increased fees. (401 KAR 11:060 Operator and training provider certification fees)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: The commenter proposes phasing in the fee increases over a period of four (4) years and eliminating the $50 fee for Continuing Education Activity Report entry. In the alternative, the commenter proposes retaining the fee increases for systems serving populations of more than 10,000, while proposing lower fees for systems serving populations less than 10,000.

(b) Response: The cabinet acknowledges the comment. The cabinet has balanced the need for additional revenue to cover the costs of its operator certification and training programs with the interests of operators and their employers. The fee increases are already spread over a 2-year period (i.e., certificates are valid for 2-year increments). The suggestions would not adequately cover the costs of implementing the program, and the second suggestion would further complicate applications and renewals for operators who change employers to a smaller or larger system. Additionally, the Continuing Education Activity Report entry fee is paid only by training providers who send the report for manual entry by Division of Compliance Assistance staff which is an extra expense for the cabinet.

V. Summary of Action taken by Promulgating Agency

The cabinet reviewed the public comments and, as a result, is not amending 401 KAR 5:010.

In response to public comments, the cabinet is amending 401 KAR 8:030, 8:050, 11:001, 11:030, 11:040, 11:050, and 11:060 as follows:

401 KAR: 8:030. Water treatment plant and water distribution system classification and staffing.

Page 1
RELATES TO
Line 6
After “224.10-110”, insert a comma.
Delete the semicolon.

Page 1
STATUTORY AUTHORITY
Line 8
After “KRS 223.180”, insert a dash.
Delete “through”.

35
Page 1
Section 1(1)(c)
Line 20
After "(c) Except as", insert "established".
Delete "provided".

After "in subsection", insert "(3)(c)".
Delete "(2)(c)".

Page 3
Section 1(3)(c)1.a.
Line 7
After "a. Except as", insert "established".
Delete "provided".

Page 3
Section 1(3)(c)1.b.
Line 15
After "direct responsible charge," insert "if".
Delete "provided that".

Page 3
Section 1(3)(c)2.a.
Line 18
After "a. Except as", insert "established".
Delete "provided".

Page 4
Section 1(3)(c)2.b.
Line 2
After "direct responsible charge," insert "if".
Delete "provided that".

Page 4
Section 1(3)(c)4.a.
Line 9
After "a. Except as", insert "established".
Delete "provided".

Page 4
Section 1(3)(c)4.b.
Line 17
After "direct responsible charge," insert "if".
Delete "provided that".
Page 5
Sections 1(3)(e)2. and 1(3)(a) (Should Have Been 1(3)(e)2. and 1(4)(a))
Lines 18 and 19
After “and distribution system.”, insert “(4)”. Delete “(3)”.

Page 5
Section 1(3)(b) (Should Have Been 1(4)(b))
Lines 22 and 23
After “system shall provide”, delete “the following information”.

Page 6
Sections 1(3)(b)5. and 1(4) (Should Have Been Section 1(4)(b)5. and 1(5)
Lines 8 and 9
After “to the contract.”, insert “(5)”. Delete “(4)”.

Page 6
Section 1(4) and (5) (Should Have Been Section 1(5) and (6))
Lines 10 and 11
After “be prominently displayed.”, insert “(6)”. Delete “(5)”.

401 KAR 8:050. Drinking water program fees.

Page 1
NECESSITY, FUNCTION, AND CONFORMITY
Line 12
After “to enforce cabinet”, insert “administrative”.

Page 1
Section 1(1)(a)
Line 19
After “(a) Except as”, insert “established”. Delete “provided”.

Lines 19 and 20
After “plans and specifications”, insert “established”. Delete “listed”.

Page 2
Section 1(1)(a)
Line 1
After “required project fee”, insert “established”. Delete “described”.

Page 2
Section 1(1)(c)
Line 5
After “project fee assessed”, insert “as established”.

Page 2
Section 1(2)(a)
Line 12
After “the applicant whether”, insert “or not”.

Page 2
Section 1(2)(b)
Lines 15 and 16
After “be assessed according to”, insert “subparagraphs 1. through 3. of this paragraph.”.
Delete “the following schedule:”.

401 KAR 11:001. Definitions for 401 KAR Chapter 11.

Page 1
RELATES TO
Line 6
After “223.160 – 223.220”, ” insert “224.1-010”
Delete “224.01-010(9)”.

Page 2
Section 1(4)
Line 7
After “defined by KRS”, insert “224.1-101(8)”.
Delete “224.01-010(9)”.

Page 2
Section 1(6)
Line 11
After “(6)”, insert the following:
“Certified operator” means an individual that holds an active certified operator’s certificate issued in accordance with 401 KAR 11:050.
(7)

Page 2
Section 1(6)
Line 12
After “by the cabinet”, insert “as established in 401 KAR 11:050”.

Page 2
Section 1(7)
Lines 18 and 19
Delete subsection (7) in its entirety.
401 KAR 11:030. Wastewater treatment and collection system operators; classification and qualifications.

Page 1
NECESSITY, FUNCTION, AND CONFORMITY
Line 10
After "private sewage system to", insert "possess".
Delete "possesses".

Page 6
Section 2(1)(c)1.
Line 13
After "A baccalaureate degree", insert "from a regionally accredited college or university".

Page 7
Section 2(2)(d)1.
Line 19
After "A baccalaureate degree", insert "from a regionally accredited college or university".

Page 8
Section 2(3)(b)2.
Line 17
After "disciplinary action as", insert "established in".
Delete "provided by".

Page 8
Section 2(4)(a)
Line 22
After "(a) Education", insert "from a regionally accredited college or university".

Page 9
Section 2(4)(b)
Line 9
After "(b) Education", insert "from a regionally accredited college or university".

Page 10
Section 2(4)(d)3.a.i. through iii.
Lines 14 through 16
Renumber incorrectly cited subclauses i. through iii. as (i) through (iii).

Page 10
Section 2(4)(d)3.b.i. and ii.
Lines 20 and 21
Renumber incorrectly cited subclauses i. and ii. as (i) and (ii).

Page 12
Section 2(4)(f)4.i. And ii.
Lines 1 and 2
Renumber incorrectly cited subclauses i. and ii. as clauses a. and b.

Page 12
Section 2(6) (Should be Section 2(5)
Line 4
After “this administrative regulation.”, insert “(5)”. Delete “(6)”.
Line 6
After “collection apprenticeship program”, insert “as established in 401 KAR 11:050”.
Line 7
After “score of seventy”, insert “(70)”. After “percent”, delete “(70%)”.
Line 8
After “administered examination.”, insert “(6)”. Delete “(7)”.
Line 17
After “operator obtained experience.”, insert “(7)”. Delete “(8)”.

401 KAR 11:040. Water treatment and distribution system operators; classification and qualifications.

Page 1
RELATES TO
Line 7
After “KRS 223.160”, insert a dash. Delete “through”.

Page 1
STATUTORY AUTHORITY
Line 9
After “KRS 223.160”, insert a dash. Delete “through”.

Page 1
NECESSITY, FUNCTION, AND CONFORMITY
Lines 13 and 14
After “programs and enforce cabinet”, insert “administrative”.

Page 4
Section 1(2)(a)2.
Line 10
After "2.", capitalize the first letter of "shall".

Page 5
Section 1(4).
Line 5
After "Operator in Training", insert "designations".
Delete "certifications".

Page 8
Section 2(1)(h)1.
Line 3
After "A baccalaureate degree", insert "from a regionally accredited college or university".

Page 8
Section 2(1)(i)1.
Line 8
After "A baccalaureate degree", insert "from a regionally accredited college or university".

Page 9
Section 2(2)(d)1.
Line 11
After "A baccalaureate degree", insert "from a regionally accredited college or university".

Page 10
Section 2(4)(b)
Line 5
After "for the classifications", insert "established".
Delete "identified".

Page 10
Section 2(4)(b)2.
Line 10
After "disciplinary action as", insert "established in".
Delete "provided by".

Page 10
Section 2(5)(a)
Line 15
After "(a) Education", insert "from a regionally accredited college or university".

Page 11
Section 2(5)(b)
Line 2
After "(b) Education", insert "from a regionally accredited college or university".

Page 12
Section 2(5)(d)2.a.i. Through iii.
Lines 5 through 7
Renumber incorrectly cited subclauses i. through iii. as (i) through (iii).

Page 12
Section 2(5)(d)2.b.i. And ii.
Lines 11 and 12
Renumber incorrectly cited subclauses i. and ii. as (i) and (ii).

Page 12
Section 2(5)(d)3.
Line 13
After "the education requirement", insert "established".
Delete "specified".

401 KAR 11:050. Operator and training provider certification.

Page 1
RELATES TO
Line 6
After "KRS 223.160", insert a dash.
Delete "through".

Page 1
STATUTORY AUTHORITY
Line 8
After "KRS 223.160", insert a dash.
Delete "through".

Page 2
Section 1(1)(b)2.
Line 19
After "in Training designation", insert "if".
Delete "as long as".

Page 4
Sections 1(8) and 1(8)(a)
Line 5
Delete the space between "(8)" and "(a)".

Page 6
Section 3(1)(b)
Line 1

Page 6  
Section 3(2)  
Line 2  
After “Operator in Training”, insert “designation”. Delete “certification”.

Page 6  
Section 3(5)(a)  
Line 19  
After “cabinet-approved training hours”, insert “as established in Sections 4 and 5 of this administrative regulation”.

Page 7  
Section 4(3)(a)  
Line 21  
After “provider applicant of”, insert “the cabinet’s”. Delete “its”.

Line 22  
After “items established in”, lowercase the first letter of “Subsection” and insert “(2)”. Delete “2”.

Page 8  
Section 4(5)  
Line 4  
After “principal officers and”, insert “core”.

Page 8  
Section 4(6)  
Line 8  
After “on core content”, delete the remainder of subsection (6), except the period.

Page 8  
Section 4(7)(b)  
Line 12  
After “shall assign a”, lowercase the first letters of “Course” and “Number.”

Page 8  
Section 4(7)(a) through (d)  
Lines 16 through 20  
Renumber paragraphs (a) through (d) as subparagraphs 1. through 4., respectively

Lines 21 and 22  
Renumber subparagraphs 1. and 2. as clauses a. and b., respectively
Pages 8 and 9  
Section 4(7)(e) through (i)  
Lines 23 and 1 through 4  
Renumber paragraphs (e) through (i) as subparagraphs 5. through 9., respectively.

Page 9  
Section 4(8)(d)  
Line 13  
After “provider certification if”, delete “the board determines that”.

Page 10  
Section 5(3)  
Line 5  
After “as established in”, lowercase the first letter of “Subsection” and insert “(1)”.  
Delete “1”.

Page 10  
Section 6(1)  
Lines 17 and 18  
After “disciplinary action if”, delete the following:  
“the cabinet, in consultation with the board, determines that”

401 KAR 11:060. Operator and training provider certification fees.

Page 1  
RELATES TO  
Line 6  
After “KRS 223.160”, insert a dash.  
Delete “through”.

Page 2  
Section 1(2)  
Line 5  
After “through the cabinet’s”, insert “Web site”.  
Delete “website”.

Line 6  
After “fees established in”, lowercase the first letter of “Subsection” and insert “(1)”.  
Delete “1”.

Page 2  
Section 1(3)  
Line 7  
After “in this section”, insert “shall be”.  
Delete “are”.

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Page 3
Section 3(3) and 3(4)

Line 6
After "(3)" delete "Continuing Education Activity Report entry fee: Fifty (50) dollars. (4)".

Lines 7 and 8
After "Fifteen (15) dollars. insert "(4)".
Delete "(5)".

Page 3
Section 3(5)

Line 8
After "and training provider", insert "documents and".

Lines 8 and 9
After "through the cabinet’s" insert "Web site".
Delete "website".