

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 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 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 disproportionately 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".

**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)(e)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**